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CHIEF-EDITOR'S COMMUNIQUE

Friends

The AIFTP Indirect Tax and Corporate Laws Journal will be available on subscription basis from January, 2022. The subscription amount for one year is Rs. 1100.00 only. We request all to subscribe the AIFTP Indirect Tax Journal and also circulate amongst other Professionals friends, WhatsApp groups and ask them to subscribe this Journal.

Journey of this Journal started with the idea conceptualized by Dr. Ashok Saraf the then President of AIFTP and immediately we started working on it and release the journal within a month of conceptualization. It has continued free of cost since then and now it has been felt that a nominal amount be fixed for the subscription of it. The Journal has been applauded by the Professionals and it has received wide acceptance and the Articles contained in the Journal are on the recent issues and controversies and amendments. The eminent Professionals had been contributing Articles in the Journal regularly and we are also covering RERA, FEMA and Companies Act apart from GST.

The recent judgement of Hon'ble Supreme Court of India in the case of M/s. AAP and Company and M/s. Bharti Airtel Limited has forced the Professionals to rethink the strategy claim of ITC and restrictions in way of revising the returns and also about the veracity of the return as provided under section 39 and also their restrictions provided in Section 16(4) of the CGST Act. The judgements has far reaching effect and the strategy henceforth has to be rethink on the issue of claim of Input Tax Credit.

Normally the month of December is a month for Wedding and holidays and thereafter New Year Celebration but looking to the timelines under Income Tax and GST and the probability that the timelines may not be extended by the Government it would be a real working month for all the Tax Professionals.

On behalf of all Team of the Indirect Tax Journal and on behalf of AIFTP we wish you a Merry Christmas and a very happy and prosperous NEW YEAR -2022.

Regards,

PANKAJ GHIYA
Chief Editor
9829013626
pankaj.ghiya@hotmail.com

President's Message

Dear Members,

Namaskar.

I am very happy in connection with AIFTP Indirect Tax & Corporate Laws Journal which was again started in my tenure by the contribution of sponsors and we have supplied the said Journal at free of cost. The initiation taken by Dr. Ashok Saraf, Senior Advocate and Past President, AIFTP is commendable for this Indirect Tax Journal.

I must say a big thanks to Chief Editor Advocate Shri Pankaj Ghiya, who had taken lot of pains for preparation and distribution in tremendous way throughout the year. Our AIFTP 2021 entire team is very much thankful for the knowledge sharing in these pandemic situation by sending hard copy of the Journal. Each one of entire team are also appreciable for this Nobel cause from my inner core of heart.

In this happy moment, I also appreciate all the article writers for their excellent co-operation from time to time throughout the year in all parts which was appreciated by our valuable members. This Indirect Tax Journal should also require to be continued further years to come. From 01.01.2022 the Indirect Tax Journal will be paid on yearly basis for Rs. 1,100/- for Members of the AIFTP and Rs. 1,400/- for Non Members is also an another milestone for the Federation and it is also a great value addition with the nominal contribution.

I request all the Members of AIFTP, please subscribe the said Journal in a large number for the benefit of professional fraternity especially Indirect Tax of GST which is required in our day to day profession.

After coming back from Pune, AIFTP conducted One Day Tax Seminar at Solapur & One Day Tax Seminar at Ratnagiri both in Maharashtra were well organized and well attended. Further, AIFTP (CZ) conducted Vindhya Tax Conference on 18th & 19th December, 2021 and AIFTP (SZ) Hyderabad is also conducting One Day Seminar on 22nd December, 2021. Finally, Lucknow National Convention, in this convention, the vibrant Central Zone of AIFTP producing a qualitative good leader all over the country. Convention will be accompanied by OGM and Last &

10th NEC including award function and First NEC for the term 2022 with 500 delegates from all over the country. Hon'ble Central Ministers, Hon'ble Judges, CBDT & CBIC Chairmen and other dignitaries are also gracing the occasion along with my Pillars of Past Presidents of AIFTP in the month of December.

All the served members to the Federation in 45 years are getting the PVC Testimonial Certificate by post and we are also printing New Year 2022 calendar of AIFTP at free of cost to the all colleagues. The co-operation rendered by each & every member from all parts of the country is one of my life time journey with the AIFTP more than 2.5 decades. As per the vision and mission with hard work, the AIFTP reached greater heights in various aspects during the year 2021.

In this connection my big thanks to one and all for granting me an opportunity to serve you all more and more at my level best.

Wish you all A Merry Christmas & Happy New Year-2022 & Pongal

Long Live AIFTP

M. Srinivasa Rao

National President (AIFTP)

Date: 15-12-2021

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Abhay Singla

NOTIFICATIONS - CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
29.12.2021	40/2021-CENTRAL TAX	Seeks to make amendments (Tenth Amendment, 2021) to the CGST Rules, 2017
21.12.2021	39/2021-CENTRAL TAX	Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force.
21.12.2021	38/2021-CENTRAL TAX	Seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the CGST (Eighth Amendment) Rules, 2021 into force w.e.f. 01.01.2022.
01.12.2021	37/2021-CENTRAL TAX	Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017

NOTIFICATIONS - CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
31.12.2021	22/2021-CENTRAL TAX (RATE)	Seeks to supersede notification 15/2021-CT(R) dated 18.11.2021 and amend Notification No 11/2017- CT (Rate) dated 28.06.2017.
31.12.2021	21/2021-CENTRAL TAX (RATE)	Seeks to supersede notification 14/2021-CT(R) dated 18.11.2021 and amend Notification No 1/2017- CT (Rate) dated 28.06.2017.
28.12.2021	20/2021-CENTRAL TAX (RATE)	Seeks to amend Notification No 21/2018-Central Tax (Rate) dated 26.07.2018
28.12.2021	19/2021-CENTRAL TAX(RATE)	Seeks to amend Notification No 2/2017-Central Tax (Rate) dated 28.06.2017.
28.12.2021	18/2021-CENTRAL TAX(RATE)	Seeks to amend Notification No 1/2017-Central Tax (Rate) dated 28.06.2017.

CIRCULAR–CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
30.12.2021	168/24/2021-GST	Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.
17.12.2021	167/23/2021-GST	GST on service supplied by restaurants through e-commerce operators

TIMELINE - GST

Adv. Deepak Garg

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summery GST Return	GSTR-3B		
	(a) Regular Taxpayers		Dec, 2021	20th Jan 2022
			Jan, 2022	20th Feb 2022
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	Oct-Dec, 2021	13th Jan 2022
	(a) QRMP		Jan, 2022 (IFF)	13th Feb 2022
	(b) Monthly Filing	GSTR-1	Dec, 2021	11th Jan2022
			Jan, 2022	11th Feb2022
(iii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	Oct-Dec, 2021	18th Jan 2022
(v)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(vi)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vii)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(viii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	Dec, 2021	10th Jan 2022
			Jan, 2022	10th Feb 2022
(ix)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	Dec, 2021	10th Jan 2022
			Jan, 2022	10th Feb 2022
(x)	Annual Return &Reconcilliation Statement	GSTR-9 & 9C	F.Y. 2020-2021	28th Feb 2022

*****

ALL ABOUT DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCE IN GST LAW

P.V. Subba Rao, Advocate

Interception and inspection of goods and conveyance have been there since times immemorial. We may find from Arthasastra of Kautilya that the goods brought in carts are inspected at *'Sulkadhwaja'* by a team of four or five (*chatwaarahapamchavaa*) tax officers. If the goods have an identification mark called '*abhignana mudra'* (like our e-way bill), they are entered in a register. If there is no such mark, penalty is collected twice the tax amount. If the mark is fake, then penalty would be eight times the tax amount. Goods are seized and kept in godown (*ghatikasthane*). If the goods are undervalued (*heenambruvataha-raja haret*) goods equivalent to such value are confiscated. If anyone doesn't stop the carts for inspection of goods (*dhwajamoolamatikrantaanaam*), penalty equivalent to eight times the tax has to be paid. Even after 2,400 years, we may find similar provisions in the present tax laws.

Section 68 of the CGST Act, 2017 (hereinafter referred to as Act) deals with 'inspection of goods in movement'. Rule 55 of the CGST Rules, 2017 (hereinafter referred to as Rules) deals with 'transportation of goods without issue of invoice'. Rule 55A of the Rules mandates that the person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply. Chapter XVI of the Rules deals with 'E-way bills'. Section 122 (1) (xiv) of the Act specifies that where a taxable person who transports any taxable goods without the cover of documents as may be specified in this behalf shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded.

Section 129 of the Act mentions 'detention, seizure and release of goods and conveyances in transit' and Section 130 mentions 'confiscation of goods or conveyances and levy of penalty'. No specific Rules have been prescribed. However through Circular No. 41/15/2018-GST CBEC-20/16/03/2017-GST dated 13.4.2018, as modified by Circular No. 49/23/2018-GST dated 21.06.2018, Circular No. 64/38/2018 dated the 14th September, 2018 and Circular No. 88/07/2019-GST dated the 1st February, 2019, CBIC has issued instructions as follows:-

"In this regard, various references have been received regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances. In order to ensure uniformity in the implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the CGST Act, hereby issues the following instructions:-"

Para 2 (d)—

Proper officer to record a statement of the person in charge of the conveyance in FORM GST **MOV-01.**

Proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST **MOV-02**

Proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST **MOV-02**, prepare a report in Part A of FORM GST **EWB-03** and upload the same on the common portal.

Para 2 (e)—

Within a period of three days from the date of issue of the order in FORM GST **MOV-02**, the proper officer shall conclude the inspection proceedings.

Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST **MOV-03** from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

Para 2 (f)—

On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST **MOV-04** and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST **EWB-03** within three days of such physical verification/inspection.

Para 2 (g)—

Where no discrepancies are found, the proper officer shall issue forthwith a release order in FORM GST **MOV-05** and allow the conveyance to move further.

Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST **MOV-06**and a notice in FORM GST **MOV-07** in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable**.**

What is the basis for forming an 'opinion' that the goods and conveyance need to be detained.It is purely subjective and left to the discretion of thousands of inspecting officers. The consignment is covered by invoice/delivery challan / bill of supply / bill of entry and officially generated e-way bill. There may be some mistakes in the documents including a situation where the vehicle is proceeding on a different route. In the circular at Annexure-I, certain minor mistakes from (a) to (f) are identified and beneficial instructions have been issued. Officers are strictly considering those mistakes only as 'minor'. Lot of inconvenience has been caused during transit by stopping the vehicles and issuing notices even though the consignment is covered by invoice / delivery challan / bill of supply / bill of entry and e-way bill and when there is neither evasion nor attempt to evade tax.

Section 129 is a provision to prevent evasion of tax.It is not a provision intended to generate revenue for all and sundry mistakes. 'Mistakes are a part of being human'. Section 129 (1) provides for detention or seizure of goods and conveyance for 'contravention of the provisions of the Act or the Rules made thereunder'. There is no definition or explanation for the phrase 'contravention of the provisions' in this context. Whether innocent mistakes in the invoice, etc., and e-way bill could be considered as 'contravention of the provisions'? Innocent mistakes are considered as 'contravention' by the authorities, though the goods in transit are covered by invoice/delivery challan / bill of supply / bill of entry and e-way bill.

In the case of Kannangayathu Metals Vs Assistant State Tax Officer2019-TIOL-2589-, the Honourable Kerala High court dealt with a case where the Petitioner has approached the High Court aggrieved by the detention notice issued by the proper officer. He has contended that there is no mandate under Section 129 for detaining vehicle/goods that were covered by a valid e-way bill merely because the driver took an alternate route to reach the same destination.

In the case of R. K. Motors vs. State Tax Officer [2019] —102 taxmann.com 337/72—, the Honourable Madras High Court held as follows, on the detention order passed while the vehicle was inspected on a different route:-

"When the assessee is a registered dealer, when the tax in respect of the goods has already been remitted and when the transportation of goods is duly covered by proper documentation, the Competent Authority ought to have taken a sympathetic and indulgent view of the lapse committed by the driver of the vehicle. The detention order and the penalty order suffer from vice of gross unreasonableness and disproportionality. The goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. Therefore, in a case of this nature, the assessee could not have evaded its statutory obligations in any manner. Competent Authority was to be directed to release goods as well as vehicle on payment of Rs.5000 by assessee."

When the consignment is covered by an invoice, etc., and officially generated e-way bill, it shall be deemed that the supplier has agreed to pay the tax (C/S/I GST) on such supply through the form GSTR-3B. There cannot be one more 'applicable' tax that is to be paid, simply because the vehicle and goods have been inspected by some officer. 'Applicable tax' would be paid through the 3B return. Clauses (a) and (b) under Section 129 (1) need to be redrafted. Insertion of 'or' between clauses (a) and (b) and (b) and (c) would be better understandable.

Form MOV-07 also needs to be redrafted providing for an offer to release the goods. Simple mention of three clauses in this notice is not conveying anything. The moment goods are detained, if the person comes forward then clause (a) would be applicable without any notice. If the person doesn't come forward, then a notice of offer under clause (b) or (c) has to be issued to the person.

During VAT regime, if any mistakes are found in the invoice or official e-way bill, only 'compounding fee' (C.fee) used to be collected because the goods in transit are already covered by sale invoice establishing that tax would be paid by the seller through his monthly return. Tax was not collected once again by the officer inspecting the goods vehicle, as it would be double jeopardy. 'Appli-

cable tax' mentioned in Section 129 (1) needs to be explained, when the goods in transit are covered by invoice / delivery challan / bill of supply / bill of entry and official e-way bill.

Para 2 (h)—

If the person comes forward to pay tax and penalty as per Section 129 (1) (a) of the Act, goods and conveyance shall be released through form GST **MOV-5.**

The order in form GST **MOV-09** shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

Clauses (a) and (b) ought to have contained the word 'security' like in clause (c). There is no mention of clause (b) in the circular.

For getting the goods and conveyance released, the person has to give security of applicable tax and penalty equal to 100% of the tax under clause (a) of Section 129 (1), if he comes forward to pay. If he doesn't come forward, then the quantum would be applicable tax and penalty equal to 50% of the value of goods reduced by the tax amount paid thereon. For exempted goods, different parameters are specified.

Discrepancies pointed out being the same, it is not correct to have two parameters for the release of goods on the sole ground that the person is not coming forward to pay. Clause (b) is harsh and small and medium sized dealers, who do business mostly on credit basis would be hard hit. Quantum of security cannot be dependent upon the person coming forward or not coming forward. It is with reference to the quantum of tax and not anything else.

Para 2 (i)

If the person comes forward to get the goods and conveyance released by paying security under Section 129 (1) ©, proper officer by taking a bond in form GST **MOV-8** can issue a release order in form GST **MOV-05.** Security may be adjusted against the demand arising from the subsequent order.

It is desirable to have a separate notice offering to release the goods under Section 129 (1) than to make it part of a notice under Section 129 (3). Form MOV-07 needs to be separately issued; one offering for release of goods and the other proposing to raise demand of tax, if the circumstances so warrant. In fact in form MOV-07 there is no offer to release the goods.

