

GIB/GUJ/YASHO INDUSTRIES LIMITED/24.06.2021/HC-246

High Court Category : Litigation

State : Gujarat

Order No.: GIB/GUJ/YASHO INDUSTRIES LIMITED/24.06.2021/HC-246

Name of Entry :

YASHO INDUSTRIES LIMITED Versus UNION OF INDIA

Date : 24-06-2021

Breif Issue :

FACTS OF THE CASE

The petitioner is a public limited company engaged in the business of manufacturing and exporting specialized chemicals. The Petitioner Company is the holder of Advance Authorization Licences granted in terms of the Scheme set out in Chapter-IV (AA Scheme) of Foreign Trade Policy 2015-2020. It appears that the Directorate of Revenue Intelligence, Kolkata Zonal Unit vide the Communication dated 11.11.2020 addressed to the Mumbai Office of the petitioner, had intimated that an inquiry was initiated against the petitioner and other importers, who had incorrectly availed the benefits of EOU Scheme extra in terms of the Customs Notification Nos.78/2017-Cus, 79/2017-Cus, and 48/2017-Cus respectively, and also simultaneously availed the benefit of refund of duty paid on the goods exported towards fulfillment of the export obligation.

As per the petitioners, the manufacturing unit of the petitioners at Vapi was visited by the officers of the DGGI on 9.2.2021 in connection with the said inquiry and during the said visit, a sum of Rs.3 crore was recovered from the petitioners on the alleged incorrect IGST refunds.

The said payment was made by the petitioners under extreme duress and not on their own volition. It is further case of the petitioners that subsequent to the said visit the officer of DGGI issued the impugned summons invoking Section 70 of the CGST Act, calling upon the petitioners to remain present on 21.4.2021 to give evidence and/or to produce documents.

According to the petitioners, they are facing two parallel investigating proceedings namely the proceedings initiated pursuant to the communication dated 11.11.2020 by the DRI, Kolkata Zonal Unit and the proceedings instituted by the DGGI officer vide the impugned summons, invoking Section 70 of the CGST Act and hence, the petition has been filed.

ISSUE OF THE CASE

The petitioners by the present petition filed under Article 226 of the Constitution of India have challenged the Summons dated 12.4.2021 issued under Section 70 of the CGST Act, calling upon the petitioners to give evidence and produce the documents as mentioned therein in connection with the inquiry initiated against the petitioners.

The petitioners also have sought directions to issue refund/allow recredit of INR 3 Crore paid by the petitioners on 9.2.2021 vide Form No. GST DRC-03.

The petitioners have also sought direction to quash and set aside the impugned [Circular dated 5.7.2017](#), in connection with the assignment of functions to the officers as the 'proper officers' in relation to the various functions of the CGST Act and the Rules made thereunder.

Decision of Advance Ruling Authority :

DECISION

The officer of DGGI being the officer of the Central Tax and the Superintendent under the CGST Act by virtue of the [Notification No.14 of 2017-CT dated 1.7.2017](#) was also assigned the powers of proper officer by the Board vide [Circular dated 5.7.2017](#) issued in exercise of the powers conferred by Clause (91) of Section 2 of the CGST Act read with Section 20 of the IGST Act. Therefore, the officer of DGGI is a proper officer in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such, was entitled to issue summons under Section 70 of the CGST Act in connection with the inquiry initiated against the petitioner. The Court, therefore, did not find any substance in the submission that officer of DGGI was not the 'proper officer' as per the definition contained in Section 2(91) of the CGST Act.

The Court also does not find any force in the submission that two parallel proceedings in connection with the same issue were not sustainable. The HC held that proceedings of issuing summons under Section 70 of the CGST Act are the proceedings of judicial nature and the petitioners are bound to respect the same, and cooperate with the inquiry.

As regards the payment of Rs.3 crore made by the petitioners on 9.2.2021 vide Form GST DRC-03 under Rule 142(2) and 142(3) of the GST Rules. The petitioners having made payment under Section 74(5), they appear to have informed the Proper Officer of such payment in the Form GST DRC-03 as contemplated in Rule 142(2) of the said Rules. It is needless to say that the said payment shall be dealt with or adjusted by the concerned respondent No.3 in accordance with law more particularly as per the provisions contained in Section 74 of the CGST Act.

1. High Court held that Officer of DGGI is proper officers and can issue summons

under sec 70.

2. When tax has been paid through DRC-03 mentioning it voluntary and paid under Sec 74(5), cannot be said under protest even though mentioned as under protest in DRC-03.