BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 978 OF 2020

MR ESSA ISAMAIL MERCHANT ….Applicant.
V/s
UNION OF INDIA & ORS …..Respondents

Ms. Priyanka Dubey a/w Ms. Megha Gupta a/w Mr. Mayank Tripathi i/b Hedgehog & Fox for the Applicant.
Mr. J. B. Mishra a/w Ashutosh Mishra for the Respondent Nos.1 and 2.
Mrs. Rutuja Ambekar, APP for the Respondent No.3/State.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 30, 2021

P.C.:-

1] Applicant is seeking pre-arrest bail in the matter of inquiry and investigation in F. No.V / CGST/MSOUTH/AE/G-02/ENQ/KAUSHAL/ 631/2019 conducted by Respondent-Authorities.

2] Prosecution case against the Applicant is, the Applicant, a Managing Director of Advanced Computers and Mobiles India Private Limited, has availed and passed on Central Excise and G.S.T. benefits illegally, to which he was not lawfully entitled. It is claimed that summons were served on the Applicant on 15/05/2019, calling upon him to appear before the Respondent-Authorities for inquiry of tax evasion. The interrogation or behaviour of the Officers of Respondent-Authorities has prompted him to believe that he is likely to be arrested in the aforesaid inquiry, prompting him to approach the Sessions Court through ABA No.1456 of 2020 which was rejected on 04/12/2020.

3] Counsel for the Applicant while trying to make out a case for pre-arrest bail, would urge that pursuant to the summons issued to the Applicant, he has 18 times attended Office of the Respondent-Authorities and has cooperated in investigation. According to her, goods, as reflected in his Sales Accounts, were duly supplied to various companies including M/s Kushal Ltd. who have arranged for transportation. It is further claimed that in ITC return, Applicant has shown income of Rs 8 crores and accordingly appropriate tax is paid. It is further claimed that even other Director viz Mr. Mohzam Patni was interrogated by recording his statement on 10/10/2019. Applicant having attended the Office of Respondent-Authorities for 18 times in past two years and provided all the Accounts and documentary evidence which is necessary for investigation of the offence prima facie demonstrates his false implication in crime. It is the further contention of the Applicant that unless Accounts of the Applicant are audited and intentional tax evasion with criminal intent is found out, Applicant cannot be subjected to custodial interrogation. As such, it is claimed that Applicant is entitled for pre-arrest bail.

4] Counsel appearing for Respondent-Authorities would strenuously oppose the prayer and would urge that there is enough material on record to prima facie infer involvement of the Applicant in the offence. It is claimed that during raid and further investigation Applicant's involvement was prima facie noticed in creation of fraudulent business transactions on record, thereby availing G.S.T. benefits and as such Application needs to be rejected.

5] Considered submissions.

6] One M/s Kushal Ltd., based on intelligence input, was subjected to investigation by the Commissionerate, Ahemedabad, as the said Firm was found to have engaged in receiving G.S.T. credits from the suppliers on the basis of invoices only. Though the invoices were generated, there was no actual exchange or delivery of goods and said

G.S.T. credit was then passed on to buyers without any physical delivery of goods. Mr. Sandeep Agarwal of said M/s Kushal Ltd. was subjected to interrogation. In the statement of said Sandeep Agarwal recorded under Section 70 of the C.G.S.T Act, 2017, it is reflected that invoices were generated without actual involvement of the goods and no transportation documents were prepared. In the investigation, it was noticed that Applicant's Firm has issued invoices to said M/s Kushal Ltd for an amount of Rs 51,43,86,451/- having G.S.T. liability of Rs 8,71,46,177/-.

7] As such, aforesaid inquiry was initiated against the Applicant. Partner of the Applicant viz. Mohzam Patni who claimed to have been inducted from 07/08/2019 informed that the Firm of the Applicant was incorporated on 12/03/2014 in which Applicant, initially, was working as administrative staff on monthly salary. However, he became full time Director from 07/08/2019. It is further claimed that entire decisions of the Firm in relation to business of the Firm were taken by the present Applicant while dealing in mobiles, Laptops, televisions, air conditioners, mobile accessories, fridge and scraps. The said witness has failed to furnish details of the goods transacted, though present Applicant has produced documents such as Invoices, Lorry Receipts, Bank Statements vide communication dated 27/5/2019, so as to establish genuineness of business transactions between M/s Kushal Ltd and Firm of the Applicant. During investigation, it was noticed that the said documents were doctored as same were not generated in regular business transactions. The Lorry Receipts seems to be serially numbered without Sales Tax or Central Tax registration number, details of the registration of the vehicle were not matching with that of the Lorry details and the goods were shown to have been transported within Bhiwandi area only. It was informed to the Applicant to demonstrate that such goods were procured, thereby matching with the supplies of M/s Kushal Ltd and claim of the Applicant that same were procured from two other Companies viz. CKP and M/s Augusta was not established as these Firms were found to be not in existence. Transporters whose services were claimed to have been hired by the Applicant, particularly as reflected in 523 e-way bills depict that vehicles of which numbers were furnished were never used for such supplies as has been claimed and reflected from the statements of vehicles owners. The proprietor of M/s Jay Shree Ram Transport in his statement under Section 70 claimed that he has never transported any electronic items, as has been claimed by the Applicant. As such, explanation tendered by the Applicant during inquiry was found to be not matching with that of other evidence collected. The objectionable business transaction of the Applicant has resulted into wrongful availing and passing of input tax credit amounting to more than Rs 69 crores.

8] As such, it appears hat there is enough material on record to infer prima facie involvement of the Applicant in the offence punishable under Section 132(1)(b), 132(1)(c) and 132(1)(l) of the Central Goods & Services Tax Act, 2017. That being so, in my opinion, no case for pre-arrest bail is made out. Application as such stands rejected. Ad-interim order of protection stands vacated.

(NITIN W. SAMBRE, J.)