Para 2 (j)—

If the objections are filed against the proposed demands of tax and penalty, a speaking order in form GST **MOV-09** shall be passed quantifying the tax and penalty payable.

On payment of tax and penalty, goods and conveyance shall be released through form GST **MOV-05.**

There is no mention of release of goods, if the objections are acceptable and no further action is needed. An adjudication order passed under Section 129 (3) is appealable. Under Section 107 (1) of the Act three months' time is available to file appeal. Under Section 107 (6) (b), if 10% of the disputed tax is paid while filing appeal, sub Section (7) provides for deemed stay of the remaining tax amount. Entire penalty levied is automatically stayed. It is a statutory right.

In such scenario, overlooking the right to appeal, how could Section 29 (6) provide for payment of tax and penalty within 14 days of such detention or seizure.

Where security has been given in the form of a bond and bank guarantee, proper officer has been invoking the guarantee on the date of passing the adjudication order, which opposes the provisions contained in Section 107.

One more problem faced is filing appeals under Section 107 against the orders passed under Section 129 and 130. Authorities are of the view that appeal has to be filed before the appellate authority in the State in which the proper officer has passed the order under Section 129 (3). For example a supplier in Tamil Nadu transports goods to Punjab. Vehicle and goods are detained in Delhi and order has been passed by the proper officer in Delhi. In this situation, Tamil Nadu dealer has to file appeal in Delhi, at the cost of his time and money. Under the VAT regime, in some States, instructions were issued to transfer the documents along with a report to the officer having jurisdiction over the consignor to

enable him to file appeal if necessary in his own State, if an order has been passed. Similarly, goods can be released against security and the matter referred to the State in which the supplier has principal place of business.

Para 2 (k)—

In case the proposed tax and penalty are not paid within fourteen days from the date of the issue of the order of detention in FORM GST **MOV-06**, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST **MOV-10**, proposing confiscation of the goods and conveyance and imposition of penalty.

Section 130 (1) reads as follows:-"130. Confiscation of goods or conveyances and levy of penalty.—(1) Notwithstanding anything contained in this Act, if any person— (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or (ii) does not account for any goods on which he is liable to pay tax under this Act; or(iii) supplies any goods liable to tax under this Act without having applied for registration; or(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.Section 129 (6) reads as follows:-"(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130: Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer."

Generally action under Section 129 is taken for the so called 'mistakes' (contravention of the provisions)in the prescribed documents and whereas for initiating

action under Section 130, five specific situations have been mentioned, laying stress on intent to evade payment of tax.Non-payment of tax and penalty demanded under Section 129 for such 'mistakes' cannot be a ground for initiating action under Section 130 (1), unless it is established that there is intent to evade payment of tax. In a situation, where the goods under transport are fully covered by invoice / delivery challan / bill of supply / bill of entry and officially generated e-way bill, it cannot be said that there is intent to evade payment of any tax.

Assuming that action under Section 130 could be initiated, still there would be another problem. Say, value of goods is Rupees one lakh. Tax demanded @ 5% is Rs.5,000 and penalty demanded is Rs.5,000 totaling to Rs.10,000. For the purpose of recovering Rs.10,000, is it correct to confiscate goods worth Rupees one lakh. There is no clarity in the provisions. If the goods in transit are not covered by the specified documents, then there may be a case for confiscation of all such goods. If the goods are covered by the prescribed documents and if the authority intends to confiscate the goods for any reason, at best, it could confiscate only to the extent tax and penalty become due and not all such goods. Persons are at the mercy of the authorities, when the entire quantity of goods is confiscated. There is a strong case to redraft the provisions contained in Sections 129 and 130.

The Honourable Gujarat High Court in the case of Synergy Fertichem (Private) Limited vs. State of Gujarat [2020]—116 taxmann.com 221—held as follows:-

"For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, *i.e.,* at the stage of detention and seizure of the goods and conveyance, the case has to be of such a nature that on the face of the entire transaction, the authority concerned should be convinced that the contravention was with a definite intent to evade payment of tax. The action, in such circumstances, should be in good faith and not be a mere pretence. In other words, the authorities need to make out a very strong case. Mere suspicion may not be sufficient to invoke Section 130 of the Act straightway."

Para 2 (l)—

Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST **MOV-10**. In the said notice, the quantum of tax and penalty leviable under section 130 of the CGST Act read with section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of section 130 of the CGST Act shall be specified.

Please see Annexure-II for an example for confiscation of goods. Board has clearly and categorically issued instructions on when the goods and conveyance are to be detained and confiscated. This is the correct interpretation of the provision. Para 2 (l) shows that if action under Section 129 has been commenced, it can be assumed that the proper officer has not considered that the movement of goods is being effected to evade payment of tax.

Para 2 (n)—

An order of confiscation of goods shall be passed in FORM GST **MOV-11,** after taking into consideration the objections filed by the person in charge of the goods. Once an order of confiscation of goods is passed in FORM GST **MOV-11**, the order in FORM GST **MOV-09** passed earlier with respect to the said goods shall be withdrawn.

Para 2 (o)—

An order of confiscation of conveyance shall be passed in FORM GST **MOV-11.**

Para 2 (v)—

A summary of every order in FORM GST **MOV-09** and FORM GST **MOV-11** shall be uploaded electronically in FORM GST-**DRC-07** on the common portal."

There is a social angle also to this problem of interception of goods vehicle. In the event of levy of tax and penalty by the over enthusiastic officers, even though covered by invoice / delivery challan / bill of supply / bill of entry and e-way bill, but due to 'mistakes'; low paid employees and accountants working in firms and small companies are being punished for their 'negligence' in preparing documents. Further lorry drivers and their assistants, who have been on continuous duty, sometimes extending to even a fortnight, are forced to stay for two to three days at the place

of interception exposed to weather, when the vehicle has been detained for the so called 'mistakes' in documents.

I am of the view that Sections 129 and 130 of the Act need to be redrafted and as a consequence, revised instructions are to be issued.

ANNEXURE-I

Circular No. 64/38/2018- Dated the 14th September, 2018

"4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and **penalty** in cases where such **goods are transported in contravention** of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being

initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document **and not an e-way bill, proceedings** under section 129 of the CGST Act **may be initiated.**

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and **also an e-way bill**, proceedings under section 129 of the CGST Act **may not be initiated,** inter alia, in the following situations:

a) Spelling mistakes in the name of the **consignor** or the **consignee** but the GSTIN, wherever applicable, is correct;

b) **Error** in the **pin-code** but the **address** of the **consignor** and the consignee mentioned is **correct**, subject to the condition that the error in the PIN code **should not have the effect of increasing** the **validity period** of the e-way bill;

c) Error in the address of the **consignee** to the extent that the locality and other details of the consignee are correct;

d) **Error** in one or two digits of the **document number** mentioned in the **e-way bill;**

e) Error in 4 or 6 digit level of **HSN** where the **first 2 digits of HSN** are **correct** and the rate of **tax** mentioned is **correct**;

f) Error in **one or two digits/characters** of the **vehicle number.**

6. In case of the above situations, **penalty to the tune of Rs. 500/- each** under section 125 of the CGST Act and the respective State GST Act should

be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for **every consignment.** A record of all such consignments where proceedings under section 129 of the CGST Act **have not been invoked** in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis."

ANNEXURE-II

Circular No. 49/23/2018-GST; Dated: 21.06.2018

"3.2 Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Illustration: Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer."

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DIGEST OF ADVANCE RULINGS UNDER GST

S S.Satyanarayana, Tax Practitioner

1. Reverse Charge Mechanism :

Facts : The applicant, has sought Advance Ruling on following Questions:

1. Can Composition Dealer purchase Scrap/Used vehicles from Unregistered Dealers? RCM on these purchases applicable or not?
2. Any RCM exemption limit amount for purchase of Scrap and Used vehicles from unregistered dealers?

Observations & Findings : As per Section 9(3) of CGST Act, Government may specify the categories of supply of goods or service or both on which the tax shall be paid on reverse charge mechanism by the recipient. In exercise of powers of section 9(3) of CGST Act, The Central Government specifies at The Sr no 6 to Notification No. 4/2017-Central Tax(Rate) dated 28-6-17, central tax shall be paid on reverse charge basis by the recipient on the used vehicles, seized and confiscated goods, old and used goods, waste and scrap purchased from Central Government, State Government, Union territory or a local authority.

Vide Section 9(4) of the CGST Act, Government may specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both.

Ruling :

1. Composition Dealer purchasing Scrap/Used vehicles from the following Suppliers, namely: Central Government, State Government, Union territory or a local authority are liable to pay tax on RCM basis.
2. There is no RCM tax liability for purchase of subject goods from unregistered dealers.

[[2021] 131 taxmann.com 268 (AAR - GUJARAT) - Ahmedraza Abdulwahid Munshi,]

2. Registration :

Facts : The applicant is an importer and reseller of chemicals. The applicant

has been getting orders for imported chemicals from customers located in States where the applicant is not registered under the GST and pursuant to such purchase orders, the applicant has further placed orders for the required quantity of goods on the foreign exporter. The applicant has stated that in a particular case, it has cleared the goods by filing the Bill of Entry at Krishnapatnam port in the State of Andhra Pradesh on payment of requisite amount of customs duty and IGST under the Maharashtra GSTIN. Thereafter, the applicant directly sold the goods from port to customer and invoices were issued under the Maharashtra GSTIN charging applicable IGST. The applicant seeking an advance ruling in respect of the following questions.

1. Whether the Applicant is required to obtain the registration in importing States other than Maharashtra, if goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs Boundaries to customers from those States?
2. Whether the Applicant is required to obtain registration in State where the applicant is proposing to open a warehouse for sale of imported goods from such warehouse?
3. Whether issuing invoices under Maharashtra GSTIN is permissible in law for supply of imported goods from the proposed warehouse located in the State where the Applicant is not registered under GST?

Observations & Findings :

With respect to the Question No.1, it is found that, considering the submissions of the applicant, as per the provisions of Section 7(2) of the IGST Act, 2017, supply of goods imported into India shall be treated as supply of goods in the course of inter - state trade or commerce and as per Section 5(1) of the Act, liable to IGST at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962. In respect of goods imported into India, as per provisions of Section 11 (a) of the IGST Act, 2017, the place of supply shall be the location of the importer. In the present case since the importer is registered in Mumbai, the place of supply will be Mumbai, Maharashtra.

With respect to the Question No.1, as per clause (a) of section 10 of the Integrated Goods and Service Tax Act 2017, -

10.(1) *The place of supply of goods, other than supply of goods*

imported into, or exported from India, shall be as under,-

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient; Further as per sub-section (1) of section 8 of the Integrated Goods and Service Tax Act 2017,-

***8 (1) Intra-State supply. -** Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply.*

Further, a reference can be made to Section 22 of the CGST Act. It reads as under:

22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.

From the above sections, it is clear that in respect of goods the subsequent sale after the import is important factor, in respect of which the applicant is not paying attention. The applicant is more focused on import of goods. But there is also a subsequent sale/supply of said goods in the same State where import happens and in that case, above sections shall apply, which requires for registration to be obtained in that State from where taxable supply originates. It is an origin based provision, requiring the registration to be taken in that State.

Ruling :

Question 1: Whether the Applicant is required to obtain the registration in importing States other than Maharashtra, if goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs Boundaries to customers from those States?

Answer:- In the present case, as per this question, since the applicant will be selling the goods before clearing the same for home consumption from the

port of import, the place of supply shall be the place from where the applicant makes a taxable supply of goods which, in this case will be the Maharashtra Office. Hence, the applicant can supply the goods on the basis of invoices issued by the Maharashtra Office and therefore they need not take separate registration in importing States other than Maharashtra.

Question 2:- Whether the Applicant is required to obtain registration in State where the applicant is proposing to open a warehouse for sale of imported goods from such warehouse?

Answer:- In view of the above discussions, no ruling can be given as the question is beyond the jurisdiction of the Maharashtra Advance Ruling Authority.

Question 3:- Whether issuing invoices under Maharashtra GSTIN is permissible in law for supply of imported goods from the proposed warehouse located in the State where the Applicant is not registered under GST?

Answer:- Such question, being a question relating to a procedure to be adopted, does not fall under the purview of Section 97 of the CGST Act and therefore in view of the above, this question is not answered.

[2021 (11) TMI 151 – AAR, Maharashtra – M/s Kamadhenu Agrochem Industries LLP]

3. Sale-in-Transit :

Facts : The applicant entered into a contract dated with Tamil Nadu Generation and Distribution Corporation Ltd. for renovation, modernisation and uprating (RMU) the Sholayar Power House-I Tamil Nadu. In terms of the contract, applicant was required to supply new components, tool, tackles, spares and such other material (components) for undertaking modification, engineering, erecting, testing, commissioning and associated technological, civil, mechanical and electrical works, as part of the project. For the purpose, the applicant, *inter alia*, purchased components from various vendors located outside the State of Tamil Nadu and transferred the title of the components to TANGEDCO while the goods were in transit as per contract conditions and the goods were delivered at the project site by the vendors of the applicant.

The applicant sought advance ruling on following questions:

1. Whether the supply of goods undertaken in course of Sale-in-

Transit, *i.e.*, supply undertaken when the goods are in movement from one State to another is exempt under the extant GST regime.

2. Whether the components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the applicant to its customer (TANGEDCO) in Tamil Nadu, will attract levy of GST.

Observations & Findings : The goods were delivered at the project site by the vendors of the applicant. In the Pre-GST regime, such transactions, inter-State, were exempted subjected to certain conditions as per CST Act. In the GST regime, every limb of supply with/between a supplier and receiver is to be considered as a supply. To fulfill the scope of the contract, they supply the Components/spares for the Operation and Maintenance period in the GST regime and the cost of such supplies are included in the contract price. Thus, the supply of Components/spares for the Operation and Maintenance period are part of the supplies of Works Contract entered into with TANGEDCO and therefore liable to GST at the appropriate rates.

Ruling : The Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant, is a 'Supply' as per section 7 of the CGST Act, 2017 and will attract levy of Goods and Services Tax.

[[2021] 131 taxmann.com 336 (AAR - TAMILNADU) – M/s Andritz Hydro (P.) Ltd.]

4. Value of Supply :

Facts : The applicant is engaged in supplying manpower services to his clients on daily/ monthly basis for different jobs as required by his clients. The clients also authorize him to make payment of salary/wages on monthly basis to the manpower provided by him. He raises periodical invoices to his clients indicating salary/ wages payable against the manpower services supplied by him and also indicates the service charges payable to him at the agreed rates in the invoices in a separate manner. Upon receipt of payment from his clients, he disburses the salary/wages to the manpower provided by him. The sought ruling on the following questions :

(i) As per the Client Service Agreement, whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of

the CGST Rules, 2017?

(ii) Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?

Observations & Findings : The activities involved in the instant case in the light of illustration given in rule 33 of the CGST/WBGST Rules, 2017. What is most significant in the said illustration that the service provider 'A', other than his service fee, recovers from the service recipient 'B" an amount towards registration fee and approval fee paid by him to the Registrar of Companies which he has paid for the name of the company i.e, 'B". Such fees are compulsorily levied on 'B' and therefore also payable by 'B'. Here, 'A' is merely acting as a pure agent in the payment of those fees and for that reason, recovery of such expenses is a disbursement and shall not form a part of the value of supply.

