



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment dated: 20.03.2020**

+ **W.P.(CRL) 766/2020 & CRL. M.A. 5730/2020**

AMIT JOSHI

..... Petitioner

Through: Mr. Ramakant Gaur, Mr. Rakesh Chitkara, Ms. Sneha Arya, Ms. Shubhakriti Gaur, Ms. Prerna Agarwal & Ms. Harshi Gaur, Advocates.

versus

COMMISSIONER OF CEST & ST, CGST (EAST) & ANR.

..... Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur & Ankit Singh.

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J (ORAL)

W.P.(CRL) 766/2020

1. This is a petition filed by the petitioner under Article 226 of the Constitution of India for issuance of the writ to safeguard the right to life, liberty, dignity & fair investigation and to examine the illegal acts of the CGST officials and to monitor the investigation of the case.



2. Ld. Counsel for the petitioner has prayed that records of the investigation be called from the office of the respondents and the court should examine the same on the touchstone of the law relating to the fair investigation. He has further prayed that Court should monitor the investigation of the case till the issuance of Show Cause Notice and/ or till the filing of complaint and further direct the respondents to give bi-monthly reports to this Court about the progress of the investigation.

3. Notice.

4. Ld. Sr. Standing counsel for respondents accepts notice on behalf of respondents and seeks time to file status report.

5. Let the status report be filed two days before the next date of hearing i.e. **18.05.2020**.

CRL. M.A. 5730/2020

1. An interim application has also been filed for issuance of direction to the respondents to conduct the investigation without use of any coercive means along with video recording of the statements of the applicant and to allow the presence of the Lawyer at visible yet inaudible distance of the applicant.



2. Ld. Sr. Standing counsel for the respondents seeks time to file reply to the said application. However, Ld. Counsel for the petitioner insists for immediate issuance of directions to the respondents.

3. Ld. Counsel for the petitioner has submitted that applicant was picked up on 07.03.2020 and was kept in illegal detention for three consecutive days. He has been beaten ruthlessly and was coerced to write incriminating statement. It is submitted that investigation by the respondents is not being conducted in accordance with law. He has, therefore, prayed that the presence of the Advocate be allowed at a visible yet inaudible distance of the applicant.

4. Ld. Sr. Standing counsel for the respondents has submitted that investigation is being conducted as per law. The petitioner is not subjected to any torture during the interrogation. So far as submission of Ld. Counsel for the petitioner regarding presence of lawyer at the time of interrogation is concerned, he has relied upon the judgment titled '**Pool Pandi vs. Superintendent, Central Excise and Ors. 1992 AIR 1795 (SC)**' as well as judgment of this



Court titled '**Sudhir Kumar Aggarwal vs. Directorate General of GST Intelligence, W.P. (Crl.) 2686/2019**' dt. 06.11.19.

5. I have considered the rival submissions. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court titled '**Senior Intelligence Officer vs. Jugal Kishore Samra, Crl. Appl No. 1266/2011 (Arising out of SLP (Crl.) No. 628/2008)** decided on 05.07.2011. I have gone through the said judgment. It was passed because of special facts and circumstances of the said case as respondent i.e. accused Jugal Kishore Samra was suffering from heart disease and his medical condition was considered by the Ld. Sessions Judge while passing the order. The said case is, thus, distinguishable on the basis of facts and circumstances stated therein. The Hon'ble Supreme Court in a case titled '**Pool Pandi vs. Superintendent, Central Excise and Ors. 1992 AIR 1795 (SC)**', has categorically held that presence of a lawyer cannot be allowed during questioning under Customs Act and the relevant para runs as follows;

11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his



constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. **Mr. Salve was fair enough not to pursue his arguement with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the `just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us. (Emphasis supplied).**



6. Thus, the Hon'ble Supreme Court in **Pool Pandi's judgment (Supra)**, has categorically held that presence of a lawyer cannot be allowed during examination/ interrogation by a Customs Officer. It was held that relevant provisions of the Constitution in this regard have to be construed in the spirit in which they were made and benefit thereunder should not be extended to exploiters engaged in Tax Evasion at the cost of public exchequer. The submission of the petitioner regarding presence of lawyer in the interrogation was, therefore, declined by the Hon'ble Supreme Court.

7. The petitioner in the present case has been summoned by the Officers under GST Act who are not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in **Pool Pandi's case (Supra)**. So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/ investigating officer has a right



to use any method which is not approved by law to extract information from a witness/ suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action.

8. The Ld. Sr. Standing Counsel for the respondents on the other hand has categorically stated at Bar that interrogation/ investigation of the petitioner would be conducted as per law and the respondents will not adopt any such method which is not permissible by law.

9. In view of the above submission made by the Ld. Sr. Standing Counsel for the respondents and also in view of the judgment of Hon'ble Supreme Court in **Pool Pandi's case (Supra)**, no grounds are made out to allow the presence of the Advocate while questioning or examination by the officers of the respondents. The present application is, therefore, dismissed and stands disposed of accordingly.

BRIJESH SETHI, J.

March, 20, 2020/ (Amit)