

Chittewan

15. WPL 30974-21.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.30974 OF 2021**

FSM Education Pvt. Ltd.

... Petitioner

***Versus***

Union of India, through the  
Principal Secretary,  
Department of Revenue,  
Ministry of Finance,  
Aayakar Bhavan, Mumbai  
And Others

... Respondents

\*\*\*\*\*

Mr. Jamshed Master a/w Ms. Natasha K. Bhot for the Petitioner.

Mr. Jitendra B. Mishra a/w Mr. Satyaprakash Sharma and Ms. Sangeeta Yadav  
for the Respondents.

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**CORAM : R. D. DHANUKA &  
S. M. MODAK, JJ.**

**DATE : 10 JANUARY 2022.  
(Through Video Conference)**

**Oral Judgment : (Per R.D. Dhanuka, J.)**

. **Rule.**

2 Mr. Jitendra Mishra, learned Counsel waives service. By consent of the parties, this petition is taken up for final hearing.

3 By this petition filed under Article 226 of the Constitution of India, the Petitioner prays for a writ of mandamus or any other writ as this Court deem appropriate so as to quash and set aside the summons issued to Ms. Tanuja Gomes and seeks direction to the Respondents to conduct an enquiry without

initiating summons and interrogation unless found extremely necessary and only by due adherence of the law.

4. The Petitioner is a School of Music engaged in the business of recreational activities such as teaching music to school children and other enthusiasts either at its teaching centre or at a school. The Petitioner is registered under the Central Goods and Services Act 2017. The Petitioner received a communication dated 2 December 2021 on the letter head of the Office of the Commissioner of CGST, Mumbai West, requesting to submit certain documents within a period of four days from the date of receipt of the Notice.

5 It is the case of the Petitioner that it has submitted various documents from time to time to the Respondents. Respondent No.3 issued a summons on the Petitioner on 15 December 2021, under Section 70 of the Central Goods and Services Act, 2017 (for short the said GST Act) to remain present before Respondent No.3 on 16 December 2021 at 11.20 a.m. The said summons were issued to the Petitioner company without any details of the inquiry. The Petitioner deputed Mr. Piyush Patel, Accounts Manager of the Petitioner. It is the case of the Petitioner that the said Piyush Patel was grilled and interrogated for a period of about five hours from 4.00 p.m. to 9.00 p.m. and was subjected to cross-questioning which was contrary to the guidelines issued by Respondent No.1.

6 The Respondents issued summons on 23 December 2021 to Mrs. Tanuja Gomes, one of the Directors of the Petitioner for producing documents and providing oral evidence by Respondent No.3 on the basis of the summons

dated 23 December 2021. Respondent No.3 issued summons to Ms. Tanuja Gomes to remain present before his office on 29 December 2021.

7 The learned Counsel appearing for the Petitioner relied on Question 34 of the FAQs dated 15 December 2018 issued by GST Department and would submit that it is clear beyond reasonable doubt that the assessee can be summons only as a last resort and as far as practicable, details can be obtained from an assessee by way of an ordinary letter. It is submitted that all the documents are furnished as requisitioned by the Respondents. The summons cannot be issued to coerce and pressurize the Petitioner or its director. He submits that Ms. Tanuja Gomes is not personally familiar with the issue of exemption regarding payment of GST, she being a musician.

8 It is submitted by learned Counsel for the Petitioner that a Consultant of the Petitioner would remain present before the Respondents and would provide all details and the particulars as may be further requisitioned by the Respondents. He states that in the event of the Respondents not being satisfied with the documents and response of the Consultant, only in that event, the said Ms. Tanuja Gomes would remain present before the Authority in response to the said summons in accordance with law.

9 Mr. Jitendra Mishra, learned Counsel appearing for the Respondents disputes that the Petitioner has furnished all the documents called upon by the Respondents. He relied upon the averments made in affidavit-in-reply filed by the Respondents.

10 A perusal of the reply to the question 34 of FAQs dated 15 December

2018, issued by GST Department would clearly indicate that issuance of summons is a last resort and are not issued in a casual manner. There are no allegations made by the Respondents alleging non-cooperation on the part of the Petitioner.

11 A perusal of the averments in para 7.1 indicates the said summons was issued only in view of the statement made by Shri Piyush Patel which was recorded under Section 70 of the CGST Act 2017, that the decision regarding payment of taxes and claiming of exemption was taken by the director Ms. Tanuja Gomes. In the affidavit-in-rejoinder filed by the Petitioner and the affidavit filed by Mr. Piyush Patel, the averments made by the Respondents in para 7.1 of the reply are denied.

12 Be that as it may, since the Petitioner is agreeable to co-operate with the Respondents in furnishing the documents as requisitioned and to provide further details through Consultants, who would remain present in the Office of Respondent No.3, we pass the following order :-

**: O r d e r :**

- (a) The Respondents are directed to inform the Petitioner the list of further documents required to be produced by the Petitioner and other requisite queries to which, they seek clarifications from the Petitioner. Such list of documents along with queries shall be furnished to the Petitioner within one week from today.
- (b) The Consultants, M/s MGB & Co. of the Petitioner would furnish all the documents on behalf of the Petitioner and

Chittewan

15. WPL 30974-21.odt

would furnish such details as per the requisitions as would be made by the Respondents, within the prescribed time or such period as may be extended by the Respondents. The said Consultant shall co-operate with the Respondents in furnishing the documents and the information.

- (c) It is for the Respondents to decide whether Ms. Tanuja Gomes, director of the Petitioner shall be still called for recording of evidence after furnishing of the documents and information by the Consultant of the Petitioner.
- (d) If any summons is issued by the Respondents, the summons shall indicate the purpose of issuing summons to the Petitioner with clear seven days notice before fixing the date for recording the statement of the said Director Ms. Tanuja Gomes. Ms. Tanuja Gomes shall appear before the Authorities on the appointed date and co-operate with the Respondents in recording her evidence.

13 The impugned summons dated 23 December 2021 issued to Ms. Tanuja Gomes, Director of the Petitioner company would not survive in view of the undertaking given by the Petitioner and in view of the aforesaid directions issued by this Court. Writ Petition is disposed of accordingly. **Rule** is made absolute. No order as to costs. Parties to act on the authenticated copy of this order.

RAJESH  
VASANT  
CHITTEWAN

Digitally signed by  
RAJESH VASANT  
CHITTEWAN  
Date: 2022.01.12  
17:39:08 +0530

**[S. M. MODAK, J.]**

**[R. D. DHANUKA, J.]**