

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

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

M/s Mohit Kirana Store

----Petitioner

Versus

entral Board of Indirect Taxes and Customs & Another.

----Respondents

r Petitioner

: Mr. Jatin Harjai Advocate with Mr. Mohit

Kumar Soni Advocate.

For Respondents

Mr. Kinshuk Jain Advocate with Mr. Jay

Upadhyay Advocate.

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA HON'BLE MR. JUSTICE MANEESH SHARMA

<u>Order</u>

01/07/2025

Heard on applications (Nos. 1/2022 and 2/2022) for vacating stay order passed by this Court.

Learned counsel for the revenue would vehemently submit that the circular impugned was, in fact, issued by the Commissioner and not by the Central Board of Indirect Taxes and Customs (for short 'the Board') and, therefore, the delegation of power in the hands of Superintendent for exercising power of issuance of summons is perfectly in accordance with law.

On the other hand, learned counsel for the petitioner would submit that impugned circular dated 05.07.2017 clearly recites that the power of delegation has been exercised by the Board whereas the Board does not have that power and power of delegation is exercisable only with reference to the provisions contained in Section 2, sub-section (91) of the Central Goods and Services Act, 2017 by the Commissioner in the Board as distinguished from the Board itself.



Having considered the submissions of learned counsel for the parties, we find that the petitioner had made out a strong prima facie case which led to passing of interim order in its favour which need not be disturbed.

Applications (Nos. 1/2022 and 2/2022) for vacation of stay ler are rejected.

Stay order passed by this Court is made absolute.

However, taking into consideration the importance of the issue, we are inclined to set down the petition for final hearing itself.

List this petition for final hearing in the week after next.

(MANEESH SHARMA),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

MANOJ NARWANI-SOURAV/72



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----Petitioner

Versus

Central Board Of Indirect Taxes And Customs

----Respondent

For Petitioner(s)

: Mr. Jatin Harjai through VC

For Respondent(s)

Mr. Kinshuk Jain through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI HON'BLE MR. JUSTICE SAMEER JAIN

<u>Order</u>

25/01/2022

No

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

[CW-1030/2022]



not open for the respondent No.2 to summon the present petitioner for any purpose.

(2 of 2)

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.

(SAMEER JAIN),J

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BRIJ MOHAN GANDHI/14

(AKIL KURESHI),CJ