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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1232/2020

KJS CEMENT LIMITED & ANR.

..... Petitioners

Through : Mr.Dayan Krishnan, Senior Advocate
with Mr.Arshdeep Singh Khurana,
Ms.Neeha Nagpal, Mr.Harsh Sethi,
Mr.Arjun Mukherjee, Mr.Aditya
Chopra, Mr.Vishvendra Tomar,
Advocates.

versus

DIRECTORATE GENERAL OF GST

INTELLIGENCE (DGGI) HQRS & ANR.

.... Respondents

Through : Mr.Harpreet Singh, Senior Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **14.08.2020**

1. The hearing has been conducted through Video Conferencing.

Crl.M.A.No.10917/2020

2. Exemption allowed, subject to the condition that petitioner will file the duly sworn/attested affidavit within 72 hours from the date of resumption of the regular functioning of this Court.

3. The application stands disposed of.

Crl.M.A.No.10918/2020

4. Exemption allowed, subject to all just exceptions.

5. The application stands disposed of.

W.P.(CRL) 1232/2020 & Crl.M.A.No.10916/2020

6. This petition is filed is filed with the following prayers:

“(i) Issue a Writ in the nature of Certiorari/ Mandamus or any writ/order/direction Quashing/ Setting aside the Search and Seizure conducted by the Respondents vide Panchnama 07.08.2020 as being

illegal and contrary to the procedure established under the provisions of the Central Goods and Services Tax Act, 2017;

(ii) Issue a Writ in the nature of Certiorari/Mandamus or any writ/order/direction Quashing/ Setting aside all ancillary, connected and consequential proceedings emanating therefrom which have been initiated by the Respondents against the Petitioners as being illegal and contrary to the procedure established under the provisions of the Central Goods and Services Tax Act, 2017;

(iii) Issue a Writ in the nature of Certiorari/Mandamus or any writ/order/direction directing that no coercive steps be taken by the Respondents against the Petitioners or its related entities or employees;”

7. It is submitted by the learned senior counsel for the petitioner, the petitioner is aggrieved by the action of the respondent which is without any legal basis. It is submitted the respondents are acting without any due process and procedure, as is prescribed under CGST Act, 2017; and are acting in a manner violative of the provisions of Cr.PC; as well as the principles of natural justice.

8. The learned senior counsel for the petitioner has referred to the copy of the notice dated 10.08.2020 issued under Section 70 of CGST Act, 2017 wherein the liability of the petitioner is shown (at page 143 of paper book) as Rs.8,04,82,300/-. However it is submitted by the learned senior counsel that yesterday the respondent had issued a press release wherein they claim the liability of the petitioner to the tune of Rs.17.00 crores. It is submitted by the learned senior counsel for the petitioner without going into the implications of the facts involved and without prejudice to the rights of the petitioners, the petitioners are inclined to deposit 25% of Rs.17.00 crores, the alleged liability till date payable by the petitioner per press of the respondent.

9. The learned senior counsel for the petitioner refers to the *Union of India (UOI) and Ors. vs. Make My Trip (India) Pvt. Ltd.* 2019 (11)

SCC 765 more specifically para 2 of the judgment, which is as under:

“2. The issue is as to whether the power of arrest Under Section 91 of the Finance Act, 1994 ("the said Act") can be exercised without following the procedure as set out in Section 73(A) and (4) of the said Act. The High Court has decided, after detailed discussion, that it is mandatory to follow the procedure contained in Section 73A(3) and (4) of the said Act before going ahead with the arrest of a person under Sections 90 and 91. We are in agreement with the aforesaid conclusion and see no reason to deviate from it.”

10. He further refers to *M/s. Jayachandran Alloys (P) Ltd. vs. The Superintendent of GST and Central Excise and Ors.* in Writ Petition No.5501/2019 and WMP No.6251/2019 more specifically para 36, which is as under:

“36. Though the discussions and conclusions therein have been rendered in the context of Chapter V of the Finance Act, 1994, levying service tax, I am of the view that they are equally applicable to the provisions of the CGST Act as well. Section 132 of the Act as extracted earlier, imposes a punishment upon the Assessee that ‘commits’ an offence. There is no dispute whatsoever that the offences set out under (a) to (l) of the provision refer to those items, that constitute matters of assessment and would form part of an order of assessment, to be passed after the process of adjudication is complete and taking into account the submissions of the Assessee and careful weighing of evidence found and explanations offered by the Assessee in regard to the same.

