

**Court No. - 7**

**Case :-** WRIT TAX No. - 132 of 2020

**Petitioner :-** Ankit Bhutani, Son of Shri Madan Lal Bhutani  
partner of M/s Ravi Crop Science, Industrial Growth Area,  
Phase-1, Samba (Jammu & Kashmir), R/o D-14, Jivan Jyoti  
Apartment, Pretampura, Delhi

**Respondent :-** Union of India through Secretary, Department  
of Revenue, Ministry of Finance, North Block, New Delhi  
and 2 others

**Counsel for Petitioner :-** Birendra Kumar Srivastava (Senior  
Advocate) assisted by Abhai Kumar Singh

**Counsel for Respondent No.1:-** Anant Kumar Tiwari

**Counsel for Respondent Nos. 2 and 3:-** Ashok Singh

**Hon'ble Biswanath Somadder,J.**

**Hon'ble Dr. Yogendra Kumar Srivastava,J.**

**[Per: Hon'ble Biswanath Somadder, J.]**

The writ petitioner is an individual against whom several summonses / notices have been issued from time to time by the Senior Intelligence Officer, office of the Directorate General of Goods & Services Tax Intelligence, Ghaziabad Regional Unit, Ghaziabad. The summonses have been issued on various dates. As stated in paragraph 3 of the writ petition, the dates are 26<sup>th</sup> September, 2019, 27<sup>th</sup> September, 2019, 1<sup>st</sup> October, 2019, 7<sup>th</sup> October, 2019, and 15<sup>th</sup> October, 2019.

As stated in paragraph 14 of the writ petition, one Radhey Enterprises – from where the writ petitioner's firm used to purchase raw materials – was also subjected to similar action / summons. A Civil Miscellaneous Writ Petition No.18802 of 2019, had been filed by Radhey Enterprises before Punjab and Haryana

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High Court and operation of the summons dated 26<sup>th</sup> June, 2019, had been stayed by that High Court. In paragraph 13 of the writ petition, the writ petitioner has stated that he has been forced to deposit a sum of Rs.2 crores on 31<sup>st</sup> October, 2019.

Using the above facts and relying upon a judgment and order rendered by a Coordinate Bench of this Court on 25<sup>th</sup> May, 2018, in Writ Tax No.-805 of 2018 (Shri Viklap Jain vs. Union of India and 4 others), the writ petitioner has approached this Court praying, *inter alia*, for the following reliefs:-

*“(i) to issue a writ, order or direction in the nature of mandamus, commanding the respondent No.3 to finalize the enquiry proceeding, initiated under Section 70 of the Central Goods and Services Tax, 2017 and not to take any coercive action against the petitioner before holding him guilty in enquiry proceeding, particularly when the he has deposited Rs.2 corore (sic) on 31.10.2019, before even quantifying his tax liability.*

*(ii) to issue a writ, order or direction in the nature of Mandamus commanding the respondent No.3 to treat the petitioner’s presence or appearance through his lawyer / representatives with all relevant documents as required and to afford reasonable opportunity of hearing before passing any final order / quantifying the tax liability.”*

The question here is whether the discretionary jurisdiction of this Court under Article 226 of the Constitution of India can be availed by the writ petitioner in the facts and circumstances of the instant case?

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A bare perusal of one of the summonses annexed to the writ petition, being summons dated 26<sup>th</sup> September, 2019, reveals that the same is for the purpose of enquiry in respect of availment of Input Tax Credit (I.T.C.), without receipt of any goods under section 70 of the Central Goods and Services Tax Act, 2017.

It is the admitted position that, till date, the writ petitioner, has not appeared before the concerned Senior Intelligence Officer in response to any of the summonses issued from time to time. Section 70 of the Central Goods & Services Tax Act, 2017 reads as follows:-

*“Power to summon person to give evidence and produce documents.*

*70. (1) the proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*

*(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).”*

At least five summonses have been issued for the purpose of such enquiry. A discretionary relief to a petitioner can be granted by the writ Court in exercise of its extraordinary high prerogative jurisdiction under Article 226 of the Constitution of India only if his / her bona fides are not suspect. The reliefs which the writ petitioner is essentially seeking – if granted – would tantamount to granting him immunity from arrest even though the facts of the

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case clearly reveal that, till date, he has not even appeared once before the concerned Senior Intelligence Officer.

