

M/S. Mridul Tobie Inc vs Additional Director General, ... on 17 March, 2021

Author: Rajiv Shakdher

Bench: Rajiv Shakdher, Talwant Singh

\$~13

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2420/2021
M/S. MRIDUL TOBIE INC.

Through: Mrs. Anjali J. Manish and M
Priyadarshi Manish, Advocat

versus

ADDITIONAL DIRECTOR GENERAL, DIRECTORATE
GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE &
ORS.Respondents

Through: Mr. Ravi Prakash, CGSC with Mr.
Farman Ali and Mr. Shahan Ulla,
Advocates for R-1.
Ms. Sonu Bhatnagar, Senior Standing
Counsel with Ms. Venus Mehrotra,
Advocates for R-2 to R-8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 17.03.2021

1. This is an application filed by the petitioner to seek a stay on the investigation for the reasons articulated therein. On 22.02.2021, the writ petition came up for hearing for the first time before this Court. A perusal of the said order shows that one of the issues which the Court had flagged was that issues raised in the instant writ petition overlapped with issues that had been raised by the petitioner in the writ petition filed before the Allahabad High Court.

1.1 Therefore, the Court had indicated to the learned counsel for the parties, on that date, that the best course of action, perhaps, would be that the petitioner be relegated to the Allahabad High Court. 1.2 It is in this context, the Court had called upon the learned counsel for the respondents, to take instructions, as to whether the respondents would raise an objection before the Allahabad High Court, on the ground of territoriality. Although, Mr. Ravi Prakash, who appeared on behalf of the respondents, on that date, had indicated that there should be no objection on that score, however, by way of abundant caution, he sought time to take instructions qua the factual aspects of the case and, if necessary, to file a response.

1.3 The Court had accordingly, granted four weeks time to Mr. Ravi Prakash to file a counter-affidavit in the matter. Concededly, four weeks have not expired. The petitioner, has, however, approached this Court to stave off coercive actions undertaken by the respondents with the renewed vigour since notice was issued in the writ petition.

2. Ms. Anjali J. Manish, who appears on behalf of the petitioner, says that within two days of notice being issued, authorisation was given on 24.02.2021 for a search being carried out by the Directorate General of Goods and Services Tax Intelligence, Delhi Zonal Unit 1 (in short "DGGI").

2.1 According to the petitioner, the search was, consequently, carried out at the premises of the petitioner located in Gautam Budh Nagar, U.P., on 25.02.2021. In support of this plea, Ms. Manish has drawn our attention to Annexure P48 which is nothing but a copy of the Panchnama dated 25.02.2021.

2.2 Besides this, on 15.03.2021, a search was carried out on the residential premises of the proprietor of the petitioner, i.e., Mr. Vipin Sharma.

3. The record shows that search has been carried out not only by the Gautam Budh Nagar Commissionerate but also by various Intelligence Units, i.e., DGGI Regional Unit Kanpur, DGGI Zonal Unit Delhi, DGGI Regional Unit Ghaziabad and DGGI Ahmadabad Zonal Unit on various dates.

3.1 The details of these searches are given in the Panchnama drawn up on 13.02.2021 by the DGGI Ahmedabad Zonal Unit. Pertinently, this unit also carried out the search at the petitioner's premises located in Gautam Budh Nagar. (See pages 224 and 226 of the paper book.)

4. Ms. Manish says that repeated searches, not only by Gautam Budh Nagar Commissionerate, but also by other Intelligence Units, are completely oppressive and in fact, the most recent search carried out at the residential premises of the proprietor was a case of breach of invasion of privacy.

4.1 According to Ms. Manish, paragraph 6 of Panchnama dated 04.02.2021 which concerned the search carried out at the petitioner's premises located in Plot No. 56, Habibpur, Greater Noida, Gautam Budh Nagar, Uttar Pradesh would show that the seized material was in order. For the sake of convenience, the contents of the said paragraph are extracted hereafter:

"6. We along with the officers also noticed stock of Raw Patti, Filter Lime Powder, Cigarette-69mm etc. The manager then provided the stock summary as on date and the officers conducted stocktaking and found that to be in order. The search conducted earlier by DGGI, DZU team had seized 146 boxes of cigarettes and on being searched, the officers found the same in order as per GST INS-02 drawn by that team."

