

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 466/2022

M/s S.k. Metal, Baba Ki Majar Road No. 6, IPIA, Kota, Rajasthan,
through Proprietor Sanjida Khan W/o Rais Khan, aged about 38
R/o H.N.81-C, Dadabari, Kota, Rajasthan

----Petitioner

Versus

Assistant Commissioner, B II Enforcement Wing II, Department
Of Commercial Taxes, Government of Rajasthan, Kar Bhawan,
Ambedkar Circle, Jaipur, 302005

----Respondent

For Petitioner(s) : Mr. Prakhar Gupta through VC
For Respondent(s) :

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

Order

25/01/2022

The petitioner has challenged the vires of Section 70 of Rajasthan Goods and Service Tax Act, 2017 (hereinafter referred to as "RGST Act"). The petitioner has also challenged the summons dated 16.05.2021 issued by respondent No.1 in exercise of powers under Section 70 of the RGST Act.

Learned counsel for the petitioner drew our attention to Section 70 of the said Act and contended that the powers are vested in the State authority to issue summons and require attendance of a person in relation to the enquiry in which the person issuing the summons is himself intrested. Such powers can be exercised like the civil court under the Code of Civil Procedure. He submitted that this scheme of Section 70 is in violation of principle of separation of powers. He relied on the



decision of Supreme Court in the case of **Madras Bar Association Vs. Union of India reported in (2010) 11 SCC 1.**

Counsel submitted that respondent No.1 has issued the summons without indicating the nature of enquiry being conducted against the petitioner, without giving details of enquiry pending against the petitioner and giving unreasonably short time of merely 12 hours to appear before him in city different from where the petitioner resides.

At the outset we may maintain a clear distinction between a case of the provision vesting powers in an authority which provision is bad in law and exercise of the powers which is improper or not in consonance with the vested powers. At the first instance we may consider the petitioner's challenge to the constitutionality of Section 70 of the CGST Act. As is well known, merging several taxing statutes the Central as well as State legislatures have framed GST laws. Like other taxing statutes these Acts also have charging provisions, the machinery provisions as well as provisions for tax collection and provisions for arresting tax evasions. Chapter XIV contained in the RGST Act pertains to inspection, search, seizure and arrest. Section 67 contained in the said chapter gives power of inspection and search and seizure to the proper officer not below the rank of joint Commissioner who under certain circumstances can exercise such powers. Section 68 pertains to inspection of goods in movement. Section 69 vests power of arrest. Section 70 contained in the said chapter which is under challenge reads as under:-

"70. Power to summon persons to give evidence and produce documents.- (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 (Central Act No. 5 of 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 (Central Act No. 45 of 1860)."

As per sub-Section (1) of Section 70 the proper officer would have the power to summon any person whose attendance is considered necessary either to give evidence or to produce documents or any other thing in any enquiry in the same manner, as provided in the case of civil court under Civil Procedure Code.

Sub-section (2) of Section 70 provides that any such enquiry referred to sub-section (1) shall be deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of Indian Penal Code.

The provision thus while empowering the proper officer to summon a person to give evidence or to produce documents, controls such exercise of powers by providing that the summons may be issued where a proper officer considers it necessary that such person is required to give evidence or to produce certain documents. These powers are not thus unguided or uncanalised. Further, such powers are to be exercised in the same manner as would be exercisable by a civil court under the Code of Civil Procedure. Order 5 of Code of Civil Procedure pertains to issue and service of summons under the C.P.C. This order makes detailed provisions for issuance and service of summons. The powers under sub-Section (1) of Section 70 thus would be exercisable in the manner provided therein. In order to ensure



that the information that a person so summoned provides, carries a certain sanctity, Sub-section (2) of Section 70 provides that every such enquiry under sub-Section (1) would be deemed to be judicial proceeding within the meaning of Section 193 and 228 of IPC.

We do not find such powers are in any manner beyond the competence of legislature or opposed to any of the fundamental rights or other provisions of the Constitution of India. We may also recall that Section 14C of the Central Excise Act and Section 108 of the Customs Act contain similar provisions authorizing the appropriate officer with the power to summon attendance of a witness for recording statement or for production of documents. The vires of the said section must be upheld.

The reference to the decision of Supreme Court in the case of **Madras Bar Association (supra)** is of no relevance. It was the case in which in the context of constitution of various tribunals, the Supreme Court has discussed at length the various principles governing the independence of judiciary and requirement of ensuring that such tribunals function independently.

Coming to the challenge to summon itself we notice that in the summons the authority has indicated the documents which the petitioner must carry with him while appearing before the said authority. If the summons in a particular case grants unreasonably short time which in any case is impossible for the noticee to comply with, it is always open for the aggrieved person to seek extension from the authority or to take a shelter of the court proceedings. However only on this ground we are not inclined to



interfere since summons was issued way back on 16.12.2021 and would have worked itself out.

Under the circumstances the petition is dismissed.

(SAMEER JAIN),J

(AKIL KURESHI),CJ

N.Gandhi/13



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