

THE HIGH COURT OF MADHYA PRADESH

WP-11822-2019

[M/s Om Shiv Associates vs. Union of India & Ors.]

Gwalior, Dated 26.06.2019

Shri Alok Kumar Sharma, learned counsel for the petitioner.

Heard on admission.

2. Petitioner is a Civil Contractor and holds Service Tax registration holder No.AKJPM8743PST001. On 28/06/2016, he was called upon to give following information relating to financial year 2013-14; viz, (i) Nature of services provided/received during the period (ii) Copy of Income tax returns along with 26AS form for the financial year 2013-14 (iii) Copy of P&L and Balance Sheet for the financial year 2013-14 (iv) Copy of ST-3 Return filed by you for the above said period (v) Copy of TR-6/GAR-7 challans relating to payment of Service Tax 2013-14. Thereafter, the petitioner was issued summons on 28/04/2017 under Section 14 of Central Excise Act, 1944 made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994; whereby, the petitioner was asked to produce the documents and records pertaining to year 2013-14 and 2014-14; viz, (i) ST-3 returns; (ii) Income tax returns filed by you with jurisdictional Income Tax Office; (iii) Form 26AS; (iv) VAT/Sales Tax Returns, filed by you with jurisdictional VAT/Sales Tax authorities; (v) Annual Bank Account Statements;

(vi) Balance sheets; (vii) A reconciliation statement (with party wise receipts) of service income reflected in your balance sheet with Service Tax returns; (viii) A reconciliation statement of the returns filed with Service Tax (ST-3), Income Tax and VAT authorities. The petitioner thereafter vide correspondence C.No.IV (16)07/TP/Ujjn/17-18 dated 30/10/2018 under Section 174 of of the Central Goods and Services Tax (CGST) Act, 2017 was called upon to furnish duly attached signed copy of service tax calculation sheets for the financial year 2016-17, balance sheets, form 26AS, work orders/agreements ST-3 returns and reconciliation statement for the financial year 2013-14 to 2017-18 (upto June, 2017). The repeated reminders were sent to the petitioner stipulating that in case of non-compliance necessary consequences shall ensue. These summons were sent on 14/03/2019 and 06/06/2019 under Section 70 of (CGST) Act, 2017 read with Section 14 of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with Section 174 of (CGST) Act, 2017. Audaciously petitioner evaded the response. Instead, insisted upon to first take a decision on his application/representation under Section 73 of the Finance Act, 1994 read with Section 73 of CGST Act, 2017 which envisages “recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded – determination of tax not paid or

short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts”.

3. Of late the petitioner has been subjected to notice for personal hearing on 06/06/2019 which is reproduced for ready reference:

“C.No.IV(16)33/CGST/SCN/YS/G-I/19-20 Dt. 6.6.2019

To,

M/s Om Shiv Associates,
(Prop. Bobby Mishra), L-34
Madhav Nagar, Gwalior- 474004
Mob-9981012712

Dear Sirs,

Subject: Personal Hearing in respect of Show Cause C.No.IV(16)33/CGST/SCN/YS/G-I/19-20/1768 dated 18.04.2019- reg.

Please refer to above referred Show Cause Notice.

Personal hearing in the case is fixed for **24.06.2019 at 3:00 PM**. You are requested to attend the personal hearing by appearing yourself or through your authorized representative before the Assistant Commissioner, Central Goods & Services Tax, Division Gwalior-1, CGST Bhawan (Garden Palace), Near Gems Public School, Gulmohar City Road, Behind New Collectorate, GWALIOR (M.P.) on the date mentioned above.

Please note that in case of failure to attend personal hearing, your case will be decided ex parte on merit, based on evidences available in the record. Please send the soft copy of the reply, if any, filed by you at E-mail: cgstdivisiongwl@gmail.com. Please acknowledge the receipt of this letter.

Yours Sincerely
Superintendent (Tech)
CGST Div-1, Gwalior”

4. The petitioner vide present petition seeks quashment of the notice for personal hearing and direction for the Authorities to decide his representation before initiating any proceedings.

5. These submissions when tested on the anvil of the stipulation contained under Section 70 of the (CGST) Act, 2017 which stipulates that the proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of civil court under the provisions of the Code of Civil Procedure, 1908 and Sub-section (2) of Section 70 of the Act of 2017 envisages that every such inquiry referred to in Sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code, and the fact as borne out from the record that, *prima facie*, opinion has been formulated that the petitioner has evaded the tax, we are not inclined to cause any indulgence. The petitioner has utterly failed to establish that the proceedings under Section 70 of the (CGST) Act, 2017 can only be taken recourse to, after decision under Section 73 of the Act.

6. In view whereof, we refrain from causing any indulgence.

7. Consequently, petition fails and is dismissed. No costs.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge