

GIB/GJ/VIMAL YASHWANTGIRI/07-08-2019/HC-105

High Court Category : Others

State : Gujarat

Order No.: GIB/GJ/VIMAL YASHWANTGIRI/07-08-2019/HC-105

Name of Entry :
VIMAL YASHWANTGIRI GOSWAMI

Date : 07-08-2019

Breif Issue :

Facts & Issue of the case:

The petitioner, Vimal Yashwantgiri Goswami is a proprietor of a firm called Heugo Metal deals in steel goods, approached the High Court apprehending an arrest by the GST authorities invoking powers under section 69 without following due procedure of law of assessment and adjudication of alleged evasion of GST as contemplated under Section 61, Section 73 of under Section 74 of Central GST Act. Goswami approached the HC through advocate Chetan Pandya, who argued before the HC that there is a laid down procedure in the law for the department to determine tax liability of a trader.

The applicant has placed strong reliance on the decision of the Delhi High Court in the case of **MAKEMYTRIP (INDIA) PVT. LTD. vs. Union of India**, well as on the decision of the Madras High Court in the case of **M/s. Jayachandran Alloys (P) Ltd. vs. The Superintendent of GST and Central Excise**

In the two decisions referred above, emphasis has been laid on the mandate that no person shall be deprived of his life and liberty for the authority of law. The two High Courts have extensively relied upon the decision of the Supreme Court in the case of **D.K. Basu vs. State of West Bengal**.

Decision of Advance Ruling Authority :

Decision

The high court said “The powers of arrest under section 69 of the Act, 2017 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed”. There must be, in the first place, a determination that a person is liable to a penalty. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee,” the court underscored.

Bench clarified that the authorities should not use the power to arrest without ‘completing their homework’ namely determining the tax liability and ascertaining the evasion .The bench issued a notice to the commissioner of state tax for exercising the power to arrest people without following the procedure laid down in the Central GST(CGST)and State GST (SGST) laws. The court held that no

coercive steps of arrest shall be taken against the writ applicant and proposed to take up the matter for final hearing as far as possible on the returnable date.