

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.5967 OF 2020

ORDER:

This is an application for regular bail. The petitioner viz., Neeraj Karande is sole accused in F.No.INV/DGGI/HZU/GST/Gr'H'/42/2020-21 dated 02.11.2020. The offence alleged against the petitioner is under Section 132(1)(i) read with Section 132(1)(b)(c) of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act').

2. Heard Sri T. Bala Mohan Reddy, learned counsel for the petitioner, and Sri P. Dharmesh, learned standing counsel for the respondent. Perused the record.

3. The allegation against the petitioner is that he is managing director of M/s. GE Godavari Engineering Industries Limited (hereinafter referred to as 'Company'). The petitioner has obtained registration under the provisions of the CGST Act vide GSTIN No.36AACCG9862H3Z7. Being the managing director of the company, the petitioner has collected and issued invoice or bill without supply of goods in violation of the provisions of the CGST Act or the rules made thereunder leading to wrongful availment or utilization of input tax credit rendered by him. The *modus operandi* adopted by the petitioner is that he indulged in issuing GST invoices, e-way bills and passing on input tax credit to various customers without actual supply of goods. It is further alleged in the complaint

that the petitioner, as per the business need of the Company, procured invoices without actual receipt of goods and supplied the said invoices and subsequently increased the Company's annual turnover to enhance his banking loan facilities. He has also issued GST invoices without supply of goods to various other parties and helped them to show them as their expenses in their accounts. It is further alleged against the petitioner that he has supplied invoices without supply of goods to some of his customers to avoid payment of the GST in cash. He has procured GST invoices without supply / receipt of materials from the firms mentioned in the statements given by him on 29.10.2020 and 02.11.2020 through M/s. Advance PowerInfra Tech Limited, M/s. Radhika Electrocast Private Limited, Bahrat Gupta, Pratik Chaturvedi, Janki Lal Sureka and Siddarth Sharma at his request to his Company located in Hyderabad. Thus, issuance of GST invoices, e-way bills without actual supply of material / services is in contravention of the provisions of Section 31 of the CGST Act. Further, availing input tax credit of GST on the basis of fake GST invoices issued without supply of material is in violation of Section 16 of the CGST Act.

4. Thus, the petitioner has wrongfully availed or utilized input tax credit and also availed input tax credit on the basis of the invoices / bills issued without supply of actual goods or services and the same an offence under Clause (b) and (c) of Sub-Section (1) of Section 132

of the CGST Act which is punishable under Section 132(1)(i) of the CGST Act.

5. It is also alleged that the GST amount involved for the operations carried out by the petitioner from 01.07.2017 to 31.08.2020 is Rs.10.89 crores (Rs.5.46 Crores inward irregular ITC credit plus 5.43 crores outward irregular ITC credit), which is much higher than Rs.500.00 lakhs, is an offence punishable under Section 132(1)(i) of the CGST Act. The said fact of petitioner working is explained by him in his statements dated 29.10.2020 recorded under Section 70 of the CGST Act.

6. Learned counsel for the petitioner would submit that there is no loss to the Government exchequer. The GST is a beneficial legislation. Section 138 of the CGST Act deals with compounding of offences. The punishment is five (5) years. It is a cognizable offence and non-bailable. Therefore, the respondent authorities have to necessarily follow the procedure under Section 41-A of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). In the present case, the respondent authorities have not followed the same.

7. The learned counsel for the petitioner would further submit that the respondent authorities have falsely implicated the petitioner in the present crime. He would further submit that even as per the complaint, the alleged availment of ITC credit is by a third party and that there is abnormal delay in lodging the complaint. As per the

complaint, the alleged availment of ITC credit by the Company is from 01.07.2017 to 31.08.2020 and the complaint was lodged on 02.11.2020. Thus, there is abnormal delay in lodging the complaint.

8. Learned counsel for the petitioner would further submit that the respondent authorities are alleging that the Company was closed and it was sold by the bank by invoking the procedure laid under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). But, according to him, the Company was not sold. He has filed copy of the sale deed bearing document No.16494 of 2019 dated 29.08.2019 executed by the Company in favour of M/s. Bajaj Heavy Engineering Limited. Referring the said document, learned counsel for the petitioner would submit that the land and shares of the said Company were sold under the above sale deed and not by the bank under the provisions of the SARFAESI Act as alleged by the respondent authorities.

9. Learned counsel for the petitioner by referring to the letter dated 11.09.2019 issued by the Assistant Commissioner (ST) Madhapur-III Circle, Hyderabad Rural Division to the Sub Registrar (SRO), Sadasivpet Mandal, Sanga Reddy District, Telangana, would submit that the respondent authorities have no objection to sale / mortgage immovable property of the Company as mentioned in its earlier letter dated 31.01.2019.

10. Learned counsel for the petitioner has relied on the principle laid down by the High Court of Bombay in **Prasad Purshottam Mantri v. Union of India**¹. He has also referred to the statement recorded by the respondent authorities under Section 70 of the CGST Act and would submit that under pressure and coercion, the said statement was recorded. Even as per the statement of the petitioner, the same is contrary to the contents of the complaint. Learned counsel for the petitioner would submit that the respondent authorities have arrested the petitioner on 02.11.2020 and since then he is in jail. The investigation is almost completed. Therefore, the petitioner's bail application may be considered by imposing any conditions.