In the instant case, undisputedly the applicant is the person who is liable to pay salary/wages to the work-men employed by him under 'Employment Agreement' to provide manpower services to his clients and just showing such amount in a separate manner in the invoice doesn't shift his liability on the recipient of services and makes him qualify as a 'pure agent' in terms of rule 33 of the CGST/WBGST Rules, 2017. The contention of the applicant that the recipient of services authorizes him to make payment of salary, wages and all allowances on behalf of him doesn't hold water on the same ground that such amount is actually payable by the applicant himself. We accordingly fail to accept the argument that the applicant makes payment of such amount "on behalf of" his client i.e., the service recipient.

Ruling :

Question: As per the Client Service Agreement, whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017?

Question: Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?

Answer: Both are answered in the negative.

{2021 (11) TMI 149 – AAR, West Bengal – M/s Prodip Nandi]

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CASE LAWSAND NOTIFICATIONS/CIRCULARSON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

CA Sanjay Ghiya

CA Ashish Ghiya

COMMENTARY ON SECTION-10

Section 11: Functions and Duties of Promoter

(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including-

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter, at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the

provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or

building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of

the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

COMMENTS

Promoter is the most key person under the Real Estate (Regulation and Development) Act, 2016. He develops the real estate project. The prima facie object of the Act is to protect the interest of the allottees/buyers in the real estate project. This section list out the various duties/responsibilities of the promoter which are to be taken care at various stages of development of the real estate project and upon its completion.

The following is the illustrative list of functions/duties of the promoter as per this section:

- To create web page on the website of the authority and making necessary quarterly updation.
- To mention web site address of the authority along with registration number of the project in advertisements issued.
- To provide necessary information at the time of booking to the allottees such as sanction plan, layout plan, stage wise time schedule of the project etc.
- To obtain Completion Certificate/Occupation Certificate or both and to make it available to the allottee or the association of allottees, as the case may be.
- To remove the structural defects or any other defect even after execution of conveyance deed for a prescribed period.
- To enable formation of association of allottees and hand over physical possession of common areas along with all original documents.

CASE LAWS

IN THE HIGH COURT OF UTTARAKHAND

Manish Kumar Agarwal & Ors VS State of Uttarakhand& Ors

Gist of the case: Criminal proceedings can be initiated even after order is passed by RERA

The case is based on an FIR lodged on 17.10.2017 by the respondent who is an

old and senior citizen. He saw an advertisement, on Aastha T.V. channel of Eminent Infra Developers Private Limited, about it's a project of Arogyam Group Housing Project near PatanjaliYogpeethHaridwar. He spoke to the petitioners, who showed him a brochure and assured him that they are developing residential and commercial flats, after proper approval. They also gave assurance that the flat would get 12% assured return. Believing the statements given by the petitioners as true, the informant booked a flat in his and his daughter's name and in all paid Rs.16.75 lakhs. But, according to the FIR, neither possession of the flat was given nor was he paid any 12% amount as assured by the petitioners, later it was revealed that the petitioners had no due permissions. Further, petitioners were requested, they did not pay the money and threatened the appellant.

The petitioners argues that the dispute between the parties is civil in nature and it has been settled by the Real Estate Regulatory Authority Dehradun and the petitioners have been directed to pay certain amount to the respondent, which they are paying. They argued that if the criminal case is allowed to proceed, it would not serve any useful purpose the chances of conviction would be bleak. Therefore, it is argued that civil dispute should be given a quietus and the proceedings of the case ought to be quashed under Code of Criminal Procedure, 1973. The petitioner had no approvals when they took money. They did not have any approvals from the concerned Haridwar and Roorkee Development Authority (H.R.D.A.).

There is no rule that if a case is civil in nature, then the probability proceedings under criminal law cannot further be proceeded. It is true that if a case has no element of criminality, the criminal prosecution would definitely be an abuse of process of court.

A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

The Hon'ble Court observed that every breach of contract would not give rise

to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

In fact, there cannot be any rule of law that if civil dispute is decided, with regard to same criminal proceedings cannot be launched. As stated both civil and criminal cases act under different spheres. As stated, a case purely civil in nature can definitely be not taken in the criminal jurisdiction, but if a civil case has an element of criminality, then it is settled law that for such an act, criminal prosecution cannot be stopped, it should go ahead. With these principles, the matter should be looked into.

The possession was not given within the stipulated time and a complaint was made to RERA and the petitioners have to pay the amount as directed by RERA so they argued that since the matter has been decided by RERA, it should not proceed under criminal law.

The FIR, in the instant case makes two allegations one that at the initial stage the informant was assured of 12% return yearly, which was not made and second the possession was not given on time. It was mention in the brochure, which was published by the petitioners, so this part of assurance is definitely an inducement for anyone to invest with the project, which the petitioners were allegedly undertaking. The RERA recorded that the petitioners did not have due approvals, they did not have completion certificate.

Having considered the facts and circumstances of the case, this Court is of the view that this case has an element of criminality. Initial stage the appellant was assured 12% return, which was not paid. It definitely induced the appellant to deliver Rs.16.75 lakh as booking amount of the flat. This promise was not kept by the petitioners. The petitioners did not have approvals despite that, they took money. The instant case is not purely civil in nature. The criminal prosecution has no affect due to judgment by RERA. Accordingly, this Court is of the view that there is no merit in the petition and it deserves to be dismissed.

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

M/s. Casa Grande Civil Engineering Pvt. Ltd. VS Mr. P. Govindaraj and Mrs. Deeparaj

Gist of the case: ATS not executed. Terms and Conditions mentioned in booking form accepted and section 12 & 13 of RERA invoked.

The promoter had advertised in the newspaper with regard to the sale of residential flats of the Project. Both the promoter and the home buyer mutually agreed for consideration of Rs, 98, 47,096/- for the residential flat sought to be booked by the respondent in the said project. The Respondent was also asked to pay an advance for the flat by the promoter. The respondent paid an advance of a sum of Rs. 3 Lakhs as a pre-launch booking.

In July 2017, the appellant/developer sent the mail to the respondent with regard to registration of the construction agreement and also informed about the extent of the flats reduced from its originally contemplated extent of 1277 Sq. ft to 1229 Sq. ft. Also the appellant has reduced a sum of Rs, 3,20,000/- from the sale consideration. But, alteration in terms of the agreement in regard to plinth and carpet areas of the apartment was not accepted by the respondents. Hence, the agreement could not be signed. The respondents were sending communication seeking benefit of credit inputs with regard to tax benefits to be transferred to them. It was said that the construction will commence during 2017 and will be completed within 18 months from June 2017 with a grace period of 3 months and further assured that possession to the home buyers within 31.01.2019.

Subsequently, as per the letter of the appellant the respondents paid the balance 10% of the cost and subsequently in June 2017 the home buyers were directed to pay another 40%. Further on 10.06.2017 the home buyer also paid a sum of Rs.46, 918/- towards tax. The appellant has not complied the launching of project as mentioned in the booking letter dated 17.08.2016 and the stipulated period of 8 months ended on 16.04.2017. **Even then they have not launched the project. The launching of project by way of Boomipooja for this project was performed on 28.06.2017. Since, the appellant has not complied with the promise as advertised by it and stated in the allotment letter. Also reduction of size of flats and claiming of GST by the appellant against his advertisement i.e"don't pay GST on your dream home". For the above said reasons the home buyers were not ready to sign in the agreement and came forward before the Adjudicating officer on the ground of violation of sections 12 and 13 of the RERA Act by the appellant.**

The appellant contended that regarding alteration it was specifically mentioned in

the 17.08.2016 letter itself. Selling of flats through advertisement is only a formal offer, that could be sealed at the instance of the both the parties through an agreement (i.e) signed and delivered. **Further, any offer made by the appellant has corresponding obligations on the sides of the respondents and the same is not binding on the appellant till such time both the parties concurred with all the terms and conditions associated with any such offer. Since there is no concluded contract between the parties to fix a liability against the violations. Therefore, the appeal deserves to be allowed.**

Points for consideration:

1. Whether without entering into agreement between the appellant and respondent regarding construction, RERA cannot be invoked is correct or not?
2. Whether the order of the adjudicating officer is a erroneous one?

Point No.1:

On perusal of both sides contention the respondent had paid Rs. 3 lakhs on 17.08.2016 for which a flat booking letter was issued by the appellant and also assured that they will launch project within 8 months from the date of booking. Further agreed to refund the advance amount with 15% interest in case of failure to launch in the same within the time specified, Boomipooja for the project was conducted only on 28.06.2017. It clearly proves that launching of project was not done as promised by the appellant. The learned counsel for the appellant would submit that mere letter issued by the promoter to the respondent on 17.08.2016 is only an acknowledgment for the payment of receipt of Rs.3 lakhs. It is not an agreement between the parties. So the letter alone is not sufficient to come to a conclusion that there is a violation of the RERA Act. Now let us discuss about the booking acknowledgment letter.

The above said letter addressed to the respondent sent by Authorized signatory of the appellant company. In the above said letter itself, the terms and conditions were incorporated. There are 5 Terms and conditions. The first condition is regarding size of the extent, the 2nd condition is with regard to payment of balance of 10%, 3rd condition is with regard to promise of the appellant to launch the project and also incorporated the appellant default clause of payment of 15% interest and the 4th condition is with regard to the price of the flat and 5th condition with regard to refund of

booking advance amount without interest.

The above said letter if really as stated is only an acknowledgment for the receipt of the cheque for a sum of Rupees 3 lakhs alone what is the need or necessity to incorporate the terms and conditions. Even before entering into a written agreement the appellant has incorporated the terms and conditions in the letter on the basis of this terms and conditions in the letter alone the appellant is claiming variation in measurements of the flat and pricing. This letter was also relied in regard to the repayment of advance amount also. The appellant claims as per the terms and conditions of this letter for the refund of amount. The appellant having himself treated the said letter as a binding agreement. Now he cannot simply brushed aside exhibit Al as a mere letter. Therefore the contention that without entering into a written contract, there is no binding agreement between the parties and hence the RERA cannot be invoked is wrong.

The above said attitude is against the section 12 and 13 of the RERA Act. Further, admittedly the appellant has received Rs.3 lakhs on 17/08/2016 without any agreement and further a sum of Rs 38 15,500/- totally it amounts to 40% of the value of the project without entering into an agreement. It is more than 10% as contemplated in section 13(i) of the RERA Act. Hence, Section 13(i) is also violated by the appellant. Under the circumstances the learned Adjudication officer found that the appellant violated the above said section 12 and 13 and directed the appellant to refund of advance amount with interest and compensation. The appellant has not stated how the Adjudication officer has erroneously allowed the complaint of the respondent. As per section 12 and 13 RERA Act there is no infirmity in the finding of the learned Adjudicating officer. Point No. 1 is answered accordingly.

Point No.2:

Regarding compensation the Learned Adjudicating officer has fixed at 9% on Rs.48,22,468/-, already for the repayment of advance amount interest rate is fixed at 10.60 % totally 18.60 % for the illegal enrichment of appellant for the home buyers advance amount. The interest rate for refund amount as per the RERA Rules itself completed 8 plus 2%. Regarding compensation arrival of 9% is without any basis. Awarding of compensation must be 'Fair and Just'. It should not penalize and prejudice one party that will enrich another party. Mental agony and inconvenience caused to the Home buyers cannot be measured in terms of money.

Hence compensation has to be fixed as just and reasonable. If the Home buyers invest his money in his own firm certainly he can get at least not less than 12% interest. On that basis awarding of compensation for the Home buyers is fixed as Rs.1, 00,000/- for mental agony and inconvenience. Therefore this tribunal comes to a conclusion that the compensation awarded by the Learned Adjudicating Officer is modified as Rs.1, 00,000/- instead of 9%. The point No.2 is answered accordingly.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

Suo MotoV/S Rajasthan Housing Board

Gist of the case: A nominal penalty of Rs 2,000 charged for not mentioning website address of RERA Authority.

The instant case pertains to "Mukhya Mantri Rajya Sahayak Awasiya Karamchari Yojana", situated at Sector 26, Pratap Nagar, Sanganer, Jaipur, of Rajasthan Housing Board, for which a suo moto cognizance was taken by this Authority for issuing an advertisement in the newspapers without mentioning RERA registration number or its website address. A notice was issued to the respondent Board for contravention of section 11 (2) of the RERA, which was duly served on the respondent Board.

The representative on behalf of the Rajasthan Housing Board and has represented that the project is registered with the Rajasthan Real Estate Regulatory Authority and in the advertisement in question, the RERA registration number has been mentioned. However, by inadvertent mistake, the website of the RERA has not been mentioned, for which the respondent Board expresses its apology.

The matter was considered. This Authority accepts the apology expressed by the respondent Board and refrain from imposing any heavy penalty on the respondent. Since the registration number of the project with RERA has been mentioned in the advertisement, it was concluded that the respondent did not have any deliberate intention of not mentioning the RERA website address and, therefore, a nominal penalty of Rs. 2,000/- is imposed on the respondent Authority.

NOTIFICATION

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

Date – 29th October, 2021

Subject: Report From CERSAI

Whereas Ministry of Finance notified the establishment of the Central Registry Securitisation Asset Reconstruction and Security Interest of India (CERSAI), a Government Company, incorporated for the purpose of operating and maintaining the Central Registry under the provisions of the Securitisation andReconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The objective of setting up of Central Registry is to prevent frauds in loan cases involving multiple lending loan different banks on the same immovable property.

Whereas Government of India has subsequently issued a Gazette Notification dated January 22, 2016 for filing of the following types of security interest on the CERSAI portal:

a) Particulars of creation, modification or satisfaction of security interest in immovable properly by mortgage other than mortgage by deposit of title deeds.

b) Particulars of creation, modification or satisfaction of security interest in hypothecation of plant and machinery, stocks debts including book debts or receivables, whether existing or future.

c) Particulars of creation, modification or satisfaction of security interest in intangible assets, being knowhow, patent, copyright, trademark, license, franchise or any other business or commercial right of similar nature.

d) Particulars of creation, modification or satisfaction of security interest in any 'under construction' residential or commercial or a part thereof by an agreement or instrument other than mortgage.

Whereas, CERSAI had started registration of the data in respect of paragraphs (a) to (c) above, for the security interests created on or after January 22,2016, w.e.f. May 25, 2016 for Scheduled Commercial Banks and w.e.f. July l, 2016 for all other entities registered with them. Further, the registration of data in respect of paragraph (d) above has commenced since June 8, 2017 for all banks and Fls registered with CERSAI. Meanwhile, the bank/Fls have also started registering the security interests created before January 22, 2016 (subsisting records).

Whereas, Homebuyers/Allottees should be aware of such security interests created

on real estate Projects /Apartments, which homebuyer is interested in purchasing.

Therefore, the promoters shall:

- During project Registration, Submit Report from CERSAI on security interests created in the Real Estate Project along with the encumbrances certificate. Incase no security interest has been created then the Promoter shall provide an undertaking confirming the same.
- Further, as and when there are any changes, Promoter shall submit updated CERSAI Reports on Security interests created on Real Estate Project by the Promoter.
- The CERSAI reports submitted should be generated within l0 days before the date of submission.

