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18.01.2021  
(PP)  
Ct23

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**WPA 11583 of 2020**

(Through Video Conference)

Nowrangroy Agro Private Limited & Ors.  
Vs.  
Union of India & Ors.

Mr. Amales Ray,  
Mr. Sabhra Kanti Roy Chowdhury,  
Ms. Mousumi Bhowal  
.... For the petitioners.

Mr. Siddhartha Lahiri,  
Mr. Siddhartha Addhya  
..... For Union of India.

Mr. Somnath Ganguli,  
Ms. Manasi Mukherjee  
... For the respondent nos.3, 7 and 10.

Mr. Kishore Datta, Ld. AG,  
Mr. Abhratosh Majuder, Ld. AAG,  
Mr. S. Mukherjee,  
Mr. D. Ghosh  
.... For the State.

Mr. Rajashree Venket Kundalia,  
Ms. Ekta Sinha  
... For CGST.

This matter was taken up on 13<sup>th</sup> January, 2021 and adjourned after hearing the parties to enable the learned advocate representing the respondent nos.3, 7 and 10 to take instruction as to the basic documents required by the Inquiry Officer, who is holding an inquiry under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) apart from

those documents which have been called for by the summons dated 7<sup>th</sup> December, 2020 and 7<sup>th</sup> January, 2021. The advocate for the respondent nos.3, 7 and 10 submits that the Inquiry Officer for the time being requires the documents mentioned in the summons dated 7<sup>th</sup> January, 2021 but may require further documents on scrutinizing those documents.

On a perusal of the summons dated 7<sup>th</sup> December, 2020 it will appear that Abhay Ajitsaria was summoned on 16<sup>th</sup> December, 2020 to give evidence and tender his statement as also to provide documents and information as detailed in Annexure – ‘A’ to the said summons dated 7<sup>th</sup> December, 2020. From the summons dated 7<sup>th</sup> January, 2021, it appears that Beharilal Ajitsaria, Arun Kr. Ajitsaria and Anant Bajaj have been called to give evidence and/or produce documents or things as in Annexure –‘A’ to the said summons. It is, therefor, not clear as to why the three persons are directed to be present at a time before the Inquiry Officer at Delhi on 29<sup>th</sup> January, 2021 apart from producing the documents amidst the pandemic when the enquiry is at a nascent stage.

After hearing the parties and considering the materials on record, I find that the transaction forming subject matter of the writ petition involves mainly a classification dispute.

The petitioners say that they have undertaken certain job relating to the Public Distribution System(in short PDS) from the State Government. The transaction appears to be composite in nature and comes under the provisions of Section 2(30) of the CGST Act. According to the petitioners and the State Goods and Services Tax (SGST) Authorities, the composite supply through PDS as in the instant case is covered under Entry No.28 of the Eleventh Schedule of the Constitution as an activity to supply to State Government. Under Serial No.3A of Chapter 99 of the notification dated 28<sup>th</sup> June,2017 bearing No.12/2017CT such a transaction wherein sale value of the composite supply is not more than 25% of the total value the tax leviable is Nil or 0%. If the value of the sale is more than 25% then the aggregate tax rate will be 5% comprising of 2.5% for CGS and 2.5% for SGST. SGST Authority has classified the transaction in a manner that it applies 5% rate. According to the Central Goods and Services Tax Authorities (CGST Authorities), the applicable rate is 18% as it comes under Entry No.26, Heading 9988 manufacturing services on physical inputs if the major component of the transaction is only manufacturing of Notification 11/2017.

Considering this nature of dispute an enquiry proceedings is conducted by the CGST

Authorities by issuing summons under Section 70 of the 2017 Act. It appears that in the enquiry the classification of the transaction has to be first ascertained. In order to ascertain this the documents and records of the petitioner no.1 is required initially. The corroborating evidence or statement from the officers of the petitioner no.1 is then required. After ascertaining the rate of the tax applicable in terms of the classification, the quantum has to be ascertained on the basis of the value of the transaction undertaken. For this, the books of the petitioner no.1 are required initially and after scrutiny if any discrepancies are found the corroborative statements and evidence is required. CGST Authorities have already issued two summons, one dated 7<sup>th</sup> December, 2020 and the other dated 7<sup>th</sup> January, 2021. In Annexure -'A' to the summons dated 7<sup>th</sup> December, 2020 a list of documents required to be produced by the petitioners on 16<sup>th</sup> December, 2020 is mentioned. Pursuant to the summons issued on 7<sup>th</sup> December, 2020, the petitioners have produced certain documents. The list in Annexure -'A' to the summons dated 7<sup>th</sup> January, 2021 speaks of 8 further documents required to be produced on 29<sup>th</sup> January, 2021. The appearance and production of documents on 16<sup>th</sup> December, 2020 goes on to show that the petitioners have participated in the enquiry

and have cooperated with the officers holding such enquiry up till now.

The petitioners are, therefor, directed to produce the documents mentioned in Annexure –‘A’ to the summons dated 7<sup>th</sup> January, 2021 on 29<sup>th</sup> January, 2021 at 11.00 a.m. at the place notified in the summons through a proper officer.

The officer holding the enquiry shall receive the documents after preliminary scrutiny thereof and should release the person producing such documents immediately thereafter without detaining him for recording any evidence. The officer shall make a full study of the documents so produced on 29<sup>th</sup> January, 2021 and shall communicate to the petitioner as to whether any further documents are required to be produced.

The petitioners shall be bound to produce such documents which may further be asked for, provided the same are in their possession on the date and time that may be specified by the Inquiry Officer. The Inquiry Officer shall not ask for personal presence of any of the officials of petitioner no.1 till the stage of production of documents continue.

After the Inquiry Officer is through with the documents, he will call the person or persons from the petitioner no.1 for recording of statement or evidence as the case may be.

This modification to the procedure is made owing to the present pandemic situation when a person or persons should not be called to be present before the Inquiry Officer at New Delhi within very short span of time and presence of more than one person at a time should also be avoided.

Let the writ petition be adjourned till March 15, 2021 with liberty to the parties to mention in case of any difficulty.

**(Arindam Mukherjee, J.)**