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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 26.05.2022*
+ **W.P.(C) 10343/2021 & CM APPLs. 31842/2021, 14102/2022**

KISHORE KUMAR ARORA Petitioner
Through: Mr J.K. Mittal, Mrs Vandana Mittal &
Ms Aashna Suri, Advocates.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr Harpreet Singh, Sr. Standing Counsel
with Mr Arunesh Sharma & Mr Jatin
Gaur, Advocates for R-2.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.(ORAL) :-

1. This writ petition is directed against the show cause notice dated 21.02.2020, as also the Order-in-Original dated 16.10.2020 and the Order-in-Appeal dated 03.08.2021.

2. The narrow issue which arises for consideration in this matter is, whether respondent no. 2 had jurisdiction to issue the impugned show cause notice.

3. Mr J.K. Mittal, learned counsel, who appears on behalf of the petitioner, submits that the record would show that even according to respondent no.2, the petitioner's taxable turnover in the relevant period amounted to Rs.15,28,468/-.

3.1. It is also Mr Mittal's submission that based on an incorrect advice rendered by the petitioner's Chartered Accountant, Rs.18,69,400/- were deposited with the respondents, although, given the taxable turnover generated by the petitioner, he was not exigible to tax.

3.2. Mr Mittal goes on to submit that respondent no.2, without jurisdiction and/or authority of law, not only confiscated the subject goods i.e., tobacco products, but also imposed penalty amounting to Rs.18,69,307/- (rounded off to Rs.18,69,400/-).

3.3. In sum, it is Mr Mittal's submission that since the taxable turnover of the petitioner was below the threshold limit prescribed qua tobacco products [for being registered under GST regime] i.e., Rs.20,00,000/-, respondent no. 2 had no authority and/or jurisdiction to issue the impugned show cause notice and pass the aforementioned orders, which are assailed *via* the instant writ petition.

3.4. Mr Mittal submits that the petitioner was, therefore, not required to register himself as per Section 22(1) of the Central Goods and Services Act, 2017 [in short "CGST Act"]. In support of this plea, Mr Mittal has drawn our attention to Section 2(6) of the CGST Act and the impugned show cause notice dated 21.02.2020. In particular, our attention has been drawn to Annexure-1, appended to the said show cause notice. Based on the details set forth in Annexure-1, Mr Mittal seeks to establish that, even according to the respondents, the taxable turnover of the petitioner, as indicated above, was Rs.15,28,468/-, in the relevant period.

3.5. Therefore, the submission is that if the aforementioned taxable turnover, on which the respondents have pegged their case, is taken into account, clearly they had no jurisdiction to initiate any action against petitioner.

4. Mr Harpreet Singh, who appears on behalf of respondent no. 2, says the petitioner has been carrying on business since June 2018.

4.1. According to Mr Singh, the petitioner has concealed the fact that he has been carrying on business since June 2018. In support of this submission, Mr Singh has relied upon the "voluntary statement" made by the petitioner before the concerned officer on 22.08.2019, under Section 70 of the CGST Act.

4.2. In particular, emphasis is laid by Mr Singh on the answers provided by the petitioner to question nos. 4 and 13 put to him by the concerned officer. For the sake of convenience, the questions and answers given qua question nos. 4 and 13 are extracted hereafter:

"Q-4 Since when have you been doing the business of Pan-masala & Tobacco (Chewing)?"

Ans-I am doing this business since June-2018.

xxx

xxx

xxx

Q-13 Do you have anything more to say?

Ans- I request to release my seized goods on an early basis. I am ready to deposit all the taxes & penalties as applicable. Please tell the amount of Tax & penalty so that I can release my goods & also I do not want any legal proceedings on it.”

5. To be noted, Mr Singh does not dispute the fact that the threshold taxable turnover fixed vis-a-vis tobacco products for being covered under GST regime is Rs.20,00,000/-.

6. We have heard the learned counsel for the parties and perused the record.

7. In order to appreciate the contentions advanced by the petitioner, one would have to advert to the provisions of Section 2(6)¹ of the CGST Act which defines aggregate turnover.

7.1. A careful perusal of the provisions of Section 2(6) would show that, while ascertaining the aggregate value of taxable supplies, what needs to be, *inter alia*, excluded are Central tax, State tax, Union Territory tax, Integrated tax and cess.

