

# TAX INFO

*Dated 22/04/2022*

Latest update on GST Law: **Assessee cannot represent through his authorised representative when summon is issued under Section 70 of CGST Act, 2017 for personal appearance and recording of statement as given in Judgment by Rajasthan High Court.**

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|---------------------------|---|
| <b>Name of Petitioner</b> | Suresh Balkrishna Jajra                 |
| <b>Name of Respondent</b> | Union Of India                          |
| <b>Court</b>              | Rajasthan High Court                    |
| <b>Date of Judgement</b>  | 08.04.2022                              |
| <b>Appeal No.</b>         | D. B. Civil Writ Petition No. 4741/2022 |

## **Brief Facts of the Case Law:**

The petitioner seeks exemption from personal appearance pursuant to summons issued by the Department under Section 70 of the Central CGST Act, 2017. The petitioner claims that he is entitled to be represented through his authorised representative as provided under Section 116 of the Act of 2017.

## **Contention of the Petitioner:**

The petitioner's representation through authorised representative is required to be duly considered by the Department. Unless it is absolutely imperative, it is not necessary that in all cases, the petitioner should be insisted for personal appearance and he may be allowed to appear through representative. Reliance was placed on order dated 10.01.2022 passed by the High Court of Judicature at Bombay in the case of **FSM Education Pvt. Ltd. Vs. Union of India (Writ Petition (L) No. 30974/2021)**.

## **Contention of the Department:**

Summons has been issued under Section 70 of the CGST Act, 2017 by Department in exercise of powers under the law. The petitioner has been directed to appear personally, and thus provisions of Section 116 of the CGST Act, 2017 would not be applicable. The petitioner is entitled to be represented through his representative in view of the provisions contained in Section 116 of CGST Act, 2017 is not acceptable in law because the provisions under Section 116 will not be applicable when a person is required under the Act to appear personally for examination on oath or affirmation. Reliance placed on the **judgment of Bombay High Court in FSM Education Pvt. Ltd. (supra)** is misplaced on facts because on facts of that case, the Court exercising its discretion was inclined to pass some protective order. Even though in a case where the summons under Section 70 of the CGST Act, 2017 have been issued to a person, the authority may consider his request of **limited nature either for changing date of personal appearance or granting some relief in the context of personal disability, is a matter of consideration of the concerned authority and not for the Court.** It would be open for the petitioner to move such application of limited nature before the authority, if for any unavoidable reason; he is unable to appear on a particular date. **The Hon'ble Supreme Court in the case of Paramvir Singh Saini Vs. Baljit Singh & Others (2021)**, observed that in the matter of issuance of summons under Section 70 of the CGST Act, 2017 for personal appearance and recording of statement, certain procedure has to be followed as stated therein.

## **Decision of the Court:**

The writ petition was disposed off without granting any exemption from personal appearance to the petitioner.

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