

2022 (2) TMI 102 - RAJASTHAN HIGH COURT

M/S MOHIT KIRANA STORE VERSUS CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

D.B. Civil Writ Petition No. 1030/2022

Dated: - 25 January 2022

Validity of summon issued - powers to be exercised under various provisions of the CGST Act including permission of summon under Section 70 thereof - circular dated 05.07.2017 issued by the Central Board of Excise and Customs - HELD THAT:- Issue notice, returnable on 23.03.2022. Learned counsel Mr. Kinshuk Jain waives notice on behalf of the respondents. His name be shown in the cause list.

Prima facie it would appear that issuance of summons after the full enquiry was over and which also resulted into not only issuance of show cause notice but the order in original being passed, was not permissible. Under the circumstances the impugned summons are stayed.

Judgment / Order

Hon'ble The Chief Justice Mr. Akil Kureshi And Hon'ble Mr. Justice Sameer Jain

For the Petitioner(s) : Mr. Jatin Harjai through VC

For the Respondent(s) : Mr. Kinshuk Jain through VC

ORDER

Petitioner has challenged a summon dated 28.12.2021 issued by the respondent No.2 Superintendent of CGST. In the context of this challenge the petitioner also challenged a circular dated 05.07.2017 issued by the Central Board of Excise and Customs assigning to certain officers, powers to be exercised under various provisions of the CGST Act including permission of summon under Section 70 thereof.

Learned counsel for the petitioner submitted that the CBEC does not have any power of assignment or delegation as has been done in the impugned circular dated 05.07.2017.

In this context he relied on a recent decision of the Supreme Court in case of **Canon India Pvt. Ltd. Vs. Commissioner of Customs, AIR 2021 SC 1699**. With respect to the impugned summons counsel submitted that the same were issued after the entire gamut of search which laid to issuance of show cause notice and even passing of order in original was over. It was thereafter not open for the respondent No.2 to summon the present petitioner for any purpose.

Issue notice, returnable on 23.03.2022. Learned counsel Mr. Kinshuk Jain waives notice on behalf of

the respondents. His name be shown in the cause list.

Prima facie it would appear that issuance of summons after the full enquiry was over and which also resulted into not only issuance of show cause notice but the order in original being passed, was not permissible. Under the circumstances the impugned summons are stayed.

Citations: in 2022 (2) TMI 102 - RAJASTHAN HIGH COURT

1. [2021 \(3\) TMI 384 - Supreme Court](#)