

M/S Bptp Ltd vs Union Of India & Ors on 27 January, 2021

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 990/2021
M/S BPTP LTD.

Through: Petitioner
Mr. Tarun Gulati, Senior Advocate
with Mr. Manish Rastogi and Mr.
Kishore Kunal, Advocates.

versus

UNION OF INDIA & ORS.
Through:

..... Respondents
Mr. Anil Soni, CGSC for Respondent
No.1-UOI.
Mr. Asheesh Jain, CGSC with Mr.
Amrit Singh, Advocate for
Respondent No. 1.
Mr. Ravi Prakash, Senior Standing
Counsel for Respondent Nos. 2, 3 and
7.
Ms. Sonu Bhatnagar, Senior Standing
Counsel with Ms. Venus Mehrotra
and Ms. Anushree Narain, Advocates
for Respondent No.4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 27.01.2021 [VIA VIDEO CONFERENCING] CM APPL. 2678/2021 (Exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 2677/2021 (ad-interim ex parte relief) in W.P.(C) 990/2021

3. By way of this petition, inter-alia, challenge is made to Section 171 of the CGST Act, 2017 ('the Act') and other provisions under Chapter XV of the Act on the ground that the same are ultra vires Article 246A of the Constitution of India, 1950 and are also violative of other articles of the Constitution of India. Further, it is contended that the very composition of the Respondent No. 2/National Anti-Profiteering Authority under Rule 122 of the CGST Rules, 2017 ('the Rules') is unconstitutional and unsustainable in the absence of a judicial member and accordingly, the very

initiation of the proceedings which have culminated into the impugned order are ultra vires the Constitution.

4. Petitioner is also aggrieved with the findings in the impugned order dated 27th November, 2020 to the extent that it directs fresh investigation of 14 projects being executed by the Petitioner in the State of Haryana.

5. Mr. Tarun Gulati, learned Senior Counsel for the Petitioner submits that in a batch of petitions, the validity of the impugned provisions is pending consideration. He further submits in several petitions relating to real-estate developers; this Court has passed interim orders granting stay of investigation in relation to projects that were not originally the subject matter of investigation. He draws support from the orders passed in Gaursons Realtech Pvt. Ltd. vs. UOI, [W.P.(C.) No.5347/2020] 2020-TIOL-1765-HC-DEL-GST; Ramprastha Promoters and Developers Ltd. vs. UOI, [W.P.(C.) No.5798/2020] 2020-TIOL-1634-HC-DEL-GST; Phillips India Limited vs. Union of India & Ors., [W.P.(C.) No.3737/2020] 2020-TIOL-1092-HC-DEL-GST; M/s Samsonite South Asia Pvt. Ltd. vs. Union of India & Ors., [W.P.(C.) No.4131/2020] 2020-TIOL-1766-HC-DEL-GST and M/s Patanjali Ayurved Ltd. vs. Union of India & Ors., [W.P.(C.) No.4375/2020] 2020-TIOL-1241-HC-DEL-GST.

6. Mr. Gulati submits that in somewhat similar circumstances, in the case of S.C. Johnson Products Pvt. Ltd. vs. UOI, W.P.(C) 10901/2020, this Court vide order 22nd December, 2020 has restrained Respondent No.3 from carrying out further investigation with regard to the other products of the Petitioner therein. He submits that case of the present Petitioner is on a better footing as in the impugned order, after accepting the contentions of the Petitioner with regards to non-consideration of various submissions and factual errors which were apparent in the report of the Respondent No. 3, it was held that the present case requires further investigation as per Rule 133 (4) of the Rules. In these circumstances, Respondent No.3 has been directed to re-investigate various issues and furnish a report under Rule 129(6) of the Rules. However, despite ordering re-investigation of allegations of profiteering by the Petitioner in respect of the 'Discovery Project', Respondent No.2 without recording any cogent reasons to believe that there has been any contravention of the provisions of Section 171 in respect of those projects has, without any lawful basis, directed Respondent No.3 to investigate 14 projects of the Petitioner in the State of Haryana which are under construction or have been partly completed.

7. Mr. Ravi Prakash, learned Standing Counsel appearing on behalf of the anti-profiteering authorities, submits that no interim protection is called for as the matter is still under investigation. He further submits that the Respondent No.2 has suo moto power to order investigation under section 171(2) of the Act and for this purpose, he relies upon the order passed by this Court in M/s. Nestle India Ltd. & Another v. Union of India & Others, W.P.(C) 969/2020.

8. We have examined the record, perused the impugned order and also the interim orders passed in similar petitions. Although in the order passed in M/s. Nestle India Ltd. & Another v. Union of India (Supra), the court has apparently not interdicted the suo moto investigation, but at the same time we notice that this Court has given protection to nearly all the Petitioners, faced with similar

circumstances, i.e., wherever the authority has directed investigation in relation to products/services which were beyond the scope of original investigation. Therefore, we see no reason to deny the same relief to the Petitioner herein.

9. Petitioner is therefore entitled to the interim protection, pending disposal of the present petition. Accordingly, it is directed that the directions given in the impugned order to Respondent No. 3 to investigate 14 projects of the Petitioner in the State of Haryana, shall remain stayed. It is however clarified that the investigation with respect to the 'Discovery Project' at Faridabad shall continue in terms of the directions given in the impugned order.

10. Issue notice.

11. Mr. Anil Soni, learned CGSC accepts notice on behalf of Respondent No.1/Union of India.

12. Ms. Sonu Bhatnagar, learned Senior Standing Counsel accepts notice on behalf of Respondent No. 4.

13. Mr. Ravi Prakash, learned Counsel accepts notice on behalf of Respondent Nos.2, 3 and 7.

14. They pray for and are permitted to file their respective counter affidavits within a period of two weeks from today. Rejoinder, if any, be filed before the next date of hearing.

15. List on 15th February, 2021 along with the connected matters.

RAJIV SAHAI ENDLAW, J SANJEEV NARULA, J JANUARY 27, 2021 v