7.2. Concededly, if taxes and cesses are excluded, even according to the respondents, the taxable turnover generated by the petitioner during the relevant period was Rs.15,28,468/-. The most definitive evidence regarding this aspect of the matter, as noticed above, is found in Annexure-1 appended to the impugned show cause notice,

7.3. The submission advanced on behalf of the respondents that the petitioner had been, admittedly, carrying on business since June 2018, and, therefore, the

¹ “Section 2 Definitions- In this, unless the context otherwise requires,
(6) —aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;”

respondents could do no better than to gather whatever information that was available, will not suffice in this case, in view of the answers provided to question nos. 7 to 12 by the petitioner in his voluntary statement made before the concerned officer on 22.08.2019.

7.4. For the sake of convenience, question nos.7 to 12 along with the responses of the petitioner are extracted hereafter:

“Q-7 Today at your above- mentioned premises total number of 519550 pouches of Pan Masala (Rajshree Panmasala) & (Kamla Pasand) which cost as per MRP is Rs. 28,06,200/- & total number of 519550 pouches of Chewing Tobacco (Black Label Brand) which cost as per MRP is Rs. 5,91,575/- are found, Do you have any purchase bills for the same?

Ans- I do not have any purchase bills for that, I had purchased the same in cash.

Q-8 From Where & from whom did you purchase these goods?

Ans- I had purchased these goods from Shri Raju whose shop is in Naya bans, Khari Baoli, Delhi & whose mobile number is XXXXXXXXXX², I do not remember the shop number as I do not purchase any bill.

Q-9 Do you know the residential address of Mr. Raju?

Ans- I do not know the address of Mr. Raju as I have only telephonic conversation with Raju.

Q-10 How do you make payment for the goods that you buy from Shri Raju?

Ans- He himself comes to our shop for collecting cash.

Q-11 Do you sell purchased goods against a bill or in cash?

Ans- I sale all goods in cash.

Q-12 Have you taken any GST registration on this premises?

Ans:- No”

7.5. A careful perusal of the aforesaid extract taken from the voluntary statement would show that the petitioner had identified the source from whom

² The mobile number has been masked, although the same is available on record.

he purchased the goods; the source being one, Mr Raju.

7.6. The petitioner had also furnished the mobile number of Mr Raju which is recorded in the voluntary statement, as indicated above.

8. To a pointed query put forth by us to Mr Singh, as to whether any investigation has been carried out *vis-à-vis* Mr Raju, Mr Singh says that this aspect has not been dealt with in the counter-affidavit filed on behalf of the respondents.

8.1. What is interesting is that the counter-affidavit was filed by the respondents, after the petitioner had filed his additional-affidavit dated 20.09.2021. In the additional-affidavit, the petitioner squarely refers to the voluntary statement dated 22.08.2019. A perusal of the said affidavit shows that the voluntary statement was placed before this Court, pursuant to the order dated 16.09.2021 passed by this Court.

8.2. As noticed above, the counter-affidavit dated 28.10.2021 was filed in and about 17.11.2021 i.e., after the additional-affidavit was placed on record.

9. Given this foregoing, we are not persuaded to accept the submission advanced on behalf of the respondents that the petitioner's taxable turnover was greater than the threshold limit fixed for tobacco products.

9.1. Based on the material placed on record, it would have to be concluded that the taxable turnover of the petitioner was Rs.15,28,468/-, which, as noticed above, is below the threshold limit of Rs.20,00,000/- fixed for tobacco products.

9.2. We are, therefore, inclined to agree with Mr Mittal that the respondents had no jurisdiction to issue the impugned show cause notice and/or pass the impugned orders.

9.3. Consequently, the impugned show cause notice dated 21.02.2020, Order-in-Original dated 16.10.2020 and the Order-in-Appeal dated 03.08.2021 are set aside.

9.4. The consequential relief which the petitioner has sought would also have to be given effect to. Accordingly, the respondents are directed to refund

Rs.18,69,400/-, deposited by the petitioner, along with interest @6% (simple) per annum. Interest will run from the date the aforementioned amount was deposited with the respondents, up until the date of payment.

9.5. Needless to add, the respondents will process the refund expeditiously, though not later than two weeks from today.

9.6. Insofar as the relief qua compensation is concerned, the same is declined. However, liberty is given to take recourse to an appropriate remedy that may be available to the petitioner, albeit as per law.

10. At this stage, Mr Mittal says that the petitioner's premises remain sealed. In view of our conclusion, the respondents will ensure that the subject premises are de-sealed forthwith.

11. The writ petition is disposed of in the aforesaid terms.

12. Consequently, pending applications shall stand closed.

13. Parties will act based on the digitally signed copy of this judgment.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MAY 26, 2022/ns

Click here to check corrigendum, if any