

ITEM NO.29 Court 5 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s).272/2020

DEVENDRA DWIVEDI Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(WITH IA No. 92998/2020 - CLARIFICATION/DIRECTION)

WITH

W.P.(Cr1.) No. 273/2020 (X)

(WITH IA No. 93254/2020 - APPROPRIATE ORDERS/DIRECTIONS)

W.P.(Cr1.) No. 276/2020 (X)

(WITH IA No. 94891/2020 - GRANT OF INTERIM RELIEF)

W.P.(Cr1.) No. 298/2020 (X)

(WITH IA No. 100496/2020 - GRANT OF INTERIM RELIEF)

Date : 07-01-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Bijendra Chahar, Sr. Adv.
Mr. Amit Bhandari, Adv.
Mr. Kumar Shashank, Adv.
Mr. Purushottam Sharma Tripathi, AOR
Mr. Abhishek Tripathi, Adv.
Mr. Mukesh Kumar Singh, Adv.

Mr Vijay Aggarwal, Adv.
Mr Mudit Jain, Adv.
Mr Yugant, Adv.
Mr. Akbar Siddique, AOR

For Respondent(s) Mr K K Venugopal, Attorney General For India
Mr. Tushar Mehta, Solicitor General
Mr. S.V. Raju, ASG
Mr. Zoheb Hossain, Adv.
Mr. Kanu Agarwal, Adv.
Mr. B. Krishna Prasad, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

W.P.(Crl) No.272/2020, 273/2020 and 276/2020

- 1 Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the petitioners, seeks the permission of the Court to withdraw the petitions with liberty to move the High Court in appropriate proceedings.
- 2 The writ petitions are dismissed as withdrawn with liberty as prayed.

W.P.(Crl.) No. 298/2020

- 1 Invoking the jurisdiction of this Court under Article 32 of the Constitution, the following reliefs have been sought by the petitioners in these proceedings:
 - “1. Issue an appropriate Writ, order(s) or direction(s) declaring Sections 69 & 132 of the Central Goods Service Tax Act, 2017, as unconstitutional and ultra vires to Article 21 of the Constitution of India and hence unconstitutional, illegal and unenforceable;
 2. Issue an appropriate Writ, order(s) or direction(s) to the Respondent to comply with the mandatory procedure under Chapter XII of the Code of Criminal Procedure, 1973 including Section 154, 157, 167, 172 etc for valid commencement of investigation into any offence qua the petitioner.
 3. Declare the entire investigations erroneously commenced by the Respondents qua the Petitioner as non est, illegal, void ab initio for not following the mandatory procedure under Chapter XII of the Code of Criminal Procedure, 1973 and therefore violative of the "procedure established by law".
 4. Issue an appropriate Writ, order(s) or direction(s) declaring Section 70(1) of the Central Goods Service Tax Act, 2017, as unconstitutional and ultra vires to Article 20(3) of the Constitution of India and hence unconstitutional, illegal and unenforceable;

5. Issue an appropriate Writ, order(s) or direction(s) declaring Section 67 (1) and S. 69 of the CGST Act are ultra vires and violative of the principles of natural justice, as the said Section does not provide for recording of reasons to believe in writing, unlike other statutes such as Prevention of Money Laundering Act, 2002
6. Issue an appropriate Writ, order(s) or direction(s) declaring provisions of Section 137 of the CGST Act 2017 contrary to the settled principles of law, which provide that there can be no fastening of vicarious liability for a criminal offence requiring mens rea, without there being an active role being proved by the prosecution.
7. Issue an appropriate Writ, order(s) or direction(s) declaring provisions of Section 135 of CGST Act, 2017, unconstitutional as it requires Accused to disprove the reverse burden of proof not by preponderance of probability but beyond reasonable doubt.”

2 The above reliefs would indicate an amalgam of:

- (i) A challenge to the constitutional validity of certain provisions of the Central Goods Service Tax Act 2017;
- (ii) A direction for compliance with the procedure for investigation enunciated in Chapter XII of the Code of Criminal Procedure 1973; and
- (iii) Declaring the investigations which have been instituted against the petitioner as illegal.

3 During the course of the hearing, it has been urged on behalf of the petitioner that it would be necessary for this Court to entertain the present proceedings under Article 32 of the Constitution having regard to some earlier orders issuing notice, where similar issues have been involved. It has been submitted that having regard to these orders and the constitutional issues which have been raised, it would be appropriate for the Court to consider the challenge both to

the constitutional validity of the statute and determine the legality of the investigation which has been commenced. It is urged that the right to life under Article 21 of the Constitution is engaged in the challenge.

4 These submissions which have been urged by Mr Vijay Aggarwal have been opposed by Mr K K Venugopal, learned Attorney General for India and Mr Tushar Mehta, learned Solicitor general.

5 From the proceedings before this Court, we find that on 10 April 2019, a Bench of three-Judges declined to entertain Writ Petition (Crl) Nos 107 and 108 of 2019. The record also indicates that several other petitions which were instituted under Article 32 of the Constitution have eventually been withdrawn, including the following:

- (i) Writ Petition (Crl) No 260 of 2020 withdrawn on 28 October 2020;
- (ii) Writ Petition (Crl) No 167 of 2020 withdrawn on 7 August 2020;
- (iii) Writ Petition (Crl) No 241 of 2020 withdrawn on 9 September 2020; and
- (iv) Writ Petition (Crl) No 157 of 2020 withdrawn respectively on 14 July 2020 and 20 July 2020 in relation to the two petitioners.

The earlier petition under Article 32 was withdrawn before this Court today after submissions were urged.

6 The petitioners have an efficacious remedy in the form of proceedings under Article 226 of the Constitution to challenge the constitutional validity of the provisions of the statute which are placed in issue. Following this course of action is desirable, for this Court will then have the benefit of a considered view emanating from the High Court. Though the Counsel for the petitioners invokes

Article 21, this is a case involving essentially a challenge to revenue legislation. Undoubtedly, the jurisdiction of this Court under Article 32 is a salutary constitutional safeguard to protect the fundamental rights of citizens. The Court must be solicitous in exercising it where a breach of fundamental human rights is in issue. But equally, whether recourse to the jurisdiction under Article 32 should be entertained in a particular case is a matter for the calibrated exercise of judicial discretion. There is regime of well-established remedies and procedures under the laws of criminal procedure. Revenue legislation also provides its own internal discipline. Short circuiting this should not become a ruse for flooding this court with petitions which can, should and must be addressed before the competent fora. Hence we are of the view that it would be appropriate to relegate the petitioner to the remedy of a petition under Article 226 so that this Court has the benefit of the considered view of the jurisdictional High Court.

- 7 While it has been pointed out that in certain cases, notice was issued by this Court, the learned Attorney General for India has, on the other hand, submitted that this was at the initial stage of hearing and, as indicated above, a three-Judge Bench of this Court has declined to entertain the petitions under Article 32 by the order dated 10 April 2019.
- 8 Following the orders of the three-Judge Bench of this Court in the above cases, we are of the view that the petitioners must be relegated to pursue the remedies in accordance with law. Besides the fact that the constitutional challenge can be addressed before the High Court, the grievance in regard to the conduct of the investigation can appropriately be addressed before the competent forum, either in exercise of the jurisdiction under Article 226 or, as the case may be, Section 482 or analogous provisions of the Code of Criminal Procedure 1973.

- 9 On these grounds, we are not inclined to entertain the writ petition under Article 32. The petition is accordingly dismissed. However, we clarify that we have left it open to the petitioners to pursue the remedies which are available in law in respect of the reliefs which have been sought in these proceedings.
- 10 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER