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By Nidhi, Advocate



Judgment No.: 097
Dt.: 28-03-2024



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Judgment Deals With

Section/Rule	Section 6
Authority	Rajasthan High Court
Case Name	Rais Khan Proprietor of M/s. Kota Metals VS Add. Commissioner, Enforcement Wing-II
Dated	14 th March, 2024

Brief Facts:

Petitioner has challenged the issuance of summons dated 27.09.2023 & 14.02.2024 under Section 70 of CGST Act, 2017 passed by Superintendent/ Appraiser/Senior Intelligence Officer DGGI.

Contention of the Petitioner:

State Authorities had initiated the proceedings and as per Section 6(2)(b) of the CGST Act, if a proper Officer under the SGST Act or UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper Officer under CGST Act on the same subject matter. Since the State Authorities had initiated action, summons under Section 70 of the CGST Act, could not have been issued by the DGGI. Guidelines have been issued by the GST-Investigation Wing on issuance of summons under Section 70 of the CGST Act, which are binding on the Authorities.

Contention of the Authority:

Summons given under Section 70 of the CGST Act cannot be said to be initiation of proceedings. The summons were issued under Section 70 of the CGST Act by the DGGI and the bar under Section 6(2)(b) of the CGST Act, would not apply. When there is inter-se evasion of tax or claim of tax benefit, Union of India is authorized to initiate the proceedings.

Findings & Decision of the Court:

It was held that scope of Section 6(2)(b) and Section 70 of the CGST Act is different and distinct, as the former deals with any proceedings on subject matter, whereas the latter deals with power to issue summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the authority to invoke the power under Section 70 of the CGST Act. The issuance of summons is not initiation of proceedings referable to under Section 6(2)(b) of the CGST Act. In issuance of summons for conducting an inquiry and to obtain a statement from the assessee cannot be construed to be bar under Section 6(2)(b) of the CGST Act. Thus, the issuance of summons under Section 70 of the CGST Act is not hit by Section 6(2)(b) of the CGST Act and the present petition being devoid of merits was dismissed.

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