

Observations of Telangana High Court MSR,J and TA,J pronounced on 06-11- 2020 in a case where both revenue and assessee made counter allegations of physical assault on each other.



CA Vinamar Gupta

- a) Whether midnight summons can be issued for on spot examination ?**
- b) Whether presence of a lawyer can be allowed at the time of examination of taxpayer's employees ? [Para 95]**
- c) DGGI insisting examination of assessee's employees at Hyderabad at its headquarter at New Delhi.**
- d) Private hospital certifying injury to assessee**
- e) Role of Police denying to register FIR against government officials.**

a) Whether midnight summons can be issued for on spot examination ?

It was contention of revenue that there is no bar in making enquiries under Section 70 of GST Act, 2017 in the night itself [Para 30], when person alleged to be evading tax was available on spot. [Para 86]

Court held that examination at midnight is not routine thing. Prima-facie it amounts to deprivation of the liberty, if the taxpayer is forced to be present with department at late hours.

Court held that cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forceably keeping them in their custody for indefinite period. If it is done, it has to be construed as informal custody and the law relating to

an accused in custody has to be expressly or impliedly applied [Para 90,92]

Court held that interrogation shall be conducted between 10:30 a.m. and 05:00 p.m. on week days [Para 108(c)]

b) Whether presence of a lawyer can be allowed at the time of examination of taxpayer's employees ? [Para 95]

Telangana High Court quoted Supreme Court in Senior Intelligence Officer, Directorate of Revenue Intelligence vs. Jugal Kishore Samra as under :

Taking a cue, therefore, from the direction made in D.K. Basu and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from behind a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in the course of the interrogations." [Para 98]

Court held that any interrogation shall be days in the visible range of an Advocate, who shall not be in hearing range.

c) DGGI insisting examination of assessee's employees at Hyderabad at its headquarter at New Delhi.

Court held that We may point out that we are in the midst of the COVID-19 Pandemic and there are serious risks involved in people traveling to and from New Delhi and their family members because there is no dispute that New Delhi has several cases of Corona virus infections for the last several months. In the coming winter months, the prediction of the health experts is that there could be more infections and even fatalities caused by the said virus. Also it would entail considerable expense for that many people to travel to Delhi and back apart from high boarding and lodging costs. [Para 104]

While the need to proceed with the investigation and take it to the logical conclusion cannot be disputed, whether the revenue can be permitted to put at risk the health and lives of the persons they wish to interrogate in connection with the alleged GST evasion and make them incur a huge amount of expenditure, is to be considered.

When the respondents have a Zonal Unit at Hyderabad where they can certainly carry on any enquiries or interrogation, we do not think that it is desirable, on account of COVID -19 Pandemic situation and the high cost involved, to allow the revenue to summon 50 or more persons in connection with the investigation of alleged GST evasion by the taxpayer to New Delhi by endangering their health and lives.

d) Private hospital certifying injury to assessee

There is no presumption in law that Doctors in private hospitals do not speak the truth and only Government doctors speak the truth. An injured person is likely to go the nearest available hospital for treatment instead of searching for a Government hospital at that juncture.[Para 68]

e) Role of Police denying to register FIR against government officials

The fact the police did not register any FIR on the complaint made by the petitioners, in our opinion, is not that significant because it is not at all unusual for the police to refuse to register any complaint against Government Officials.

The omission of the police to register any FIR at the instance of taxpayer does not mean that what the revenue's allege is true [Para 73]