

NAME OF APPLICANT: YASHO INDUSTRIES LIMITED	ORDER NO: GIB/GUJ/YASHO INDUSTRIES LIMITED/24.06.2021/HC-246	HC DECISION CATEGORY: Litigation
STATE: Gujarat	DATE: 24-06-2021	Link of Case Law- https://www.gstindia.biz/advance-ruling-short-title.php?id=czoZOil4NjAiOw==

FACTS OF THE CASE

The petitioner is a public limited company engaged in the business of manufacturing and exporting specialized chemicals. The Petitioner Company is the holder of Advance Authorization Licences granted in terms of the Scheme set out in Chapter-IV (AA Scheme) of Foreign Trade Policy 2015-2020. It appears that the Directorate of Revenue Intelligence, Kolkata Zonal Unit vide the Communication dated 11.11.2020 addressed to the Mumbai Office of the petitioner, had intimated that an inquiry was initiated against the petitioner and other importers, who had incorrectly availed the benefits of EOU Scheme extra in terms of the Customs Notification Nos.78/2017-Cus, 79/2017-Cus, and 48/2017-Cus respectively, and also simultaneously availed the benefit of refund of duty paid on the goods exported towards fulfillment of the export obligation.

As per the petitioners, the manufacturing unit of the petitioners at Vapi was visited by the officers of the DGGI on 9.2.2021 in connection with the said inquiry and during the said visit, a sum of Rs.3 crore was recovered from the petitioners on the alleged incorrect IGST refunds.

The said payment was made by the petitioners under extreme duress and not on their own volition. It is further case of the petitioners that subsequent to the said visit the officer of DGGI issued the impugned summons invoking Section 70 of the CGST Act, calling upon the petitioners to remain present on 21.4.2021 to give evidence and/or to produce documents.

According to the petitioners, they are facing two parallel investigating proceedings namely the proceedings initiated pursuant to the communication dated 11.11.2020 by the DRI, Kolkata Zonal Unit and the proceedings instituted by the DGGI officer vide the impugned summons, invoking Section 70 of the CGST Act and hence, the petition has been filed.

ISSUE OF THE CASE

The petitioners by the present petition filed under Article 226 of the Constitution of India have challenged the Summons dated 12.4.2021 issued under Section 70 of the CGST Act, calling upon the petitioners to give evidence and produce the documents as mentioned therein in connection with the inquiry initiated against the petitioners.

The petitioners also have sought directions to issue refund/allow recredit of INR 3 Crore paid by the petitioners on 9.2.2021 vide Form No. GST DRC-03.

The petitioners have also sought direction to quash and set aside the impugned **Circular dated 5.7.2017**, in connection with the assignment of functions to the officers as the 'proper officers' in relation to the various functions of the CGST Act and the Rules made thereunder.

DECISION

The officer of DGGI being the officer of the Central Tax and the Superintendent under the CGST Act by virtue of the **Notification No.14 of 2017-CT dated 1.7.2017** was also assigned the powers of proper officer by the Board **vide Circular dated 5.7.2017** issued in exercise of the powers conferred by Clause (91) of Section 2 of the CGST Act read with Section 20 of the IGST Act. Therefore, the officer of DGGI is a proper officer in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such, was entitled to issue summons under Section 70 of the CGST Act in connection with the inquiry initiated against the petitioner. The Court, therefore, did not find any substance in the submission that officer of DGGI was not the 'proper officer' as per the definition contained in Section 2(91) of the CGST Act.

The Court also does not find any force in the submission that two parallel proceedings in connection with the same issue were not sustainable. The HC held that proceedings of issuing summons under Section 70 of the CGST Act are the proceedings of judicial nature and the petitioners are bound to respect the same, and cooperate with the inquiry.

As regards the payment of Rs.3 crore made by the petitioners on 9.2.2021 vide Form GST DRC-03 under Rule 142(2) and 142(3) of the GST Rules. The petitioners having made payment under Section 74(5), they appear to have informed the Proper Officer of such payment in the Form GST DRC-03 as contemplated in Rule 142(2) of the said Rules. It is needless to say that the said payment shall be dealt with or adjusted by the concerned respondent No.3 in accordance with law more particularly as per the provisions contained in Section 74 of the CGST Act.

1. High Court held that Officer of DGGI are proper officers and can issue summons under sec 70

2. When tax has been paid through DRC-03 mentioning it voluntary and paid under Sec 74(5), cannot be said under protest even though mentioned as under protest in DRC-03.

Yasho Industries Limited vs Union Of India on 24 June, 2021- Important Provisions

Section 2(91) of CGST Act, 2017

Section 2(91) of the CGST Act, 2017 defines “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the Central tax who is assigned that function by the Commissioner in the Board.

Section 167 of CGST Act, 2017

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

Notification No. 14/2017 Central Tax dated 1-7-2017

Central Board of Excise and Customs appoints the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit, as central tax officers and invests them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank.

Circular dated 5.7.2017

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, assigns the officers and the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder.

Section 3 of CGST Act, 2017

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:--

- a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

Section 70 of CGST Act, 2017

(1) 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 a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) 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.

M/S BHUMI ASSOCIATE Versus UNION OF INDIA THROUGH THE SECRETARY

Direction quoted from order dated 16/02/2021- “Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee”.