

GIB/HR/AKHIL MAGGU/15-11-2019/HC-114

High Court Category : Others

State : Haryana

Order No.: GIB/HR/AKHIL MAGGU/15-11-2019/HC-114

Name of Entry :

Akhil Krishan Maggu & Anr.

Date : 15-11-2019

Breif Issue :

Facts & Issue of the case

“Akhil Krishan Maggu” - Petitioner No.1 son of “Sanjeev Maggu”- Petitioner No. 2 as an Advocate, on behalf of four exporters filed Writ Petitions before Delhi High Court against DGGI seeking quashing of summons issued by Senior Intelligence Officer, Directorate General of GST Intelligence.

As per Respondent the exporters had availed huge amount of refund of IGST and they are dummy owners. Petitioner No. 2 was interrogated on 11.9.2019 & 12.9.2019 by DGGI and thereafter handed over to DRI, who arrested him. There is nothing on record showing admission by Petitioner No. 2 and no further statement has been recorded in jail though he is in judicial custody since 13.9.2019. Petitioner No. 1 has already put appearance on various occasions and there is nothing in file to show which indicates that Petitioner No. 1 was connected with alleged illegal refund sought by Exporters. The DGGI Respondent searched residence of Ramesh Wadhera-alleged owner of dummy export firms who happens to be neighbour of Petitioners. On the request of Ramesh Wadhera, Petitioners came to his residence and some commotion took place between Petitioners and official of DGGI. At the behest of DGGI, Police registered FIR dated u/s 186, 353 IPC against both the Petitioners and arrested them on the same day. Both were released on bail after a week incarceration. The DGGI lodged another FIR against Petitioner No. 2 under Section 186, 34 & 353 IPC alleging that petitioner called police at the time of search of his residence which amounts to obstruction in performance of official duty. The DGGI-Respondent directed Petitioners to appear before SIO to tender their statement in connection with export made by dummy export firms. Apprehending coercive action, the Petitioners approached this Court by way of present writ petition.

Petitioners claims that the Respondents want that Petitioner No. 1 should accept that he is involved in refund scam and that the Intention of Respondent is just to arrest which is evident from the fact that Respondent/DGGI remained silent when Petitioner No. 2 was in custody in FIR case and thereafter in DRI matter.

The Respondent contended that Petitioner No. 1 is neither cooperating nor answering questions asked by SIO. He is involved in the fraud and deserves no sympathy of this court. The exporters are not real owners of exporting firm and it is Petitioners who in connivance with Ramesh Wadhera and one Mukesh Kumar had created bogus/dummy firms and availed refund of IGST. The Petitioner No. 1

who earlier was customs clearing agent is mis-using his professional position and needs to be interrogated without cover of protection of this court.

Decision of Advance Ruling Authority :**Decision**

Petition is disposed of and respondents are made free to continue with their investigation and thereafter proceed as per law.

Taking cue from judgment in the case of **Make My Trip, Jayachandran Alloys (P) Ltd and Siddharam Satlingappa Mhetre** and keeping in mind Section 69 and 132 of CGST Act which empower Proper Officer to arrest a person who has committed any offence involving evasion of tax more than Rs.5 Crore and prescribed maximum sentence of 5 years which falls within purview of Section 41A of Cr. P.C., court held the opinion that power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, **arrest of Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of statement without any corroborative evidence linking the professional with alleged offence should be avoided.**