Amended pursuant to the directions issued by the Authority in its meeting held on 08th October 2021. Accordingly, order No. 1912021 dated 25th July 2021 stands amended with this order.

This order shall come into effect immediately.

*****

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5978/2021

UNION OF INDIA & ORS. **Appellant(s)**

VERSUS

AAP AND COMPANY **Respondent(s)**

O R D E R

This appeal takes exception to the judgment and order dated 24.6.2019 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.18962 of 2018.

This judgment has been expressly overruled by a three-Judge Bench decision of this Court in Civil Appeal No.6520 of 2021 titled Union of India vs. Bharti Airtel Ltd. & Ors., reported in (2021) 13 SCALE 301.

Learned counsel for the respondent was at pains to persuade us that the three-Judge Bench judgment can be distinguished, without realising that the three-Judge Bench judgment expressly overrules the impugned judgment. In such a case, the argument of distinguishing the three- Judge Bench judgment is not available.

The note submitted by the respondent is taken on record only to be rejected.

The appeal succeeds on the same terms as in Civil Appeal No.6520 of 2021 titled Union of India vs. Bharti Airtel Ltd. & Ors., reported in (2021) 13 SCALE 301.

The civil appeal is disposed of in the above terms. Pending applications, if any, stand disposed of.

.....,J.
(A.M. KHANWILKAR)

.....,J.
(C.T. RAVIKUMAR)

NEW DELHI;
December 10, 2021.

HIGH COURT OF DELHI

Reserved on : 12th November : 2021 **Pronounced on: 26th November, 2021**

BAIL APPLN. 3771/2021 & CRL.M.A. 16552/2021

TARUN JAIN .....Petitioner

Through: Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastava, Mr. Rajiv Tuli, Advocates

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE DGGI

..... Respondent

Through: Mr. Harpreet Singh, Special Public Prosecutor for DGGI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The petitioner has approached this Court by way of the instant application under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred to as "Code") seeking anticipatory bail in a matter pertaining to Section 132 of the Central Goods and Services Act, 2017 (hereafter referred to as the "CGST Act") in File Number DZU/INV/A/GST/894/2021. Another Application bearing CRL. M.A. -16552/2021 has also been filed before this Court under Section 438 read with Section 482 of the Code seeking *ad-interim* protection from coercive action that might be taken by the Respondent during the pendency of the Anticipatory Bail Application.

2. Before adverting to the submissions made by learned counsel for the parties, it is essential to highlight the factual background of the matter.

FACTUAL MATRIX

3. The petitioner is one of the directors in M/S Jetibai Grandsons Services India

Pvt. Ltd (hereinafter, referred to as "Company"), a company incorporated in August 2019. The company was initially involved in the supply of services however, it subsequently started manufacturing and supplying solar inverters, solar power generating units and like products.

4. The respondent has alleged that the Company of which the petitioner is a director, along with other firms namely M/s Microlyte Energy (P) Limited, M/s Sun Automation Limited, M/s Urja Global Limited and M/s NYX Industry India (P) Ltd. are involved in fraudulently availing and passing on ineligible/fake Input Tax Credit amounting to Rs. 72,00,00,000/- (Rupees Seventy Two Crores).

5. The respondent has alleged that the Company made most of its purchases from three firms namely - M/s Microlyte Energy (P) Limited, M/s Sun Automation Limited, and M/s Urja Global Limited. It has been alleged that these three firms further received these goods from various firms, most of which have been found to be non-existent at their official addresses and had no inward supplies. The respondent has thus alleged that these firms have availed the ineligible Input Tax Credit amounting to Rs. 72,00,00,000/- (Rupees Seventy-Two Crores) and fraudulently passed on the same to the Company within a short span of five months from November 2020 to March 2021.

6. Based on the above analysis of the respondent, several summons had been issued to the petitioner in order to give evidence and record his statement. The first among these were issued on 21st July, 2021 directing the petitioner to appear before the department on 26th July, 2021 for the aforesaid purpose. It is stated by the petitioner that he could not attend the same because of this mother's illness.

7. Another summons dated 27th July, 2021 was issued to the petitioner to appear in person and to produce certain documents in relation to alleged wrongful utilization of the Input Tax Credit. On 5th August, 2021, the Petitioner submitted the required documents, however he failed to appear to tender his statement citing personal difficulty.

8. The failure of the petitioner to appear in person on these occasions led the respondent to issue another summons dated 7th August, 2021 for the third time. This time, the summons was issued for directing the petitioner to appear in person for the purpose of tendering statement and for providing details of purchase and sales transactions. The petitioner tendered reply to the summons via letter dated 12th August, 2021, expressing his incapacity to appear in person due to his medical

condition. In reply to the same, the petitioner also reiterated that the documents as requested were already submitted with the respondent.

9. Similar summons were again issued on 18th August, 2021 which solicited a similar reply via letter dated 24th August, 2021 again citing medical problems. Thereafter, summons were issued on 1st September, 2021 *inter alia* directing the petitioner to appear and tender his statement. Petitioner submitted a request via letter dated 8th September, 2021 for the presence of the counsel in the interrogation and videography while recording the statement, which was not acceded to by the Respondent.

10. The petitioner then filed a W.P. (C) No. 10647/2021 regarding the Input Tax Credit amounting to Rs. 19,65,000/- which the petitioner was forced to deposit. The matter was listed before the High Court on 24th September, 2021 for hearing, wherein the Court allowed withdrawal of the petition with liberty to file appropriate proceedings in accordance with law. In the course of same proceedings, an assurance was given by the learned counsel of the petitioner that the petitioner will appear before the officers of the respondent on 8th October, 2021. However, subsequently, it was brought on record that the assurance was made by the learned counsel for the petitioner without taking instruction from the petitioner.

11. The petitioner subsequently filed an application for Anticipatory Bail bearing Bail Application No. 2037/2021 before the Court of Additional Sessions Judge, Patiala House Court, New Delhi. The Additional Sessions Judge rejected the application vide order dated 9th October, 2021 *inter alia* observing that the petitioner's role in the formation of shell companies seem to be apparent and that there was nothing on record to indicate that the alleged transactions were carried out with genuine firms. It was also observed that the investigation was at the nascent stage and there was a possibility of the accused tampering with the investigation process.

12. Aggrieved by the said order and to seek anticipatory bail, the instant applications have been filed before this Court.

SUBMISSIONS

13. Dr. G. K. Sarkar, learned counsel for the petitioner vehemently argued that the allegations leveled against the petitioner are false and frivolous and the petitioner has not at all availed and utilized the input tax credit as being alleged fraudulently.

14. The learned counsel for the petitioner submitted that the petitioner has clean

antecedents, belongs to a respectable family, has deep roots in the society and hence there are no chances of his absconding.

15. While countering the allegations as to non-compliance with the summons issued by the respondent, learned counsel appearing on behalf of petitioner submitted that on 21st July, 2021, summons were issued to petitioner to appear before the concerned authority. The petitioner could not attend the same due to medical condition of his mother who also happens to be one of the directors in the company of the petitioner. Another summon was issued on 27th July, 2021 directing respondent to appear and produce certain documents as mentioned therein. The petitioner has submitted the said required documents vide letter dated 5th August, 2021 and also stated his difficulty in appearing in person. Three other summons dated 7th August, 2021, 18th August, 2021 and 1st September, 2021 respectively were issued to the petitioner for appearing before the authority concerned.

16. The court further enquired as to the reasons for non-appearance before the respondent that the health condition was a one-time affair and why the petitioner failed to appear on other occasions. The counsel for the petitioner submitted that he was apprehending arrest and had he gone before the authorities concerned, he would have been arrested. Thus, in order to protect himself, he chose not to appear before the authorities and filed the present application.

17. Learned counsel appearing on behalf of petitioner submitted that the offences under the CGST Act are compoundable and thus not serious in nature. Learned counsel for the petitioner further submitted that the offences of fiscal nature like the present case do not require custodial interrogation and in view of this, the prayer for anticipatory bail may be granted.

18. Learned counsel appearing on behalf of petitioner submitted that the power of arrest is an extreme provision and should be exercised with utmost care and not arbitrarily. The learned counsel further submitted that the apprehension for arrest arises from the fact that three persons related with suppliers and buyer company of the petitioner were arrested despite appearing regularly and furnishing all the relevant documents/information as required by the respondent.

19. Learned counsel appearing on behalf of petitioner submitted that since the entire evidence present in the case is based on documents and therefore, his custodial interrogation is not required. It is also submitted that the other co-accused has already been enlarged on the bail vide order dated 30th September, 2021 by the

Coordinate Bench of this Court.

20. On instructions, learned counsel appearing on behalf of petitioner also undertakes that the petitioner shall appear before the concerned authority whenever it is required. He also undertakes that the petitioner shall abide by any condition imposed by this Court while granting anticipatory bail.

21. The learned counsel for the petitioner for buttressing his arguments placed reliance on various decisions of High Courts and the Hon'ble Supreme Court, which have been dealt with under Analysis Section of this judgment.

22. Per contra, Mr. Harpreet Singh, SPP, learned counsel for the Respondent vehemently opposed the present application on the ground that the amount of tax evasion in the instant matter is of 72,00,00,000 (Rs. Seventy Two Crores Only) and the petitioner till now has been evading investigation by avoiding summons by the respondent.

23. It has also been argued by the respondent in the status report dated 23rd October, 2021 that the petitioner has been evading investigation repeatedly on various occasions. It has been vehemently argued that seven summons have been served upon the petitioner and he has not been complying with them on several occasions which exhibits the appalling conduct of the petitioner and if allowed to go unchecked will set a wrong precedent.

24. The learned counsel appearing on behalf of the respondent further submitted that it is imperative for the investigating authorities to examine the accused on other aspects like money laundering, hawala and circular trading in which the petitioner might be involved. The respondent placed reliance on the decision of ***P.V. Rammanna Reddy v. Union of India*** **(2019 SCC Online TS 3332)** to contend that assessment need not be finalized prior to taking action for arrest under Section 69 of the Act.

25. It has also been argued by the learned counsel for respondent that the petitioner is involved in an economic offence of serious nature, and he is trying to influence investigation by planting fake witnesses. For this argument, the Petitioner has placed reliance on the following extract of decision of Delhi High Court in ***P. Chidambaram v. Directorate of Enforcement*** **2019 SCC Online Del 11129, which reads as follows:**

"Also submitted, as a part of its international obligation, India also

has a robust statutory mechanism for detection, investigation, prosecution and prevention of money laundering and connected offences. Such mechanism also provides creation of Financial Intelligence Unit [FIU] in other countries by the Indian investigation agencies from which help/information/ assistance/inputs is regularly received by the investigating agency in cases under its investigation. When the international community is taking the offence of money laundering seriously and India is a Member of international Forum viz. "Financial Action Task Force" and has committed itself to the global resolve of being firm with money laundering offence, irrespective whether petitioner-accused is the former Finance Minister and former Home Minister or an ordinary citizen of India, it will be travesty of justice if this Court considers the prayer made by the petitioner and grant him protection of pre-arrest bail, without examining the case records, investigation material maintained in regular course of the present statutory investigation conducted and which contains the evidence which is incapable of being fabricated as loosely alleged on behalf of the accused."

Upon perusal it came to the notice of the Court that the aforementioned decision has been reversed by the Hon'ble Supreme Court in the case of ***P. Chidambaram v. Directorate of Enforcement*** **(2020) 13 SCC 791.** Further, the extracted portion as being cited is not the observation of the court but a submission made by the counsel in the case, and hence cannot be entertained by this Court.

26. In their reply to the status report, apart from reiterating the submissions earlier made, it has been stated by the petitioner that he has been complying with the various filings under the Act along with those mentioned under the Companies Act, 2013. While citing various documents it has been stated that it is wholly misconceived to contend that the suppliers and the petitioner's Company are non-existent rather the aforementioned entities are duly registered with the GST Department as well as possess bank accounts, both of which require a prior verification of their credentials.

27. The rival submissions now fall for consideration of this Court.

28. Heard the counsels at length, perused the record at length, and analysed the arguments, provisions of statute and case laws.

ANALYSIS AND FINDINGS

29. Before adverting to the arguments and case laws cited, it is essential to analyse the scheme of the CGST Act. The Act was introduced to harmonise the indirect tax regime in the country. In furtherance to this, several powers have been conferred on the authorities under the Act. One such power is the power of inspection, seizure and arrest under Chapter XIV of the Act. Under Section 69 of the Act, when the person has reasons to believe that the person has committed any offence under section 132, the commissioner may by order authorize any officers of the central tax to arrest such person.

30. Section 132 of the CGST Act is reproduced hereunder:

> ***"132. Punishment for certain offences.***— *(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—*
>
> *(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*
>
> *(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
>
> *(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;*
>
> *(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
>
> *(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);*
>
> *(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;*
>
> *(g) obstructs or prevents any officer in the discharge of his duties under this Act;*

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend

to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause

(f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable._

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term "tax " shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

31. Chapter XIX deals with offences and penalties. Section 132 provides for punishment for committing certain offences. As per sub-section (1), whoever

commits any of the twelve offences mentioned therein shall be punished in the manner provided in clauses (i) to (iv) of sub-section (1). In this case, we are concerned with offences under clauses (b) and (c) of sub-section (1). As per clause (c), the offence is availing input tax credit using invoice or bill without the supply of goods or services or both in violation of the CGST Act; and as per clause (b), a person who issues any invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made there under leading to wrongful availment or utilization of input tax credit or refund of tax. If a person commits the above two offences as per clauses (c) and (b), he shall be punishable under clause (i) if the amount of tax evaded or the amount of input tax credit wrongly availed of or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees with imprisonment for a term which may extend to five years and with fine. All other penalties are below five years. Therefore, the maximum penalty that can be imposed for committing offences under clauses (c) and (b) of sub-section (1) of section 132 is imprisonment for a

term which may extend to five years and with fine. As per sub-section (5), the offences specified in clause (a) or (b) or (c) or (d) of sub-section (1) and punishable under clause (i) of that section are cognizable and non-bailable.

32. Section 132 of the Central Goods and Services Tax Act, 2017 ('CGST Act') lists a total of twelve offences that are punishable by imprisonment and/or a fine. The term of imprisonment and the amount of fine, is dependent on the amount involved in the offence, or in some cases, the act committed by the offender. The provision further categorises certain offences as cognizable and non-bailable, if the amount involved exceeds Rupees five hundred lakhs. These offences relate to persons who supply goods or services without issuing invoices, or issue invoices without supplying goods or services and thus wrongfully availing input tax credit; or to persons who collect tax but fail to pay it to the Government beyond a period of three months from date on which payment becomes due. All other offences listed under the Act have been categorised as non-cognizable and bailable.

33. Section 138 of the CGST Act further dilutes the heinousness of offences under the Act. The said section makes every offence under the Act compoundable except for certain circumstances which have been specified under different clauses to the proviso of Section 138. The relevant section has been reproduced hereunder:

"138. Compounding of offences: *(1) Any offence under this Act*

may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section

shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated. "

34. Sections 69 & 70 of the CGST Act are reproduced hereunder:

69. Power to Arrest-

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 174)—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents.:

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908."

