

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 2589 (MS) of 2021

M/s Alfa Ignot Pvt. Ltd.
and others.

.....Petitioners.

Through: Shri S.K. Posti, learned Sr. Advocate
assisted by Shri Ashutosh Posti, learned
counsel for the petitioners.

-Versus-

Commissioner of the CGST,
and others.

.....Respondents.

Through: Shri Shobhit Saharia, learned
counsel for the respondents.

Date of Hearing and Order : 06.07.2022

Shri Sanjaya Kumar Mishra, J.

(Upon hearing of learned counsel for the parties, the Court has passed the following Orders):

1. By filing this writ petition, the petitioners have prayed for the following reliefs:

“i. Issue a suitable writ, order or direction in the nature of certiorari, calling the record of the case and quash the summoning order issued to the petitioners. (Annexure No. 5 to W.P.)

ii. Issue a suitable writ, order or direction in the nature of Mandamus commanding the respondent not arrest the petitioners in pre inquiry proceeding in pursuance of the summon dated 03.11.2021 issued to petitioners no. 2 and 3 (Annexure No. 5 to W.P.).

iii. Issue a suitable writ, order or direction in the nature of mandamus to the respondent authority not to arrest

to petitioner in pursuance of notice issued under Section 70 of the CGST Act and impose such and other condition which this Hon'ble Court deem fit and proper to protect the liberty of the petitioner as petitioners are ready to cooperate with the inquiry proceedings."

2. It is apparent from the record that petitioners have challenged Annexure No. 5 to the writ petition – a summoning order issued by Senior Intelligence Officer, office of DGGI, Meerut under Section 70 of the Central Goods and Services Tax Act, 2017.

3. This Court while deciding a similar issue in the case of **Hingiri Ispat Pvt. Ltd. Vs. Commissioner of the CGST, Commissionerate at Dehradun 2022 NTN (Vol. 78) 457** has held that a writ petition is not maintainable against an order of show cause or summoning order for production of documents. However, certain directions were issued to the respondents to comply with, as envisaged under Section 69 (1) of the Act. It is appropriate to take note of paragraph 4 of the aforesaid judgment:

"4.The learned counsel for the petitioner admitted that he has challenged the summoning order which is at Annexure 6, issued by the Inquiring Officer for recording the statement of the petitioner. He also cited certain orders passed by the Coordinate Bench, in which, stay orders have been granted restraining the respondents from arrest of the petitioner. However, this Court is of the opinion that a writ to quash a summoning order is not maintainable. Hence, this Court is not inclined to follow the orders passed by the learned Single Judge sitting in the Coordinate Bench, which do not constitute a binding precedent. However,

keeping in view the apprehension of the petitioner, the submissions made by Mr. Ashutosh Posti, learned counsel for the petitioner and the submissions made by Mr. Shobhit Saharia, learned counsel for the respondents, this Court observes that the petitioner shall appear before the Authority summoning him for recording his statement. However, this Court further directs that before taking any steps to arrest, the Commissioner of CGST, Dehradun shall comply the provisions of Sub-Section (1) of Section 69 in letter and spirit. In other words, he must come to a definite conclusion that the petitioner has committed the offence as enshrined thereon, on the basis of credible materials and before authorizing any person to arrest the petitioner and the commissioner must record the reasons and material that he took into consideration in authorizing the officer to arrest him. A violation of this order shall be considered contempt of this Court."

4. In that view of the matter, I direct that petitioners shall appear before respondent no. 3 within 15 days from today and if so advised, they may take assistance of an Accountant but if respondent no. 3 desires to arrest the petitioners, then he shall comply with the provisions of Section 69 (1) of the Act.

5. With such observations, the writ petition is disposed of.

(Sanjaya Kumar Mishra, J)