11. On the other hand, the learned standing counsel for the respondent would submit that the petitioner herein being the managing director of the Company has committed serious offence. The *modus operandi* adopted by the petitioner is that he indulged in issuing GST invoices, e-way bills and passing on input tax credit to various customers without actual supply of goods. He has referred to the contents of remand application filed under Section 167 of Cr.P.C. In the said remand application, it is specifically mentioned that the investigation revealed that the registered office of the Company is found to be non-existent which is said to be located at Plot Nos.136 and 137, Road No.3, Phase-2, Maitri Nagar, Miyapur, Hyderabad.

¹ 2019(29) G.S.T.L. 647

The factory of the Company said to be located at Survey No.655, Peddapur Village, Sadashivpet Manal, Sangareddy District, is also non-existent.

12. Learned standing counsel for the respondent would further submit that since both the premises are found to be not in possession of the said entity since 2016, there is no established premises of the Company. The *mens rea* of the management of the Company including the petitioner, managing director of the Company, can be clearly viewed which establishes the well thought out conspiracy aimed at duping the exchequer by way of creation of a complex web of inter-connected companies engaged in fraudulent issuance of tax invoices without supply of goods or services to enable the recipient companies to avail and utilize fake input tax credit leading to loss to the Government exchequer.

13. He would further submit that the GST amount involved for the operations carried out by the petitioner for the period from 01.7.2018 to 31.08.2020 is 10.89 crores.

14. Learned standing counsel would further submit that the respondent authorities have already recorded the statement of the petitioner under Section 70 of the CGST Act, wherein the petitioner has categorically answered to Question No.9 of the said statement stating that presently, there is no registered premises of the factory. Business is being run by him from vehicle viz., Grey Colour Swift

Dezire TS07 1667 using laptop and mobile No.9493895762. He has also answered to Question No.10 stating that based on the invoices created in the laptop, he raised documents like e-way bills using hotspot and transfer documents created through mail neerajkarande@godavariengg.com. He also answered that he will submit all the related documents like invoices, e-way bill after retrieval of the same from his mail, as far as possible.

15. The learned standing counsel has also referred to paragraph No.6 of its counter affidavit, wherein it is stated that the investigation is not completed and forward chain recipient of the tax credit is to be investigated. Due to ongoing investigation, the department could lay its hand on an amount of R.42,90,133/- in the electronic credit ledger of the Company of the petitioner. He caused loss of to a tune of Rs.10.89 lakhs to the exchequer of the Government. There is every possibility of the petitioner interfering with the investigation and tampering with the evidence. With the said submissions, the learned standing counsel for the respondent authorities seeks dismissal of the present application.

16. In view of the above rival submissions, the allegations against the petitioner are that he has collected and issued invoices or bills without actual supply of goods in violation of the provisions of the CGST Act and the rules made thereunder leading to wrongful availment or utilization of input tax credit rendered by him and his Company. The *modus operandi* adopted by the petitioner is that he

indulged in issuing GST invoices and e-way bills and passing on input tax credit to various customers without actual supply of goods. It is also specifically mentioned in the remand application that the registered office and also the factory of the petitioner are non-existent one. According to the respondent authorities, the bank has sold the unit of the Company by invoking the procedure laid down under SARFAESI Act. Both the registered office and the factory are found to be not in possession of the Company since 2016. The petitioner has filed irregular inward ITC credit of Rs.5.46 crores and outward irregular ITC credit of Rs.5.43 crores from 01.07.2017 to 31.08.2020. In the statement recorded under Section 70 of the CGST Act, the petitioner has admitted that presently there is no registered premises of the factory. The business is being run by him from the vehicle viz., Grey Colour Swift Dezire TS07 1667. He is also conducting business by using his laptop and mobile No.9493895762. He has answered that based on the invoices created in the laptop, he has raised documents like e-way bills using hotspot and transfer documents created through e-mail neerajkarande@godavariengg.com. He also answered that he will submit all the related documents like invoices, e-way bill after retrieval from his mail, as far as possible.

17. In the counter affidavit, the respondent authorities specifically contended that the investigation is not yet completed. The forward chain recipient of the tax credit is to be investigated. Due to ongoing investigation, the department could lay its hand on an

amount of Rs.42,90,133/- in the electronic credit ledger of the Company of the petitioner. Further, a provisional attachment order under Section 83 of CGST Act was issued to the banker of the Company. Steps have been undertaken to get the laptop recovered under panchanama dated 02.11.2020 to be forensically examined by CFSL, Hyderabad. Such forensic science laboratory report is awaited. Steps have been taken to prevent further loss to the Government exchequer by blocking the ITC credit under Rule 86A(1)(a) of the CGST Act as the competent authority i.e., the Additional Director General has accorded approval along with reasons to believe that the ITC has been fraudulently availed and is ineligible due to two counts i.e. the petitioner has availed credit on fake invoices obtained without supply of goods and Company of the petitioner not conducting business from its registered place.

18. Thus, there are serious allegations against the petitioner. There are several aspects to be investigated into by the investigating officer during the course of investigation. The *modus operandi* said to have been adopted by the petitioner in commission of offence is to be investigated into by the investigating officer. The GST amount involved for the operations carried out by him for the period from 01.7.2017 to 31.08.2020 is Rs.10.89 crores. Admittedly, the investigation is pending.

19. Considering the above and also the offences alleged to have been committed by the petitioner and also the aspect that the petitioner

was arrested only on 02.11.2020, this Court is not inclined to grant regular bail to the petitioner.

20. Therefore, the criminal petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the criminal petition stand closed.

K. LAKSHMAN, J

November 30th, 2020.

PV

