IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.10.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.14636 of 2020

Kanthasamy ... Petitioner

Vs.

State rep. by:
The Superintendent of CGST &
Central Excise,
No.6/7, ATD Street, Race Course Road
Coimbatore-18.
(C.No.IV/06/31/2020-HPU) ... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in C.No.IV/06/31/2020-HPU on the file of the respondent.

For Petitioner : Mr.V.Kumaresan

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 13.08.2020 for the offences punishable under Section 132(1)(i), subsection (1)(b) and (c)of Central Goods and Services Act, 2017 on the file of C.No.IV/06/31/2020-HPU, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that information was given by the Principal Commissioner of CGST & Central Excise, Raigad Commissionerate calling for follow up action for a fake company at Mumbai viz., M/s.Raj Tex who had passed on ineligible input tax credit without actual supply of goods to a local unit M/s.Lakshmi Tex falling under the jurisdiction of Coimbatore Commissionerate. Based on the input received from the Raigad Commissionerate comprehensive intelligence was gathered against M/s.Lakshmi Tex, Tirupur and on preliminary verification, it was noticed that the unit was non-existent at the principal place of business as declared by them in their GST registration. No bank details were available on the registration forms. Owing to discreet enquiries, it was found that M/s.Lakshmi Tex had applied for refund under Inverted duty structure showing purchase of polyester yarn from Mumbai at GST rate of 18% and outward supply of manufactured fabric at 5%. A thread bare analysis of the bank statement of the account submitted for refund by them led to another bank account maintained in Federal Bank and which finally led to the location of the actual residential address of Shri.Mohammed Sahil who had floated the above fake company. On searching the residential premises at No.60, New York Avenue, Coimbatore, various incriminating documents have been seized wherein invoices have been issued for around Rs.50 crores involving a GST amount of Rs.9.40 crores approximately. On further investigation of Shri.Mohammed Sahil alias Sathya, it was found that he in connivance with the petitioner, a GST Consultant had floated five companies under various names and different address for claiming refund and pass on the fake Input Tax Credit fraudulently to others. Thereafter, search operations were conducted at the office and residential premises of the petitioner and several incriminating documents, cash of Rs.4,00,000/- and lot of property documents were seized under a mahazar. Further other documents corroborating his active role in preparation and furnishing the fake invoices and making fraudulent claims and also passing on credit to other fake companies and the bogus invoices issued without supply of goods for around Rs.50,00,000/- involving GST amount to the tune of Rs.9.40 crores approximately was found.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he is only a Tax Consultant and he has acted as per the instructions given by the main accused Mr.Mohammed Sahil and that as a professional, he has done his work. He would further submit that only an attempt has been made and the department has not suffered any loss. He would further submit that the petitioner is in judicial custody from 13.08.2020. He would further submit that the petitioner is prepared to abide by any stringent conditions that may imposed on him by this Court.

4.The learned Special Public Prosecutor vehemently opposed this petition stating that the petitioner has colluded with one Mohammed Sahil committed tax evasion and by furnishing the fake invoices attempted to claim refund and pass on the fake credit inputs to fake companies fraudulently. Though it may look like an attempt, investigation is continuing and that the petitioner has sent several invoices to various persons and it seems some of the accused have claimed amounts. He would submit that investigation is pending and fortunately, the fraud came to light before the amount of Rs.2 Crores was refunded.

5. At this juncture, the learned counsel for the petitioner would submit that the petitioner is in custody for more than 60 days and he is prepared to abide by any stringent condition that may be imposed on him. He would further submit that the petitioner's property documents have been taken under the cover of mahazer and the same has been sealed and handed over to the wife of the petitioner. If the de-facto complainant permits, the petitioner is prepared to deposit the title deed before the Court to the credit of the case in C.No.IV/06/31/2020-HPU and the wife of the petitioner undertakes to stand as surety.

6.Taking into consideration of the facts and circumstances and the submissions made by the learned counsels and also considering the period of incarceration suffered by the petitioner and that the petitioner is also prepared to deposit an amount of Rs.3,00,000/- to the Credit of C.No.IV/06/31/2020-HPU, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties, out of which one surety should be the wife of the petitioner, each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Coimbatore.

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

c) the wife of the petitioner shall deposit an amount of Rs.3,00,000/- to the credit of C.No.IV/06/31/2020-HPU on the file of the respondent.

d) the wife of the petitioner shall also deposit the following documents (viz., Documents bearing numbers and date)

1) 11367 dated 27.09.2007, Sri SPK Real Estate, S.No.2107 vacant land

2) 10796 dated 13.09.2007 SPK Nagar S.No.2108 Vacat land

3) 5330 dated 29.08.2020 Success Nagar S.No.34, Building

4) 6349 dated 09.09.2005 Paraskthi nagar, S.No.135, Vacant land

5) 13328 dated 26.10.2016 Mathappur .. No.4786 vacant land

6) 2721 dated 17.08.2017 - Thangam Lay out - Building S.No.15

7) 3583 dated 14.09.2018 Srimahalakshmi Nagar S.No.35.36 vacant land.

8) 1531 dated 20.05.2020 Sri Bannari Amman Nagar S.No.40 vacant land

9) 4174 dated 23.10.2018 Sri Sasti Nagar S.No.37, 38 vacant land

10) 2691 dated 21.05.1990 Eswaramoorthy Nagar S.No.46 House.

(e) the petitioner shall report before the respondent daily at 10.30 a.m., until further orders.

(f) the petitioner shall not commit any offences of similar nature;

(g) the petitioner shall not abscond either during investigation or trial;

(h) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(i) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(j) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-
08/10/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT OF CGST
AND CENTRAL EXCISE,
NO.6/7, ATD STREET,
RACE COURSE ROAD,
COIMBATORE-18.

+1 CC to M/S. V.KUMARESAN Advocate on payment of necessary charges
SR.No.6739

CRL OP.14636/2020

Date :08/10/2020

cs 09/10/2020