
WRIT PETITION CHALLENGING CONSTITUTIONAL VALIDITY OF GST PROVISION DISMISSED: SUPREME COURT OF INDIA

Overview:

The Hon'ble Supreme Court in the case of *Devendra Dwivedi v. Union of India & Ors.*¹ dismissed a writ petition wherein the constitutional validity of certain provisions of the Central Goods and Service Tax Act, 2017 (the 'CGST Act') was called into question by Shri Devendra Dwivedi (the 'Petitioner').

The challenge was made by the petitioner under Article 32 of the Constitution of India, on the vires of Section 67(1) (Power of Inspection, search and seizure), Section 69 (Power to arrest), Section 70(1) (Power to summon persons to give evidence and produce documents), Section 132 (Punishment for certain offenses) & Section 135 (Presumption of culpable mental state) of the CGST vis-à-vis Article 20(3) & Article 20 of the Constitution. The challenge alleged that the investigation conducted by the revenue against the Petitioner was void ab initio, owing to the non-compliance of the investigation procedure laid down in Chapter XII of the Code of Criminal Procedure, 1973 (the 'CrPC').

Findings of the court:

- While the court's power under Article 32 is present as a constitutional safeguard against violation of the fundamental right guaranteed therein, this power must be exercised with caution and judicial discretion.
- There are pre-existing remedies and procedures under the CrPC as well as the CGST act and circumventing the same would open a floodgate of litigation under article 32.
- Additionally, owing to the presence of an alternate efficacious remedy under Article 226 of the Constitution before the relevant High Court, the Petition was remanded to the High Court since the grievance as to the conduct of investigation could be appropriately addressed therein.
- Consequently, it was observed that the Supreme Court could thereafter benefit from the considered view taken by the appropriate High Court.

VA Comments:

- The present challenge was made on the CGST Act which is a Central legislation. Even though the High Court is empowered to address a question of constitutional validity, it is often observed that the several High Courts across the country end up having a contradictory view on the same subject thereby leading to uncertainty. Therefore, it would have been prudent if the Supreme Court would have answered the question in this case.
- As the provisions challenged in the present petition affect a large number of people, redirecting the present petition back to the relevant High Courts would only result in a delay and uncertainty on a nascent law with little jurisprudence to consider.

¹ [TS-3-SC-2021-NT]

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