35. Chapter XIV of the CGST Act deals with inspection, search, seizure and arrest. It consists of sections 67 to 72. Section 70 deals with power to summon persons to give evidence and produce documents. As per sub-section (1), the proper officer under the CGST Act has the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry in the same manner as provided in the case of a civil court under the provisions of the Civil Procedure Code, 1908. Thus, Section 70 (1) confers the power on the proper officer to summon any person whose attendance he considers necessary to either tender evidence or to produce documents etc. in any enquiry. Exercise of such a power is similar to the powers exercised by a civil court under the Civil Procedure Code, 1908. Sub-section (2) further clarifies that every inquiry in which summons are issued for tendering evidence or for production of documents is to be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code, 1860.

36. There is no embargo under the CGST Act restraining the petitioner from seeking pre-arrest bail. Economic offences such as tax evasion, money laundering, etc. affect the economy of the country and thus are considered grave in nature. To deter persons from indulging in such economic offences, criminal sanctions are required to be imposed. One of the most prominent criminal sanctions imposed with regard to economic offences is that of arrest. It is widely acknowledged that arrests result in deprivation of liberty of a person. Thus, while it is imperative to maintain law and order in society, the power to arrest must also always be subject to necessary safeguards. Against this backdrop, analysing the arrest provisions under the Goods and Services Tax Law, with a view to study the adequacy of the safeguards and authorisation built into the text of the statute, the interplay between these provisions and the standards of arrest has to be established through judicial precedents, as well as other sources such as the Constitution of India and general

statutes such as the Code of Criminal Procedure.

37. Having analysed the Scheme of the Act, it is pertinent to refer to the relevant case laws.

38. The question of bail under the Act remains unsettled, rather we have at hand various conflicting decisions of different High Courts. In similar matters pursued under various provisions of the Act, bail applications have been filed before various High Courts, the judgments of which have been relied upon by the learned counsel for the parties. All the judgments have been broadly analysed hereunder.

39. In the case of ***P. V. Ramana Reddy v. Union of India*** *(supra)* pre-arrest bail in a similar matter was refused. This was a case arising out of petition under Article 226 of the Constitution. Therein, the court rejected pre-arrest protection to the petitioner in view of the special circumstances of the case. The court there distinctly noted that in view of several decisions of the Hon'ble Supreme Court, pre-arrest protection being akin to anticipatory bail needs to be sparingly exercised under Article 226. No such constraint can be read into the present application, since the present application has been filed under Section 438 of the Code, which specifically calls for decision on anticipatory bail. The Special leave petition against this decision has been dismissed by the Hon'ble Supreme Court.

40. On the other side, the case of ***Shravan. A Mehra v. Superintendent of Central Tax, Anti evasion, Commissionerate*** **Manu/KA/0875/2019** is the one that squarely applies to the present case. In this matter, bail was granted in relation to offences under the Act in view of the fact that the offences were not punishable with imprisonment for more than five years. In this case, the petitioner was alleged of having obtained Invoices from the Company of the respondent without delivery of the goods and thereby evading payment of tax and committing an offence under Section 132(1)(b) of the Act. Therein, the petitioner once appeared before the authorities concerned but on a subsequent summon, they were apprehending arrest because another witness who was called to tender statement was arrested by the police. Thus, an application for anticipatory bail was filed before the court. The court after analysing the provisions of the Act held as under:

> *"On close reading of the above said Sections, the maximum punishment provided under the Act is five years and fine and if that is taken into consideration, the magnitude of the alleged offence and it is not punishable with death or imprisonment for*

> *life. Even as per the said provision, the alleged offence is also compoundable with the Authority, who has initiated the said proceedings. The only consideration which the Court has to consider while releasing the petitioners on anticipatory bail is, that whether the petitioners can be secured for the purpose of investigation or for the purpose of trial. Under such circumstances, I feel that by imposing stringent conditions if the petitioners are ordered to be released on anticipatory bail, it would meet the ends of justice."*

41. In a similar matter, bail was granted by this Court in the case of ***Raghav Agrawal v. Commissioner of Central Tax and GST Delhi North*** **Bail Application 4019/2020** vide order dated 21st December, 2020.

42. Again, in a similar vein, the Bombay High Court also granted ad-interim relief to the petitioner by directing the investigative authorities not to take any coercive steps against the petitioner in ***Sapna Jain v. Union of India*** **2020 SCC Online 13064.** This was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not interfere with the order and tagged it along with other matters that were listed before a three-judge bench in the case of ***Union of India v. Sapna Jain*** **(2021) 2 SCC 782**.The matter is pending before the three-judge bench and has not been decided till date. Thus, the question regarding anticipatory bail while dealing with offences under CGST Act is yet unsettled. Hence, it falls before this court to decide the present matter by exercising its discretion as per intention of the Act along with analyzing the factors necessary for the grant of anticipatory bail.

43. It is true to contend that the economic offences are grave in nature however the same does not mean that the bail needs to be denied in every case. The same has been reiterated by the Hon'ble Supreme Court in the case of ***P. Chidambaram v. Directorate of Enforcement*** **(2020) 13 SCC 791** as follows:

> *"Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering*

the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

44. In the present case, there cannot be any conflict with the fact that petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than five years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view the offences

under the Act are not grave to an extent where the custody of the accused can be held to be *sine qua non.*

45. Before analysing the application for anticipatory bail, it is essential to take note of the approach that is expected from the High Courts in such applications as observed by the Hon'ble Supreme Court in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra*** **(2021) 2 SCC 427:**

"More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand [State of Rajasthan v. Balchand, (1977) 4 SCC 308 : 1977 SCC (Cri) 594] , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is "bail, not jail" [These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are: State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] . The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system". Tasked as we are with the primary responsibility of preserving the

liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."

46. The Constitution Bench judgment in the case of ***Gurubaksh Singh Sibbia v. State of Punjab*** **(1980) 2 SCC 565** has been serving as an encyclopedia for the cases in relation to anticipatory bail. Therein, the court also called for a similar approach when it observed:

> *"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned."*

47. The Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** **(2011) 1 SCC 694** concerning grant of anticipatory bail after exhaustively analyzing the rights under Article 21 held as under:

> *"A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."*

48. A three-judge bench of the Hon'ble Supreme Court in the case of ***Nathu***

Singh v. State of U.P. **(2021) 6 SCC 64** has called for a liberal interpretation in the cases relating to grant of anticipatory bail, when it observed:

> ***"19.*** *At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of the provision is incomplete. It is no longer res integra that any interpretation of the provisions of Section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief."*

49. Since, the genesis of the statutory right to anticipatory bail can be found under Article 21 of the Constitution, it is essential to understand the true import of rights under Article 21 of the Constitution. The Hon'ble Supreme Court has held that such right to life does not merely mean animal like existence but includes wider connotations to make the life meaningful. One such ingredient of right to livelihood has been accepted as a part of Article 21 in the case of ***Centre for Environment & Food Security v. Union of India*** **(2011) 5 SCC 676.** Therein the Hon'ble Supreme Court observed as under:

> *"The Framers of the Constitution, in the Preamble to the Constitution, guaranteed to secure to its citizens justice social, economic and political as well as equality of status and opportunity but the "right to employment" was not incorporated in Part III of the Constitution as a fundamental right. By judicial pronouncements, the Courts expanded the scope of Article 21 of the Constitution of India and included various facets of life as rights protected under the said article despite the fact that they had not been incorporated by specific language in Part III by the Framers of the Constitution. Judgments of this Court in Olga Tellis v. Bombay Municipal Corpn.[(1985) 3 SCC 545] and*

> *Narendra Kumar Chandla v. State of Haryana [(1994) 4 SCC 460 : 1994 SCC (L&S) 882 : (1994) 27 ATC 616] expanded the scope of Article 21 and held that "right to livelihood" is an integral part of the "right to life.""*

Since, anticipatory bail is a statutory right in consonance with the Right to life and personal liberty under Article 21, it is essential to be alive to the various facets that form a part of rights under Article 21 of the Constitution. It is in this background, that this court ventures upon to decide the present application.

50. Equally important is to take into considerations the factors that the court ought to take into account while granting or refusing anticipatory bail. In a fairly recent judgement, the Constitutional bench of the Hon'ble Supreme Court had the occasion to consider some important aspects of anticipatory bail in the case of ***Sushila Aggarwal v. State(NCT of Delhi)*** **(2020) 5 SCC 1.** The principal question before the Hon'ble Court was whether the grant of anticipatory bail operates for a limited time period or not. The court analysed the concept of anticipatory bail at great length and held as under:

> ***"92.3*** *Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts*

of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court. "*

51. The learned counsel for the petitioner has also placed reliance on a Supreme Court order dated 20th August, 2018 arising out of the case of ***C. Pradeep V. Commissioner Of GST And Central Excise Selam*** **Special Leave to Appeal (Crl.) No. 6834 of 2019.** The Hon'ble Supreme Court therein was concerned with a case where the assessment under the Act was not complete, and the Petitioner therein agreed to deposit 10 percent of the amount that the department therein had alleged to be wrongfully utilised by the Petitioner therein. It was on this condition of payment of the amount before the court that the court thought it fit to grant the interim protection to the accused.

52. In the present case, the Petitioner has been accused of wrongfully utilizing the Input Tax Credit amounting to Rs. 72 Crores, an offence under Section 132(b) and (c). Since the alleged amount exceeds five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under the Act are bailable and non-cognizable except for the offence under Section 132(5) of the Act. Additionally, under Section 135 of the Act, in any prosecution under the Act requiring culpable mental state, the court is bound to presume culpable mental state of the accused. The section further states that the accused will have a defense to prove that he had no such mental state. Also, section 138 of the Act states that the offences under the Act shall be compoundable either before or after the prosecution.

53. The task before this Court is two-fold, *first* being to ensure that no unwarranted abuse of process is allowed to impinge upon life and liberty of the petitioner, and *second* to ensure that the investigation is not hampered, procedure of administration of justice is not adversely impacted and ultimately the guilty is prosecuted.

54. These are competing interests included in an anticipatory bail application i.e., the liberty of the accused and the interest of the investigative authorities for discovering the particular of offence. It is the case of the Petitioner that he failed to appear due to his ill health, which evidently no more exists. The other ground pertains to apprehension of arrest, which can be removed by allowing the present application. It is very well possible that the respondent department might get the information as required if the Petitioner cooperates with the authorities concerned and arrest might not be necessary.

55. Custodial interrogation in the instant matter is neither warranted nor provided for by the statute. Detaining the petitioner in Judicial Custody would serve no purpose rather would adversely impact the business of the petitioner.

56. It is without an iota of doubt that the Petitioner needs to be more cooperative in investigation, joining the same as and when required for, by the Respondent. In the present case, the Petitioner has not appeared before the Respondent department on various occasions due to two main reasons mainly i.e., due to his own ill health on some occasions while on one occasion, he failed to appear due to the ailing heath of her mother. On several other occasions, the Petitioner was apprehending his arrest and thus did not submit himself before the Respondent Department. It is equally important to take note of the fact that Petitioner has placed on record several documents in the petition in order to corroborate the fact of his and his mother's ill health the document supporting the factum of his ill health has also been supported via proper documents in the respective replies to summons.

57. The apprehension of arrest of the Petitioner is also not bereft of factual evidence. It was this apprehension that forced him to make a request to the authorities concerned for recording the statement in the presence of the counsel via letter dated 8th September, 2021. Also, this apprehension forced him to apply for the grant of anticipatory bail in the Sessions Court, which was refused via order dated 9th October, 2021.

58. This court must give effect to Article 21 of the Constitution in letter as well as in spirit while deciding the anticipatory bail application. The basic tenet on which our criminal justice system operates is -"innocent until proven guilty" and in view of this the Supreme Court has time and again reiterated that "bail is the rule while jail is an exception". Such principles cannot remain a dead letter of law and this court must intervene to give effect to such principles which has been enshrined by

the Hon'ble Supreme Court in numerous decisions.

59. In view of these facts and circumstances and in light of the provisions of law, this Court is inclined to allow the anticipatory bail application with some stringent conditions in view of the prior conduct of the Petitioner.

CONCLUSION

60. This Court allows the instant application under section 438 of Code of Criminal Procedure. In the event of arrest, the petitioner be released on bail on his furnishing a personal bond in the sum of Rs. 5,00,000/-(Rupees Five Lakhs only) with two solvent sureties of like amount to the satisfaction of the Investigating Officer/ Apprehending Authority with the terms and conditions as follows:

i. he shall surrender his passport before the Investigating Officer/ Apprehending Authority and under no circumstances leave India without prior permission of the Investigating Officer/Apprehending Authority, and, if he does not possess any passport, he shall file an affidavit to that effect before the Investigating Officer /Apprehending Authority;

ii. he shall cooperate in the investigation and appear before the Investigating Officer /Apprehending Authority as and when summoned;

iii. he shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;

iv. he shall provide his mobile number and keep it operational at all times;

v. he shall drop a PIN on Google map to ensure that his location is available to the Investigating Officer /Apprehending Authority; and

vi. he shall commit no offence whatsoever during the period he is on bail.

61. If breach of any of the above conditions is committed, it would be open to the Investigating Officer/Apprehending Authority to file an appropriate application for cancellation of the Anticipatory Bail granted.

62. Accordingly, the petition and pending application stand disposed of.

63. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)

JUDGE

November 26, 2021

HIGH COURT OF ALLAHABAD

Court No. - 1

Case :- WRIT TAX No. - 1084 of 2021

Petitioner :- Ranjana Singh

Respondent :- Commissioner Of State Tax And 2 Others

Counsel for Petitioner :- Aloke Kumar **Counsel for Respondent :-** C.S.C.

Hon'ble Piyush Agrawal J.

1. Heard Shri Aloke Kumar, learned counsel for the petitioner and Shri A.C. Tripathi, learned Standing Counsel for the respondents.
2. With the consent of learned counsel for the parties, the present writ petition is decided at the admission stage itself, as no facts are in dispute.
3. The present writ petition has been filed assailing the impugned orders dated 23.09.2021 and 28.10.2021, whereby, grant of GST registration has been rejected.
4. The brief facts of the case are that the petitioner is engaged in the business of providing employment through consultancy, which fall within the purview of U.P. Goods & Service Tax Act (hereinafter referred to as, **'the Act').** On 17.08.2021, the petitioner applied for grant of registration under the Act through online mode. On submission of the application, an inspection was made at the business premises of the petitioner on 15.09.2021 and thereafter, notice was issued for providing certain information and documents in support thereof. On submission of reply, by means of the impugned order dated 23.09.2021, the application of the petitioner was rejected, against which the petitioner preferred an appeal before the respondent no. 3, which too has been dismissed vide order dated 28.10.2021. Hence, this petition.
5. Learned counsel for the petitioner submits that the petitioner has applied for grant of GST registration as per the provision of section 25 of the Act, read with rules 8 & 9 of the Goods & Service Tax Rules, 2017 (hereinafter referred to as, **'the Rules')** furnishing all the requisite documents as prescribed under the Act, i.e., Adhar Card, PAN card, house tax receipt. Thereafter, on the date of inspection, all the details, as required by the Serving Officer, were

provided. Thereafter, a notice was issued requiring the petitioner to submit electricity bill or house tax bill or any other document related to the business. In reply to it, information and documents as required were furnished by the petitioner, but by the impugned order dated 23.09.2021, the same was rejected for non-submission of electricity bill. The said order was assailed before the appellate authority, but the appellate authority too has rejected the appeal confirming the order of rejection. Learned counsel for the petitioner further submits that the order passed by the authorities are patently illegal, perverse and against the provisions of law. He submits that the provision of the Act only requires for providing documents, i.e., PAN and Adhar as well as the property tax receipt, which were furnished by the petitioner, but without looking into the same, the impugned orders have been passed. Therefore, he prays for quashing the impugned orders.