So far as the judgment of the Division Bench of this Court is concerned, the facts of that case are totally different. Even otherwise, while issuing directions, the Court took note of the fact that the entire writ petition was based upon apprehension only. In the facts of that case, the writ petitioner had claimed that he was running a hotel and a Desi wine shop. He was issued summons under section 70 of Central Goods and Services Tax Act, 2017, by the Superintendent, office of the Chief Commissioner of Central Goods and Services Tax Commissionerate, Meerut, to appear in person before him on 10<sup>th</sup> May, 2018 at 12:45 hours to give evidence on such matters concerning the enquiry as he may be asked and produce documents and record mentioned in the schedule for examination. In pursuance to the summons, the writ petitioner had not attended the office of the Chief Commissioner. Rather, it was alleged that his wife went to the office and requested for granting a month's time as the petitioner was reported to be out of station. In such circumstances, the Division Bench in **Writ Tax No.805 of 2018 (Shri Viklap Jain vs. Union of India and 4 others)**, was pleased to dispose of that matter in the following manner:-

*“In view of the aforesaid facts and circumstances, though the entire petition is based upon apprehension only, we dispose it of expecting the authorities to adhere to the above settled principles of law in interrogating or putting questions to the petitioner pursuant to the summons dated 8.5.2018 issued to him.*

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*Since the petitioner has not appeared before the Superintendent, Office of the Chief Commissioner, Central Goods and Services Tax Commissionerate, Meerut now he is directed to present himself on 30th May, 2018 or on any other date which may be informed to him by the aforesaid Officer on his appearance on 30th May, 2018.*

*The petition is disposed of with the direction that the petitioner will cooperate with the enquiry.”*

The judgment of the Coordinate Bench of this Court, even though taking note of three judgments of the Hon’ble Supreme Court – in our respectful view – is not an authority for the proposition that a person against whom several summonses have been issued for the purpose of enquiry conducted under section 70 of the Central Goods and Services Tax Act, 2017, in respect of availment of Input Tax Credit (I.T.C.), without receipt of any goods, can be shielded from such enquiry by the writ Court in the manner as prayed for. Rather, in that matter, the Coordinate Bench disposed of the writ petition with a specific direction that the writ petitioner will cooperate with the enquiry.

At this juncture, we wish to quote what Lord Morris said in **British Railways Board v. Herrington**<sup>1</sup>, which reads as follows:-

*“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”*

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<sup>1</sup> 1972 AC 877= (1972) 1 All ER 749 (HL)

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In so far as this matter is concerned, the series of summonses / notices which have been issued, clearly reveal that the writ petitioner is not interested in cooperating with the enquiry. Apart from a letter dated 24<sup>th</sup> January, 2020, written by the writ petitioner, addressed to the concerned Senior Intelligence Officer, after almost four months from the date of issuance of the first summons dated 26<sup>th</sup> September, 2019, there is nothing on record to show as to how the writ petitioner has specifically responded to the summonses / notices dated 26<sup>th</sup> September 2019, 27<sup>th</sup> September, 2019, 1<sup>st</sup> October, 2019, 7<sup>th</sup> October, 2019, 15<sup>th</sup> October, 2019 and 19<sup>th</sup> November, 2019.

We may also take notice of the views expressed by the Hon'ble Supreme Court in **Poolpandi vs. Superintendent, Central Excise**<sup>2</sup>. The Hon'ble Supreme Court – in that case – was considering a situation as to whether the petitioners were entitled to the presence of their lawyers when they were being questioned during investigation under the provisions of Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973. There was a difference of opinion between the High Courts on this issue. The Supreme Court – in its judgment – has made certain observations while considering as to whether Article 21 is violated if a person is called away from his own house and questioned in that atmosphere of the Customs office without the assistance of his lawyers or his friends. In this context, the following observations of the Supreme Court would be worthwhile to be noticed and quoted:-

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2 1992 (60) E.L.T. 24 (S.C.)

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*“It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits.....The purpose of the enquiry under the Customs Act and the **other similar statutes** (emphasis supplied by this Court) will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the `just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us.”*

As observed earlier, the facts of the instant case do not qualify for use of discretion by the writ Court in order to grant the writ petitioner such reliefs as prayed for. The writ petition is, therefore, liable to be dismissed and stands dismissed accordingly.

Just after pronouncement of this judgment, the learned advocate representing the respondent nos. 2 and 3 appears and submits that his clients, namely, the Additional Director General

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Meerut Zonal Unit, Directorate General of Goods & Services Tax Intelligence, Ghaziabad Regional Unit, Ghaziabad and the Senior Intelligence Officer, Directorate General of Goods & Services Tax Intelligence, have not even been served with a copy of the writ petition. We only wish to observe that the writ petitioner ought to have approached the writ Court after serving all the respondents instead of serving only respondent no.1, being represented by Shri Anant Kumar Tiwari.

**Order Date :- 6.2.2020**

Neeraj

(Biswanath Somadder,J.)

(Dr. Y. K. Srivastava,J.)