7. The use of words ‘commits’ make it more than amply clear that the act of committal of the offence is to be fixed first before punishment is imposed. The allegation of the revenue in the present case is that the petitioner has contravened the provisions of Section 16(2) of the Act and availed of excess ITC in so far as there has been no movement of the goods in the present case as against the supplier and the Petitioner and the transactions are bogus and fictitious, created only on paper, solely to avail ITC. The manner of recovery of credit in cases of excess distribution of the same is set out in Section 21 of the Act. This section provides that where the Input Service Distributor distributes credit in contravention of the provisions contained in Section 20 resulting in excess distribution of credit to one or more recipients, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of Section 73 or Section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.”

11. The same law is followed by the Gujarat High Court in *Vimal Yashwantgiri Goswami vs. State of Gujarat* in R/Special Civil Application No.13679/2019 decided on 07.08.2019 as well as the Punjab and Haryana High Court in in CWP No.24195 of 2019(O&M) in *Akhil Krishan Maggu & Anr. vs. Deputy Director, Directorate General of GST Intelligence & Ors.* decided on 15.11.2019.

12. The learned senior counsel for the petitioner also referred to *C.Pardeep vs. Commissioner of CGST and Central Excise Selam and Anr.* SLP(Crl.) 6834/2019 wherein vide order dated 06.08.2019 it was held:

“Learned counsel for the petitioner submits that indisputably assessment for the relevant period has not been completed by the Department so far. In which case, invoking Section 132 of the Central Goods and Services Tax Act, 2017 does not arise. He further submits that, even if, the alleged liability of Rs. 19 crores as is assumed by the Department is accepted, it is open to the petitioner to file appeal after the assessment order is passed; and as per the statutory stipulation, such appeal could be filed upon deposit of only 10% of the disputed liability. In that event, the deposit amount may not exceed Rs. 2,00,00,000/- (Rupees Two Crores), which the petitioner is willing to deposit within one week from today without prejudice to his rights and contentions in the assessment proceedings and the appeal to be filed thereafter, if required.

Issue notice on condition that the petitioner shall deposit Rs. 2,00,00,000/- (Rupees Two Crores) to the credit of C.No. IV/16/27/201HPU on the file of the Commissioner of GST & Central Excise, Salem, Tamil Nadu and produce receipt in that behalf in the Registry of this Court within ten days from today, failing which the special leave petition shall stand dismissed for nonprosecution without further reference to the Court.

Subject to the above, notice returnable within three weeks. Dasti, in addition, is permitted.

For a period of one week, no coercive action be taken against the petitioner in connection with the alleged offence and the interim protection will continue upon production of receipt in the Registry about the deposit made with the Department within one week from today, until the disposal of this Special Leave Petition.”

13. It is submitted by the learned senior counsel for the petitioner

though the Hon'ble Supreme Court has directed to pay 10% of the liability during the investigation, the petitioners herein are inclined to pay 20% of the alleged liability as of today.

14. However the learned counsel for the respondent submit the amount stated above is tentative and since the investigation is still going on, the amount of liability may increase. The learned senior counsel for the petitioner submits as and when the amount would increase they shall comply with further directions passed by this Court. It is further submitted the petitioner has paid Rs.1.50 crores approx. to the department and that the raids are being conducted respondent at the office of the petitioner.

15. In the circumstances, let the petitioner deposit an amount equivalent to 25% of the amount of Rs.17.00 crores, the alleged liability as is of today and shall also join the investigation as and when directed by the department. The amount shall be deposited within two weeks from today. However, it is submitted by the learned senior counsel for the petitioner an amount of Rs.1.50 crores approx. has since been deposited by the petitioner with the Department, its credit be given.

16. At this stage the learned counsel for the respondent submits this order shall apply only to the petitioners herein and would not be treated as a precedent. Allowed.

17. List on 30.09.2020.

YOGESH KHANNA, J.

AUGUST 14, 2020

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