6. *Per contra,* learned Standing Counsel, at the very outset, submits that under rule 8 of the Rules, forms are prescribed, i.e., form GSTR-1, which have two parts, i.e., Part A and Part B. Part B contains list of documents required for the purpose as mentioned therein and the same required for submission of electricity bill or property tax receipt. Therefore, the order for non-compliance was passed. He very fairly submits that as per the provisions of the Act, PAN card and Adhar card are required, which were provided by the petitioner and hence, the orders impugned cannot be sustained.

7. After hearing the learned counsel for the parties, the Court has perused the record.

8. For deciding the controversy involved in the present writ petition, section 25 and rules 8 & 9 will be relevant, which are quoted below:

> *"Section 25-* ***Procedure for Registration:***
>
> *(1) Every person who is liable to be registered under section 22 or*
>
> *section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:*
>
> *Provided that a casual taxable person or a non-resident taxable*

person shall apply for registration at least five days prior to the commencement of business.

Provided further that a person having a unit, as defined i the Special Economic Zones Act, 2005 (Act No. 28 of 2005), in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the State.

Explanation.- Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a

single registration in a State or Union Territory:

Provided that a person having multiple places of business in the State may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible

for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

"(6A) Every registered person shall undergo authentication, ***or furnish proof of possession of Aadhaar number,*** *in such form and manner and within such time as may be prescribed:*

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or ***furnish proof of possession of Aadhaar number,*** *in such manner as the Government may, on the recommendations of the Council, specify in the said notification:*

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such

manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.—For the purposes of this section, the expression ***"Aadhaar number" shall have the same meaning as assigned to*** *it in*

clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) ***Act, 2016.***

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),-

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner,

shall be granted a Unique Identity Number in such manner and for

such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period."

9. A perusal of the sub-section (6) of section 25 of the Act clearly reveals that for registration, only PAN card and Adhar card are required to be furnished. For a ready reference, rules 8 & 9 of the Rules is quoted below:-

***"Rule 8. Application for registration**.-(l) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone: Provided further that every person being an Input Service Distributor shall make a separate application for registration as such Input Service*

Distributor.

(2) (a) ***The Permanent Account Number shall be validated online*** *by the common portal from the database maintained by the Central Board of Direct Taxes.*

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the Permanent Account Number, mobile4 number nad e-mail address, a temporary reference number shall be generated and communicated to the applicnat on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(4A) ***Every application made under rule (4) shall be followed by—***

(a) biometric-based Aadhaar authentication and taking photograph, unless exempted *under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or*

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done,

of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation

Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgment under sub-rule (5) shall be issued electronically only after the said deposit."

***Rule 9. Verification of the application and approval**.-(1)The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant **within a period of seven working days from the date of submission of the application.** Provided that where-*

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; of

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business.

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem

fit.

(2) Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper

officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

Provided that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

Explanation.- For the purposes of this sub-rule, the expression — clarification includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM

GST REG- 05.

(5) If the proper officer fails to take any action, -

(a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

(b) within a period of thirty days from the date of submission of the application in cases where a person is not covered under proviso to sub-rule (1); or

(c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved."

10. Section 25 provides detailed procedure to be followed by every person applying for registration. It further requires by the person to provide PAN and Aadhar details. Rule 8 and 9 provides how the application for registration has to be dealt with. Further Rule 9 suggests the manner in which verification has to be done. If on examination of the application accompanying the documents all found to be in order then approval should be granted within seven working days. In the event the officer is not satisfied with the documents annexed then inspection is provided and further clarification can be sought.

11. In the case in hand PAN and Aadhar details as well as property receipts were provided as per the provisions of the Act and Rule. The petitioner has annexed the photocopy of the Form applied for registration as Annexure No. 1, whereas the details of PAN, Aadhar and property receipts have mentioned. PAN reference has come at page nos. 25, 28 and 29; Aadhar reference has come at page 29 and 33 as well as property reference has come at page 37.

12. The petitioner has further annexed a copy of PAN, Aadhar and property receipt as Annexure No. 2, 3 and 4 of the writ petition at page 42, 44 and 46 respectively. It has been averred in the writ petition that after submission of the aforesaid documents along with online form, the inspection was conducted at the premisses of the petitioner and all details as well as documents as required by the surveying officer was provided and after due satisfaction, the

surveying officer left the site.

13. Thereafter show cause notice dated 15.9.2021 was issued, relevant part of which, is quoted below:-

> *"This is with reference to your Registration application filed vide ARN AA090821108211O dated 17/08/2021 the Department has examined your application and is not satisfied with it for the following reasons:*
>
> *1. Principal Place of Business-Nature of Possession- Other (Please Specify) - Submit recent electricity bill **or** house tax copy **or** any other documents related business place."*

14. A perusal of the notice shows that the petitioner **was required to submit recent electricity bill or house tax receipt.** The petitioner submitted reply along with requisite document but the application of the petitioner for grant of registration certificate was rejected vide order dated 23.9.2021, which is quoted below:-

> ***" Order of Rejection of Application for Registration***
>
> *This has reference to your reply filed vide ARN AA090821108211O dated 17/08/2021. The reply has been examined and the same has not been found to be satisfactory for the following reason:*
>
> *1. Principal Place of Business-Nature of Possession Other (Please specify) -Please Specify.*
>
> ***2. Submit recent electricity bill***
>
> *Therefore, your application is rejected in accordance with the provisions of the Act."*

15. Thereafter the petitioner preferred an appeal in which specific grounds were taken. The relevant statement of facts as well ground are quoted hereunder:-

> *Statements of Facts.*
>
> 1…
>
> 2..
>
> *3. The State Jurisdictional Officer, Assistant Commissioner Sector 12, Prayagraj issued a notice dated 15.9.2021 in GST REG03 vide*

Ref. No. : ZA090921117282N seeking additional information / clarification relating to Nature of Possession of Principal Place of Business and submission of recent electricity bill / house tax copy or any other document relating to business place.

4. The appellant filed clarification on 20.9.2021 reiterating the facts furnished in the original application and ***again submitting copy of house tax receipt*** *as demanded by the state jurisdictional officer.*

5…

6….

Grounds of appeal

1. The order of rejection has been passed without considering the reply dated 20.9.2021 in ***which the nature of possession of the principal place of business has been clearly clarified as being in the ownership of the applicant / sole proprietor supported by copy of latest house tax receipt for FY 2021-22*** *issued by Nagar Nigam Prayagraj. House Tax receipt is a valid document which is accepted as proof of address under the provisions of law.*

16. But by the impugned order dated 28.10.2021, the appellate authority has rejected the application of the petitioner. The relevant part of the order dated 28.10.2021 is quoted below:-

''अपील सुनवाई के समय श्री असति हजेला फर्म के अधिकृत प्रतिनिधि उपस्थित हुए तथा अपील मेमो में वर्णित तथ्यो को दोहराया। दाखिल अपील मेमो एवं पत्रावली का अवलोकन किया गया। अपीलकर्ता द्वारा पंजीयन हेतु पंजीयन प्रार्थनापत्र ARN AA0908211082110 दि० 17.08.2021 द्वारा दाखिला किया गया है। पंजीयन प्रार्थनापत्र को एडज्युडिकेटिंग आफीसर (Adjudicating Authority) श्री मिथिलेश कुमार द्वारा एग्जामिन करने के बाद दि० 15–09–21 को व्यापारी को दि० 23–09 21 के लिए नोटिस जारी की गयी एवं दि० 23–09–21 को यह अंकित करते हुये कि दाखिल पंजीयन प्रार्थनापत्र निम्न कारणों से संतोषजनक नहीं पाया गया–

1- Principal Place of Business - Nature of Possession- Others (Please pecify)

2- Submit recent electricity Bill

अतः उपरोक्त साक्ष्य प्रस्तुत न किये जाने के कारण व्यापारी के पंजीयन प्रार्थनापत्र को

अस्वीकार किया गया है।

अपीलकर्ता द्वारा इलेक्ट्रिसिटी बिल सुनवाई के समय भी नही दाखिल किया गया। ऐसी स्थिति में एडज्युडिकेटिंग आफीसर (Adjudicating Authority) द्वारा पंजीयन निरस्तीकरण का आदेश उचित ढंग से पारित किया गया है जिसमें किसी हस्तक्षेप की आवश्यकता नहीं है।''

17. On perusal of the show cause notice, rejection order and the appellate order, it appears that firstly clarification with regard to the possession of business premisses was required to be specified and secondly submission of electricity bill / house tax receipt was required. The petitioner has submitted the explanation with regard to the nature or possession of the business premisses as the owner and also submitted the house tax receipt in compliance with the show cause notice. But the authorities below without whispering any word or assigning any reason had rejected the application for non-specifying possession of the business premisses and insisted for submission of electricity bill. The authorities below have further erred in law in not pointing out any defect in submission of house tax receipt and insisted for submission of electricity bill whereas the notice dated 15.9.2021 gave an option for submission of recent electricity bill or house tax receipt. Further the petitioner has explained that the property, in which the business is being undertaken, is under the ownership of the petitioner. So the other grounds also falls for non specifying the nature or possession of the property. Further in the grounds of appeal, it has specifically been mentioned that the petitioner's place of business is under ownership of the sole proprietor. Once the fact which has not only been mentioned in the in the reply to the show cause notice given in the application filed for grant of registration but also in the grounds of appeal, it was bounded duty of the authorities to look into the same and then pass the order in accordance with law instead of their own whims and fancies. Once the petitioner has satisfied the requirement of the law for providing PAN, Aadhar and also house tax receipt / property receipt then the authority should not have insisted for submission of receipt of electricity bill. In the absence of any short comings or defect being pointed out in the reply submitted along with documents, the petitioner has every right to carry on her business lawfully and her right to do business cannot be confiscated in illegal and arbitrary manner.

18. It is clear from the records that all the documents as required under the Act

and law as well as in compliance to the show cause notice were furnished by the petitioner and without pointing out any defect or short coming therein, the application should not have been rejected.

19. Before parting with the judgement, the Court is constraint to observe that the two authorities of the State have acted only with a view to harass the petitioner which cannot be accepted at any cost. This attitude of the respondents in this petition cannot be tolerated as the officers are being State functionary has to act fairly and their action must be in consonance with the provisions of the Acts as well as Rules.

20. In view of the foregoing discussions, the impugned orders dated 23.09.2021 and 28.10.2021 cannot be sustained in the eyes of law. The impugned orders dated 23.09.2021 and 28.10.2021 are hereby quashed. The respondents are directed to pass an appropriate order on the material available on record within a period of seven working days from the date of receipt of a copy of this order.

21. The writ petition is allowed with cost of Rs. 15,000/-, which shall be deposited before the High Court State Legal Services

Committee, Allahabad within a period of 20 days from today.

22. The respondents are at liberty to recover the cost from the erring Officer.

23. The compliance report regarding deposit of the cost shall be filed before the Registrar General of this Court within 45 days from today. In the event, the cost upon the erring officer is not deposited or the compliance report is not filed within the said period, the Registry is directed to list the case in chambers for further order.

Order Date :-09/12/2021

Amit Mishra

HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19549 of 2021

M/S. KARNATAKA TRADERS

Versus

STATE OF GUJARAT

Appearance:
MR SAMIR GUPTA ADVOCATE WITH MR MONAL S CHAGLANI(10240) for the Petitioner(s) No. 1,2
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1
MR UTKARSH SHARMA, AGP(1) for the Respondent(s) No. 1,2,3
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 1,2,3

CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 06/01/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE NISHA M. THAKORE)

1 Rule returnable forthwith. Learned A.G.P. Mr. Utkarsh Sharma waives service of notice of rule for and on behalf of the respondents.

2 The challenge in the present writ application is to the confiscation notice dated 4th December 2021 issued by the Tax Commissioner (Enforcement) Division - 1, Ahmedabad, in exercise of powers conferred under Section 130 of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act") read with the relevant provisions of the Integrated Goods and Services Tax Act, 2017 (for short, "the IGST Act"). The petitioner has also prayed for direction of issuance of a writ of mandamus to forthwith release the goods and vehicle without demanding any security.

3 The relevant facts which emerges from the record are reproduced as under:

4 The petitioner No.1 is a seller of the goods (Arecanut) and a registered dealer under the GST. It is the case of the petitioner No.1 that the goods were to be sold

by the petitioner No.1 to the buyer who was having the office premises in Ahmedabad. It is undisputed that the petitioner No.1 is a duly registered dealer under the GST Act. So far as the petitioner No.2 is concerned, he claims to be the owner of the Truck bearing registration No.KA 18 C 2681 on which the instant goods were to be transported.

5 The consignment was intercepted by the respondent No.3 on 20th November 2021 at around 11:40 AM at Changodar Road, Navapura. The statement of the driver / person in charge of the vehicle was recorded on 20th November 2021. The necessary documents i.e. E-way bill and Tax Invoice were produced before the respondent No.3 under Section 68(1) of the CGST Act. However, the respondent No.3 had issued Form GST MOV - 02 to conduct physical verification / inspection of the conveyance, goods and documents and upon examination of the same, the respondent No.3 had prepared report in Form GST MOV - 04. No discrepancy was noted by the respondent No.3 with regard to the description of goods as per invoice and conveyance nor any anomaly was found with regard to quantity as per invoice and physical verification undertaken by the respondent No.3.

6 The respondent No.3 noticed two discrepancies in the impugned notice Form GST MOV - 10, which reads as under:

> *"(i) Vehicle was intercepted while it was travelling to the different direction than the direction of destination or way to the destination. So it is clear that the goods was not moving to the place destined for. Hence it appears that the goods is being transported with intention to evade tax.*
>
> *(ii) The value of goods being transported is shown Rs.286/- which is to low compared to its Real Market Value i.e. 330/-."*

7 Being aggrieved by the aforesaid action of the respondent No.3, the petitioners are here before this Court with the present writ application.