5. Apart from anything else, Ms. Manish says that in view of the fact that the investigation process was commenced, in the first instance, by the Gautam Budh Nagar Commissionerate, the investigation should have been carried out by that Commissionerate only and that other Intelligence Units ought to have held their hands. In support of this plea, Ms. Manish relies upon the circular

dated 05.10.2018 issued by the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India,.

5.1 Furthermore, Ms. Manish says that this approach has been accepted by the Division Bench of the Gujarat High Court in 'M/s. Bhawani Textiles vs. Additional Director General, 2020 (35) G.S.T.L. 36 (Guj.)'. In addition thereto, Ms. Manish has also relied upon a judgment rendered in „Himanshu Balram Gupta vs. Union of India 2020-TIOL-2241-HC-AHM-GST'. 5.2 On the issue concerning invasion of privacy, reliance was placed, once again, on the judgment of the Division Bench of the Gujarat High Court, rendered in 'Sureshbhai Gadhecha vs. State of Gujarat, R/Special Civil Application No. 23279 of 2019.'

6. On the other hand, Mr. Ravi Prakash, who appears on behalf of the respondents, says that the circular dated 05.10.2018, will have no application since the "subject matter" is different. In support of his plea, Mr. Ravi Prakash has relied upon the judgement of the Division Bench of the Punjab and Haryana High Court dated 12.02.2021 rendered in 'Kaushal Kumar Mishra vs. Additional Director General, Ludhiana Zonal Unit and another.'

7. Before we proceed further, we may note that, we had, once again, indicated to Mr. Ravi Prakash as to whether he had any objection if the issues raised in the writ petition were placed for consideration before the Allahabad High Court by permitting the petitioner either to amend the pending writ instituted before that Court or by way of a fresh writ petition. 7.1 Mr. Prakash conveyed that he had obtained instructions to the effect that if such a step is taken by the petitioner, respondents will not take an objection qua the maintainability of the amended writ petition or the fresh writ petition, as the case may be, on the ground that the Court lacked territorial jurisdiction.

7.2 To the other suggestion made by us, which was, that we would accord two weeks to the petitioner to move to the Allahabad High Court and till then direct maintenance status quo; Mr. Prakash opposed the same.

8. It is in that context that we have heard Ms. Manish and Mr. Prakash for a considerable period of time.

9. Having heard learned counsel for the parties, according to us, Ms. Manish has made out, in our view, a prima facie case, at least at this stage, that since investigation was commenced, in the first instance, by the Gautam Budh Nagar Commissionerate, as far back on 19.03.2020, the other Intelligence units should have held their hands. For this purpose, it would be necessary to extract the relevant portions of the circular dated 05.10.2018.

"2. In this regard, GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:

W.P.(C) 2420/2021 Page 5 of 7 'viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain.'

3. It is accordingly clarified that the officers of both Central tax and State tax are authorised to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority.

The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.

5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority."

9.1 A perusal of the circular is suggestive of the fact that once the Gautam Budh Commissionerate had taken steps to investigate the petitioner, the other Intelligence Units should have held their hands; an approach which is both sensible and practical. The submission made by Mr. Prakash that there is a difference in the subject matter, and, therefore, other units can also investigate, to our minds, at this juncture, does not impress us.

9.2 The reliance placed by Mr. Prakash on the judgment of the Division Bench of the Punjab and Haryana High Court rendered in 'Kaushal Kumar Mishra vs. Additional Director General, Ludhiana Zonal Unit and another', in this behalf, to our minds, does not help the cause of the respondents as there is no reference to the circular dated 05.10.2018 in the said judgement. As noted above, there have been continuous searches carried out not only at the business/factory premises of the petitioner but also at the residence of its proprietor since 19.03.2020. To be noted, no less than 10 searches have been carried out to date.

10. Therefore, while we are inclined to give time to the respondents to file their reply to the captioned application within next two weeks, for the moment, no coercive measures will be taken against the petitioner. If, in the interregnum, investigation is necessitated, in line with the circular dated 05.10.2018, it shall be carried out only by the Gautam Budh Nagar Commissionerate. The search officers will ensure that there is no invasion of privacy.

11. List the application on 22.04.2021.

MARCH 17, 2021/pa

[Click here to check corrigendum,](#)

W.P. (C) 2420/2021