

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.18128/2020

(M/s. A. Y. Trading Company & Anr. Vs. Director General of GST Intelligence)

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Indore, dated 15/12/2020

Shri Alok Barthwal, learned counsel for the petitioners.

Shri Prasanna Prasad, learned counsel for the respondent.

The petitioners before this Court, who are engaged in the trading business of "Arecanut", have filed this present petition stating that they have received summons from Directorate General of GST Intelligence under Section 70 of the Central Goods and Services Tax Act, 2017 for appearance on 23/11/2020.

The petitioners have further stated that they are desirous and duty bound to join investigation and render full cooperation and assistance in the ongoing investigations. However, they are apprehending mischief on the part of the respondent. Petitioners are apprehensive that coercive attempts may be made to extort confession from them. Accordingly, they have prayed for the following relief:-

- “(i) Issue an appropriate writ, order or direction in the nature of mandamus or any other writ to the Respondent to allow the petitioners', their employees / representatives to have presence of their Advocate at a visible but not audible distance during the course of interrogation and / or recording of their statement in case arising out of File No.IV(6) INV/ROI/23/Pact-II/2020-21;
- (ii) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing the respondent to conduct interrogation and record the statement of the petitioners, and their employees / representatives during reasonable office hours;
- (iii) and / or pass any other or further orders which Your Lordships may deem fit and proper in the interest of justice.”

It has been argued by learned counsel for the petitioner that in

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similar circumstances in the case of **Vijay Sajani Vs. Union of India** reported in **2017 (345) E.L.T. 323 (S.C.)**, similar relief has been granted to the petitioner therein.

Reliance has also been placed upon an order passed in the case of **Birendra Kumar Pandey & Anr. Vs. Union of India & Anr. (Writ Petition (Crl.) No.28 of 2012**, decided on **16/04/2012**). Various other orders have been passed from time to time and they have been brought on record. The last order passed by the Hon'ble Supreme Court is dated 17/04/2020 in the case of **Nilesh Parekh Vs. Union of India & Anr. (Writ Petition (Cr.) No.300/2019)**.

The Division Bench of Bombay High Court in the case of **Vikas Singh and Others Vs. The State of Maharashtra and Another (Writ Petition No.4205 of 2016)** on 05/12/2016 has passed the following order:-

“Mention for production. Taken upon production board in view of urgency.

2. The writ petition is filed for the following relief:-

“(a) To direct the Respondent No.2 to permit the Petitioners to accompany an Advocate at visible but not audible distance, during their interrogation by the officers of the Respondents in F.I.R.No.78/16 (C.R.No.32 of 2016)”

3. The relief claimed in the present petition is fairly covered by the order of 3 Judge Bench Judgment passed CRL MP No.10117 of 2012 on 25th April, 2012. In similar circumstances, the apex Court directed that the advocate of the petitioners should be allowed to be present during the interrogation of the petitioners. It was further directed that he / they should be made to sit at a distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.

2. In the light of above, this petition is allowed in terms of

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prayer clause (a) and is disposed of as such.”

Learned counsel for Directorate of GST Intelligence has not disputed the aforesaid orders, however, has opposed the prayer made by the petitioners.

This Court, in light of the order passed by Hon'ble Supreme Court from time to time, as in similar circumstances the apex Court directed that the advocate of the petitioner should be allowed to be present during the interrogation of the petitioner, is of the opinion that the advocate of the petitioners are to be allowed to be present during the interrogation of the petitioners. It is further clarified that he/they should be made to sit at a distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.

With the aforesaid, writ petition stands partly allowed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
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