8 Considering the submissions made by the learned advocate appearing for the petitioners, this Court has issued notice vide order dated 22nd December 2021. The same reads thus:

> *"1. Petitioner is before this Court seeking to challenge the action of the respondent authority by way of the following reliefs:*
>
> *"43. In view f the above, the Petitioner most humbly prays that:*
>
> *It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to issue a Writ, Order or Direction in the nature of:*

(a) Certiorari quashing the MOV-10 (Confiscation notice dated 04.12.21 (Annexure-A to the Writ Petition);

(b) Mandamus directing the Respondent no.3 to forthwith release the goods and vehicle without demanding any security;

(c) Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the learned Respondent Authorities to forthwith release goods with vehicle no.KA18 C 2681 detained/seized in purported exercise of powers under Section 129 and Section 130 of the GST Acts;

(d) Issue any other writ, Order or Direction in favour of the petitioner which this Hon'ble Court deems fit in the facts and circumstances of the case;

(e) Award cost of the petition to the petitioner;"

2. According to the petitioner, there are two grounds on which the action has been taken by the respondent authority. Firstly, when the goods cannot be transported to AAhmedabad from Karnataka because of wrong route and secondly, because of under valuation of the goods. Learned advocate for the petitioner has relied on the decision in the case of Podaran Foods India Pvt. Ltd. vs. State of Kerala, 2020 (50) GSTL(Ker.), where the Court is categorical that mechanical detention of the consignment is impermissible, merely because the driver has opted for different route. He has also relied on the decision in the case of K.P. Sugandh Ltd. vs. State of Chhattisgarh, 2020(38) G.S.T.L. 317(Chattisgarh) on the ground that the Court has not held the detention of vehicle and the seizure of goods sustainable merely because there was an undervaluation, by holding that it is for the department to initiate the appropriate separate proceedings with regard to the alleged undervaluation and that itself cannot furnish a ground for detention of vehicle. It is urged that all aspects have been placed by way of objection, which has not been considered.

3. The petitioner has shown inclination to pay tax and penalty. Let the request be made to the concerned officer, who will consider without being deterred by the pendency of this petition. Any order passed will not have a tendency of creating any equity in favour of either parties.

4. Notice returnable on 05.01.2022.

5. Over and above the regular mode, direct service by way of Speed Post or E-mode is also permitted."

9. In response to the notice issued by this Court, learned A.G.P. Mr. Utkarsh Sharma has appeared on behalf of the State - authorities.

10. Learned advocate Mr. Samir Gupta assisted by learned advocate Mr. Monal S. Chaglani has appeared for the petitioners and has submitted that two grounds on which the department proposes to confiscate the goods and vehicle referred to above are not tenable at all in law. The attention of this Court is drawn to the decision rendered by the High Court of Judicature of Chhattisgarh in the case of K. P. Sugandh Ltd vs. State of Chhattisgarh reported in 2020(38) GSTL 317 (Chhattisgarh) and it is submitted that undervaluation of seized goods in transit cannot be a ground to confiscate the goods and vehicle. The learned advocate has further submitted that similarly, the second ground raised by the respondent No.3 - authority is also not sustainable in the eye of law. The learned advocate has referred to and relied upon the observations made in para 10 of the said judgement. The same reproduced as under:

> *"Merely because the manufacturer sells his products to its customer or dealer at a price lower than the MRP, as such cannot be a ground on which the product or the vehicle could be seized or detained. If at all if this, according to the respondents, is contrary to the law, the authorities are supposed to draw an appropriate proceeding under the law. If at all what the State counsel has submitted is to be accepted, even then it would be only a case of an alleged sale of a product at a lower costs than the MRP. The Inspecting Authorities for the alleged discrepancy could have only intimated the Assessing Authority for initiating appropriate proceedings. What is more relevant to take note of is the fact that the details in the invoice bill as well as in the e-way bill matched the products found in the vehicle at the time of inspection except for the price of sale."*

11 The learned advocate has further relied upon the decisions of the Kerala High Court in the case of Podaran foods India Pvt Ltd vs. State of Kerala reported in 2021 (50) GSTL 412 (Ker) as well as in the case of Kannangayathu Metals vs. Assistant State Tax Officer, SGST Deptt, Thiruvananthapuram reported in 2019 (31) GSTL 391 (Ker).

12 On the other hand, learned A.G.P. Mr. Sharma has vehemently objected to the grant of relief in favour of the petitioners by submitting that the route preferred by the the petitioner No.1 reflects that he had intention to evade tax. Such intention

can be presumed from the fact that the route which was preferred by the petitioner was travelling to the different direction than the direction of destination or way to the destination. Hence, it was submitted not to entertain this writ application.

13 On careful consideration of the facts and circumstances of the case and the submissions made by the respective advocates for the parties, we find the force in the contention of the learned advocate appearing for the petitioners that there cannot be any mechanical detention of a consignment in transit solely on the basis of the two reasons as stated by the respondent No.3 in the impugned notice. We find that merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax. So far as the second ground with regard to the goods being transported to be undervalue is concerned, no material has been placed on record. Even otherwise, as held by this Court as well as other High Courts, it is a settled legal position that undervaluation cannot be a ground for seizure of goods in transit by the inspecting authority. In the instant case, there is no such indication.

14 In the result, the present writ application succeeds and is hereby allowed. The confiscation proceedings initiated by the respondents are hereby quashed and set aside. The vehicle as well as the goods shall be released at the earliest and handed over to the writ applicants.

15 We clarify that we have quashed the entire confiscation proceedings keeping in mind two things: first, mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax. Sometime, change of route may assume importance provided there is cogent material with the department to indicate that an attempt was sought to be made to dispose of the goods indirectly at a particular place. If such is the case, then probably, the authority may be justified in initiating appropriate proceedings, but mere change of route of the vehicle by itself is not sufficient. In the same manner, mere undervaluation of the goods also by itself is not sufficient to detain the goods and vehicle far from being liable to confiscation.

16 Rule is made absolute to the aforesaid extent. Direct service is permitted.

(J. B. PARDIWALA, J)
(NISHA M. THAKOREJ)

CHANDRESH

HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 3535/2021 & CRL.M.A. 20961-20962/2021

KABIR KUMAR ..... Petitioner

Through: Mr. Maninder Singh, Sr. Adv. with Mr. Ajay Kumar Pipaniya, Ms. Pallavi Pipania, Advs.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE, GURUGRAM ..... Respondent

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

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% 24.12.2021

CRL.M.A. 20962/2021 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 3535/2021 & CRL.M.A. 20961/2021

The petitioner vide the present petition seeks the setting aside of the order dated 22.12.2021 of the Court of the learned CMM in case *"Directorate General of GST Intelligence, Gurugram vs Kabir Kumar"* and also seeks restoration of the bail granted to the petitioner vide order dated 05.12.2020 till the pendency of this petition and also seeks stay of the operation of the impugned order.

Submissions have been made on behalf of either side.

As per record, the petitioner was granted bail vide order dated 05.12.2020 subject to terms and conditions to the effect:

> *"J.That the accused shall join the investigation as and when directed by the Investigating Agency.*
>
> *2. The accused shall not tamper with the evidence or influence the witness which will be examined by the department during investigation.*

3. That accused shall not leave the country without the permission of the Court.

4. That accused shall not indulge in similar offence in future.

5. That accused shall appear before the Court on each and every date of hearing.

The application stand disposed off.

It was *inter alia* observed vide this order to the effect:

" In the given facts, accused is a young man apparently having clean antecedents as no evidence has been brought forth by the department to show that he has previously been involved/engaged in similar offences. Further, the conduct of the accused seems to be reasonable during investigation as it has not come from the department , that he evaded arrest or remained defiant to the directions of the IO. The accused is in custody since 29.10.2020 and during this time the department has got ample opportunity to interrogate him. However, same was not done by the department which makes it clear that his custodial interrogation is no more required and it is pertinent to note that the time line for filing the chargesheet is drawing near, however, despite this no request has come from the department to seek his interrogation. The frail health of the mother of the accused and his own bad health are relevant consideration in the backdrop of the fact that he never acted as an obstructionist during investigation. Being sole bread earner and provider of the family is also a valid consideration for seeking bail where it is found that on account of his incarceration the entire family is subjected to hardship. So far as the concern of the department that the instant case is falls under the socio economic offence leading to loss to exchequer, in this regard the following judgment is important, ***"H.B. Chaturvedi Vs. CBI: 2010(3) JCC 2109*** *it was held by Hon'ble*

High Court of Delhi " para 12 ... Bail, it has been held in catena of decision is not to be withheld as punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before

he is convicted.

Furthermore, there is no justification for classifying offence into different categories such as an economic offences and for refusing bail on the ground that the offence involved belonging to particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving socio economic offences.

Further, the investigating agency is having the possession of all the documentary evidence collected so far and all other relevant material which is in the form of stamps, cheque books, debit cards, digital signatures and other material like invoices which they can scrutinize and for such scrutiny which is time consuming the further, detention without any justification seems to be unreasonable. At the same time, interest of the department can be safeguarded by putting conditions on the accused so that he should not come in the way of fair and proper investigation in future also."

The respondent in the present petition is indicated thereafter to have filed an application seeking cancellation of bail granted vide order dated 05.12.2020 by the learned CMM, New Delhi, which application was declined vide order dated 18.01.2021 by the learned ASJ-02, New Delhi observing to the effect:

"Perusal of the record reveals that accused was granted bail not only on account of his age, cooperative behaviour and his criminal antecedents but he was also granted bail considering the time of incarceration and the fact that department is in possession of all incriminating material and no fruitful purpose would be served by detaining the accused behind the bars. Evidently, in the case at hand, there is no material available on record to suggest that accused is attempting to interfere with the course of administration of justice or he is attempting to evade the proceedings. No plausible explanation has been cited for cancellation of bail of accused. The instant application seems to be more ornamental than having any legal substance in it. The instant application is bereft of any merits and is accordingly dismissed."

Another application seeking cancellation of regular bail was again filed by the respondent submitting to the effect that the applicant/ petitioner herein had flouted

the condition no.4 of the order dated 05.12.2020, which reads to the effect that the accused shall not indulge in similar offence in future. It is submitted in the said application that whilst taking forward its investigation, the applicant/ department has arrested two associates of the applicant herein i.e. the respondent to the application seeking cancellation of bail named Manish and Vikas who were then in judicial custody (who have since been granted bail as submitted on behalf of the respondent and the petitioner in reply to a specific Court query).

The averments in ground-II of the second application seeking cancellation of bail further mentions to the effect that the voluntary statements of these persons Vikas and Manish had been recorded under Section 70 of the CGST Act, 2017 and it was stated that the respondent to that application i.e. the present petitioner was still engaging himself in issuance of fake paper invoices and thereby passing of fake / ineligible ITC running into crores of rupees and the said statements were specific in nature and give the exact details of the manner in which the respondent / accused i.e. the present petitioner was functioning and that the statements have also not been retracted till date despite a considerable period of time having elapsed. It was further averred vide ground-III to the effect that the illegal actions of the accused led to generation of black money and hawala transactions, which were further used to fund anti-national activities and which was a threat to the society and the nation, that the accused was at the helm of a well established network of defrauding the exchequer and was the perpetrator of a grave economic crime and was destroying the framework of the nation's economy.

In reply to a specific Court query to the senior Standing Counsel representing the respondent as to apart from the disclosure statement recorded of the stated accused Manish and Vikas as mentioned in para 2 of the second application seeking cancellation of bail that had been filed before the learned CMM, New Delhi whether there was any further incriminating evidence that had been collected in relation to any further offence committed after the date 05.12.2020 by the applicant, to which, presently the response is in the negative submitting to the effect that investigation is in progress.

It has been submitted on behalf of the applicant that the mere disclosure statements by the accused Manish and Vikas *per se* would not suffice to allege to the effect that the applicant had committed any offence. The said contention presently appears to be correct in view of the response of the respondent also by

the Senior Standing Counsel to the effect that presently apart from the disclosure statements of the accused Vikas and Manish (both as submitted on behalf of either side have since been granted bail) there is no other material to incriminate the applicant / petitioner herein in relation to any further commission of offence beyond the date 05.12.2020, though presently, the investigation is still in progress

In these circumstances, the observations in the impugned order dated 05.12.2020 to the effect that the applicant/ petitioner herein named as the respondent in the order dated 05.12.2020 had indulged in similar commission of offence after release on bail and the condition no.4 of the order dated 05.12.2020 had been defied with the impunity cannot be accepted.

As regards the other submissions that have been made on behalf of the respondent to the present petition that the applicant/ petitioner had not been appearing before the learned CMM on each and every date of hearing in terms of condition no.5 of the order dated 05.12.2020 and the observations of the learned trial Court vide the impugned order dated 05.12.2020 spelt out to the effect that the conduct of the applicant has been unsatisfactory and defiant as despite the specific direction, he failed to appear before the learned trial Court which is also a violation of the condition of the bail whereby he was obligated to appear before the Court as and when directed and baseless and untenable grounds were taken to avoid Court appearance which spoke volumes of his conduct, it has been submitted on behalf of the petitioner that the application dated 21.12.2021 was filed on behalf of the applicant submitting to the effect that the Court had directed **the applicant to appear on 20.12.2021,** which has been so directed vide order dated 16.12.2021 with it having been submitted on behalf of the respondent to the present petition that the order dated 09.12.2021 directing **the appearance of the applicant and clarification on 16.12.2021** indicate directing the presence of the petitioner / accused herein and not the respondent, applicant of the application seeking cancellation of bail of the present petitioner as sought to be contended on behalf of the petitioner herein to the effect that it was the presence of the respondent to the application seeking cancellation of bail as directed vide order dated 09.12.2021 for the date 16.12.2021, which appears to be correct in view of the proceedings dated 23.10.2021 of the

Court of the learned CMM, which reads to the effect:

"23.10.2021

Proceedings conducted through video conferencing on Cisco Webex.

Present: Mr. Harpreet Singh, Ld. SPP for the department through VC.
None for the respondent/accused through VC. ***On behalf of applicant, nobody is appearing, however, in the interest of justice, last opportunity is granted to address arguments on behalf of respondent on 28.10.2021.***

Copy of this order be also sent to all the parties through email/ Whatsapp.

It is certified that the connection during hearing (through Cisco Webex was uninterrupted and the voice and video was clear and the Ld. APP for the State and Ld. Counsel for the parties appearing through VC did not raise any objection regarding the quality of V/C."

The same indicates thus that though on that date, the SPP for the department was present through VC, there was none for respondent / accused through VC and it was mentioned further in the said order: ***"On behalf of the applicant nobody is appearing however, in the interest of justice, last opportunity was granted to address arguments on behalf of respondent on 28.10.2021",*** which makes it thus implicit that the proceedings dated 09.12.2021 directing the appearance of the applicant on 16.12.2021 relate to the accused i.e. the petitioner herein.

The proceedings of the date 16.12.2021 indicate that there was no one present and the accused was directed to appear in person on 20.12.2021. The proceedings of the date 20.12.2021 are not on record. However, it is brought forth on behalf of the respondent by senior Standing Counsel that on the date 20.12.2021 in as much as there was a change of counsel on behalf of the applicant/ petitioner herein as prayed on behalf of the applicant/ petitioner, the matter had been renotified by the learned CMM to the date 21.12.2021 for the personal presence of the applicant.

Placed on record is an application dated 21.12.2021 filed on behalf of the petitioner before the learned trial Court placed as Annexure P8 at page 107 of the present petition submitting to the effect that in as much as the applicant had Covid-19 symptoms since the last few days and therefore he got his RTPCR test done on 19.12.2021 and though the test result came out to be negative but the applicant was still suffering from high fever, cold, headache and other related symptoms of COVID-19 and due to conspicuous symptoms of COVID-19, the doctor had advised him to isolate himself for at least 10 days to avoid any transmission and for medical

care, the applicant was unable to put in appearance before the learned trial Court in person and sought to appear virtually through the Court VC link and authorized his counsel to argue the matter in his absence and prayed for marking of his presence through VC.

Vide order dated 21.12.2021, the said prayer made by the applicant to join the proceeding through VC on 21.12.2021 was disposed off with observations to the effect:

> *" An application has been filed on behalf of respondent/ accused Kabir Kumar submitting that applicant was directed to appear in person, however, he got Covid test done on 19.12.2021 and his Covid test report is negative, however, he is suffering from high fever, cold, headache and other related symptoms of Covid-19. It is submitted that Doctor has advised him to isolate himself for next 10 days. It is submitted that he may be allowed to appear through virtual means. Application is opposed on behalf of the prosecution submitting that accused is deliberately not appearing before the Court. It is submitted that accused had adopted the similar ways to debunk ongoing investigation which necessitated filing of instant application as the very conditions of the bail was flouted by him. Ld. SPP for the department submits that conduct of the accused may be noted down. Heard. Perused.*
>
> *From the facts, it is apparent that accused is trying to avoid his presence before the Court and taking baseless excuses. On 20.12.2021 , despite being directed to appear in person, he did not appear even through VC on the pretext of Covid 19 test. Today, despite he has been detected negative for the Covid 19, he failed to appear before the Court physically and appeared through VC and took the pretext of advise of his doctor which is apparently to avoid appearance. Accordingly it is directed to the accused to remain physically present before Court on 22.12.2021 at 10:00 am as last opportunity as it is amply clear that accused is avoiding appearance intentionally despite specific directions."*

In reply to a specific Court query, it is informed on behalf of the petitioner that the petitioner could not put in appearance on 20.12.2021 in view of his suffering

from fever and that it was the reason that the petitioner could not appear in terms of order dated 16.12.2021 of the learned CMM directing the appearance of the petitioner on the date 20.12.2021.

Taking into account the factum that in view of the observations hereinabove, it is held that presently it cannot be observed to the effect that the applicant/ petitioner had violated the condition no.4 of the order dated 05.12.2020 in as much as investigation in the matter qua any future commission of the offence after 05.12.2020 is still in progress as submitted on behalf of the respondent and presently there are only disclosure statements of two accused Manish and Vikas against the petitioner qua further alleged commission of offence after 05.12.2020, the condition no.4 of the order dated 05.12.2020 cannot be held to be violated presently.

The absence of the accused on the date 20.12.2021 and 21.12.2021 in the circumstances put forth appears to have been explained.

In view thereof though the order dated 22.12.2021 of the learned CMM, New Delhi, PHC setting aside the grant of bail granted vide order dated 05.12.2020 is set aside, it is essential to observe that direction dated 22.12.2021 of the learned CMM, New Delhi whilst disposing of the application seeking cancellation of bail as filed by the respondent herein before the learned CMM, New Delhi after the cancellation of bail granted to the applicant vide order dated 05.12.2020 directing the applicant/ petitioner to surrender by 23.12.2021 has not been complied with, qua which, it is submitted on behalf of the petitioner by learned senior counsel for the respondent that the petitioner did not surrender because of the pendency of the present petition, apparently, the petition has been listed for hearing today and there was no stay of the operation of the order dated 22.12.2021 at any time granted. Thus though the order of the learned CMM, New Delhi is set aside, the same is set aside subject to deposit of the costs of Rs.1 lac (Rs.1,00,000/-) in the Delhi High Court Legal Services Committee during the course of the day by the petitioner with direction to place on record the receipt of said cost before the learned CMM/ New Delhi/ Link MM by 3 pm today.

The petition is disposed of.

ANU MALHOTRA, J

DECEMBER 24, 2021

COMMERCIAL NEWS

CA Deepak Khandelwal

CBIC launches new Tax Law Information Portal

Tax Information Portal launched for enhanced view of all Indirect Tax Acts, Rules, Regulations and Forms. CBIC launches revamped tax information portal, through which all indirect tax legislations, rules, regulations and forms will be available for ease of reference of taxpayers. The content on this portal is being continuously updated and expanded in a phased-manner.

Eventually, information under all categories in Customs, GST, Central Excise and erstwhile Service Tax will be available. In case, any user comes across any anomaly or error in content, it is requested to please notify CBIC on feedback.taxinfo@icegate.gov.in.

New Portal is launched by Chairman CBIC Sh. VivekJohri along with Members of the Board. The new portal can accessed through CBIC website. Tax Law Information Portal enables taxpayers to seamlessly view fully amended and updated version of Act, Rules, Regulations, Notifications, Circulars and forms ensuring Ease of Doing Business and promoting. Link to new portal is as follows:- https://taxinformation.cbic.gov.in

DGGI refutes multiple speculative media reports in case of M/s Odochem Industries; sets the record straight on facts

In the context of ongoing investigations by the Directorate General of GST Intelligence (DGGI) in the case of M/s Odochem Industries, Kannauj- a manufacturer of perfumery compounds - and its proprietor ShriPeeyush Jain, wherein a total cash of Rs. 197.49 crore, 23 kg of gold and offending goods of high value have been recovered so far from two premises, reports have appeared in certain sections of the media that DGGI has decided to treat the cash recovered as the turnover of the manufacturing unit and proposes to proceed accordingly. Some reports have even stated that after admitting his liability, ShriPeeyush Jain has, with the approval of DGGI, deposited a total amount of Rs 52 crore as tax dues. Thus, it is made out as if the department has agreed with the deposition of ShriPeeyush Jain and finalised the tax liability accordingly.

These reports are purely speculative, without any basis and seek to undermine the integrity of the ongoing investigations which are being carried out in a most professional manner based on specific intelligence against the party.

In this regard, it is clarified that the total amount of cash in the ongoing case from the residential and factory premises of M/s Peeyush Jain has been kept as case property in the safe custody of the State Bank of India pending further investigations. No deposit of tax dues has been made by M/s Odochem Industries from the seized money to discharge their tax liabilities and their tax liabilities are yet to be determined.

Further, the voluntary submissions made by ShriPeeyush Jain are a subject matter of ongoing investigations and any view on the source of cash seized by the department and the exact tax liabilities of M/s Odochem Industries or other parties involved in the investigation shall be taken on the basis of appraisal of evidences collected from various premises during the searches and the outcome of further investigations.

Based on his voluntary admission of guilt and the evidence available on record, ShriPeeyush Jain was arrested on 26.12.2021 for commission of offences prescribed under section 132 of the CGST Act and was produced before the Competent Court on 27.12.2021. The Hon'ble Court has remanded him to 14 days judicial custody.

Recommendations of 46th GST Council Meeting

Existing GST rates in textile sector to continue beyond 1st January, 2022

The GST Council's 46th meeting was held today in New Delhi under the chairmanship of Union Finance & Corporate Affairs Minister Smt. NirmalaSitharaman.

The GST Council has recommended to defer the decision to change the rates in textiles recommended in the 45th GST Council meeting. Consequently, the existing GST rates in textile sector would continue beyond 1st January, 2022.

Income Tax Department conducts pan-India searches in case ofmobile manufacturing companies

The Income Tax Department carried out search and seizure operations pan-India on 21.12.2021 in the case of certain foreign controlled Mobile Communication & Mobile Hand-set Manufacturing Companies and their associated persons. Various

premises in the states of Karnataka, Tamil Nadu, Assam, West Bengal, Andhra Pradesh, Madhya Pradesh, Gujarat, Maharashtra, Bihar, Rajasthan, Delhi& NCR have been covered in the action.

The search action has revealed that two major companies have made remittance in the nature of royalty, to and on behalf of its group companies located abroad, which aggregates to more than Rs.5500 crore. The claim of such expenses does not seem to be appropriate in light of the facts and evidence gathered during the search action.

The search operation has also brought out the modus operandi of purchase of the components for manufacturing of mobile handsets. It is gathered that both these companies had not complied with the regulatory mandate prescribed under the Income-tax Act, 1961 for disclosure of transactions with associated enterprises. Such lapse makes them liable for penal action under the Income-tax Act, 1961, the quantum of which could be in the range of more than Rs.1000 crore.

The search has brought to fore another modus operandi whereby foreign funds have been introduced in the books of the Indian company but it transpires that the source from which such funds have been received are of doubtful nature, purportedly with no credit worthiness of the lender. The quantum of such borrowings is about Rs.5000 crore, on which interest expenses have also been claimed.

Evidence with regard to the inflation of expenses, payments on behalf of the associated enterprises, etc. have also been noticed which led to the reduction of taxable profits of the Indian mobile handset manufacturing company. Such amount could be in excess of Rs.1400 crore.

It is further found that one of the companies utilized the services of another entity located in India but did not comply with the provisions of tax deduction at source introduced w.e.f. 01.04.2020. The quantum of liability of TDS on this account could be around Rs.300 crore.

In case of another company covered in the search action, it has been detected that the control of the affairs of the company was substantively managed from a neighbouring country. The Indian directors of the said company admitted that they had no role in the management of the company and lent their names for directorship for namesake purposes. Evidences have been gathered on attempt to transfer the entire reserves of the company to the tune of Rs.42 crore out of India, without payment of due taxes.

Survey action in the case of certain fintech and software services companies have revealed that a number of such companies have been created for the purposes of inflating expenses and siphoning out of funds. For this purpose, such companies have made payments for unrelated business purposes as also utilized the bills issued by a Tamil Nadu based non-existent business concern. The quantum of such out-flow is found to be around Rs.50 crore.

Further investigations are in progress.

Officers Of Directorate General Of GST Intelligence (DGGI), Ahmedabad With The Support Of Officers Of Local Central GST Initiated Search Operations In Kanpur

On specific intelligence, officers of Directorate General of GST Intelligence (DGGI), Ahmedabad with the support of officers of local Central GST initiated search operations in Kanpur on 22.12.2021. The search operations covered the factory premises of M/s Trimurti Fragrance Pvt Ltd, Kanpur, manufacturers of Shikhar brand Pan Masala and Tobacco products and the office/godowns of M/s Ganpati Road Carriers, Transport Nagar, Kanpur, involved in transportation of goods.

The information indicated clandestine supply of goods by the manufacturer without payment of applicable tax. The transporter reportedly used to generate multiple invoices **in the name of non-existent firms**, all below Rs 50,000/- for one full truck load, to avoid generation of E-way Bills while moving the goods. The transporter was also collecting the sale proceeds of such clandestine supply in cash and handing it over to the manufacturer, after deducting his commission.

The officers initially were able to **successfully intercept and seize 4 such trucks** outside the factory premises, cleared from the factory without invoices and E-way Bills, which confirmed the contents of intelligence.

In the factory premises, during physical stock taking, shortage of raw materials and finished products was noticed as the finished products had been cleared clandestinely. The authorised signatory of the company has admitted to have cleared the goods without GST.

In the premises of the transporter, M/s Ganpati Road Carriers, **more than 200 fake invoices** used in the past for transportation of goods without payment of GST have been recovered. The transporter has also admitted that goods were

being transported without e-way bills under the cover of fake invoices and also the sale proceeds was being collected in cash, to be handed over to the manufacturer. An amount of Rs 1.01 crores in cash has been seized from the possession of transporter.

Based on the intelligence inputs, the residential premises of partners of M/s Odochem Industries, Kannauj, UP, located at 143, Anandpuri, Kanpur, who were supplying perfumery compound, mostly in cash, to the said company was also searched. It was suspected that the sale proceeds in cash were secreted in the premises.

During the search proceedings at the residential premises, huge amount of cash, wrapped in paper, has been found. The process of counting of cash has been initiated with the help of officials of State Bank of India, Kanpur, which may continue till 24.12.2021, evening. The total amount of cash is expected to be in excess of Rs 150 crores.

The agency proposes to seize the cash under the provisions of section 67 of CGST Act, pending further investigations.

An amount of Rs 3.09 crores has been recovered so far towards tax dues. Necessary follow up action in the ongoing investigation of sensitive nature is being organised.

DGGI Ahmedabad seizes more than Rs 177 crore in Kanpur search operations

Search operations in related premises continue with recovery of Rs 17 crore, 64 kg gold and 600 kg sandalwood oil worth Rs 6 crore

The Ahmedabad unit of Directorate General of GST Intelligence (DGGI) on 22.12.2021 initiated search operations in Kanpur at the factory premises of manufacturers **of Shikhar brand Pan Masala and Tobacco products,** the office/ Godowns of **M/s Ganpati Road Carriers, Transport Nagar, Kanpur**, and the residential/factory premises of **M/s Odochem Industries**, suppliers of perfumery compounds, at Kanpur and Kannauj.

After intercepting 4 trucks operated by M/s Ganpati Road Carriers, carrying pan masala and tobacco of said brand cleared without payment of GST, the officers tallied the actual stock available in the factory with the stock recorded in the books and found shortage of raw materials and finished products. This further corroborated that the manufacturer was indulging in clandestine removal of goods with the help

of transporter who used to issue fake invoices to manage the transportation of said goods. The officers have also seized more than 200 such fake invoices. The manufacturers of Shikhar brand of pan masala/tobacco products have admitted and deposited an amount of Rs 3.09 crore towards their tax liability.

The search proceeding which was initiated at the residential premises of the partners of M/s Odochem Industries located at **143, Anadpuri, Kanpur on 22.12.2021** has since been concluded. **The total amount of unaccounted cash recovered and seized from this premises is Rs. 177.45 crore**. This is the biggest ever seizure of cash by the CBIC officials. The documents seized from the premises are under scrutiny.

Further, the DGGI officers have also searched the **residential/factory premises of M/s Odochem Industries at Kannauj** which is in progress. During the searches at Kannauj, the officers have been able to recover **an amount of about Rs 17 crore in cash,** which is presently being counted by the SBI officials. In addition, recovery of **approximately 23 kg of gold** and huge unaccounted raw materials used in manufacture of perfumery compounds, including more than **600 kg of sandalwood oil** hidden in an underground storage, having a market value of about Rs 6 crore, have been made. The search proceeding at Kannauj is likely to continue till evening.

Since the gold so recovered is having foreign markings, Directorate of Revenue Intelligence (DRI) is being roped in for necessary investigations.

Meanwhile, on the basis of evidence collected during investigations so far, **ShriPeeyush Jain,** Partner of M/s Odochem Industries, Kannauj was interrogated by the DGGI officers. His statement has been recorded on 25/ 26.12.2021 under section 70 of the Act wherein Shri Jain has accepted that the cash recovered from the residential premises is related to sale of goods without payment of GST. In view of the overwhelming evidences available on record indicating large scale evasion of GST by M/s Odochem Industries, Kannauj, **ShriPeeyush Jain has been arrested on 26.12.2021** for commission of offences prescribed under section 132 of the CGST Act and has been produced before the Competent Court on 27.12.20221.

The evidence collected during the searches conducted in last 5 days is being investigated thoroughly to unravel the tax evasion.

*****

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