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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 03.02.2021

Pronounced on: 11.02.2021

+ BAIL APPLN. 319/2021 & CrI.M.B. 92/2021

LUPITA SALUJA

..... Petitioner

Through Mr.N.Hariharan, Sr. Adv. with
Mr.Shadman Ahmed Siddiqui,
Mr.Sumer, Mr.Siddharth S. Yadav,
Mr.Samarth K. Luthra &
Mr.Abhishek Pati, Advs.

versus

DGGI AND ANR

..... Respondents

Through Mr.Harpreet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Present petition has been filed under section 438 Cr.P.C. seeking anticipatory bail to the petitioner in relation to the enquiry/investigation being conducted by the respondent under Central Goods & Service Tax Act, 2017.

2. The case of the prosecution against the petitioner herein is that applicant and her husband created five bogus export firms, namely, M/s Atlantic International Trading Pvt. Ltd, M/s Blue Star International Pvt. Ltd,

M/s Sun Flame Trading Pvt. Ltd., M/s Blue Evolution Pvt. Ltd and M/s White Mountain Trading Pvt. Ltd. and fraudulently availed ITC of Rs.45 crores upon the strength of fake invoices providing fabricated information on E-way bill portal. On enquiry, it is found that all their suppliers were either non-existent at the declared principal place or the business address given in the GST registration. Moreover, none of the transporters have transported the good for the companies in question, however, only one transporter disclosed that he transported the goods from a warehouse to ICD TKD and not from any of the suppliers as claimed by the husband of the applicant in his statement dated 17.11.2020 recorded u/s 70 & 174 of CGST Act. The applicant and her husband are active directors of the abovementioned five companies and were well aware of all the tax related dealings of the companies. The applicant in her voluntary statement dated 10.12.2020 has stated that she signed all the financial documents regarding day to day work of these firms. However, during investigation, it has been revealed that applicant was drawing annual salary of Rs.7,20,000/- whereas her husband was drawing annual salary of Rs.6,00,000/-. The applicant has received approximately Rs.279 crores from her companies accounts in her

personal savings account maintained in Indusind Bank and Rs.5.79 crores in her bank account maintained in ICICI Bank.

3. Learned counsel for the respondents, while opposing the present petition, submitted that from the investigation carried out and the incriminating evidence collected so far, it is clear that the applicant was not merely a housewife but she was actively involved in the affairs of the companies in question including financial affairs and was very well aware of all the misdeeds done by her in order to claim GST refund of Rs.45 crores. Moreover, the applicant is not cooperating in the investigation and since the day of arrest of her husband, she is absconding and the investigation is being conducted under strict adherence of law and under relevant provisions of CGST Act.

4. Further submitted that filing of the Writ Petitions bearing No.10013-15 have no bearing on the present investigation as this Court has not granted any stay in the said writ petitions. Searches were made by the investigating agency after obtaining due approval from the competent authority and under relevant provisions of law. Thus, the instant petition is liable to be dismissed.

5. Whereas, learned counsel appearing on behalf of the petitioner submitted that Rs.279 crores credited to the personal account of the applicant from the accounts of the Companies i.e. M/s Sun Flame Trading Pvt. Ltd., M/s Blue Star International Private Ltd. & Atlantic International Trading Pvt. Ltd., from 2017 to 2020, were further debited to the accounts of the Companies. Such receipt and transfer of the aforesaid amount is duly reflected in the Bank statement of the applicant as **Annexure A- 29**, and which is further corroborated with the Audited Ledgers of the Company which are annexed herewith as **Annexure A-30**. The reason for the aforesaid transfer was that the Companies were not generating handsome profit and with a sole purpose to earn interest, the monies received from the foreign buyers were transferred from the current accounts of the Companies to the saving accounts of the applicant for few days, and finally after generating interest, it was again transferred to the current account of the Companies. Moreover, the applicant has paid income tax on the interest accrued thereon. Copy of the ITRs filed by the Applicant is attached herewith as **Annexure A-31**.

6. Further submitted that the applicant has not siphoned off even a single penny received from the accounts of the Company. Moreover, the applicant

has no movable and immovable assets in her name. The applicant has only received annual salary of Rs. 3 lakhs for the Financial Year 2019-2020 and has not received any salary for the Financial Year 2018-19. Therefore, the allegations of the respondent that the applicant has drawn the annual salary of Rs.7.20 lakhs are misconceived.

7. It is submitted that the alleged offence u/s 132(b), CGST Act, 2017 is not made out against the Companies of the Applicant ("*Companies*") as firstly, admittedly all the exports made by the Companies of the applicant are not disputed by the respondent, and secondly, there is no such allegations qua the Companies of the applicant that the Companies have forged and fabricated the invoices.

8. As regards the 132(l)(c) CGST Act, 2017 i.e. availment of input tax credit ("*ITC*") using such invoice or bill referred to in clause (b), it is submitted that the Companies have availed the ITC as per section 16 of the CGST Act, 2017 after fulfilling the criterion mentioned therein. The suppliers of the Companies have been filing GSTR 1 & GSTR 3B returns and the tax liability of the Companies is auto populated in GSTR 2A. The Companies have been filing GSTR 3B and GSTR 9C with Audit, which matches with the returns filed by the suppliers. Consequently, the ITC is

credited to the Accounts of the Companies. Thus, the Companies have not fraudulently availed ITC, in fact, the ITC have been credited to the accounts of the Companies after having found no discrepancies by the Respondent, in the returns filed by the Suppliers and the Companies of the applicant. Thus, no offence u/s 132(l)(c) of CGST Act is made out against the Companies. Moreover, the goods supplied by the suppliers are sent at the ICD, Tughlakabad and from there, it is further exported by the Companies, which leaves no scope of doubt that the goods are not purchased from the suppliers. It is further submitted that after receiving goods from the suppliers, the Company has made export of crores of rupees. Thus, it is totally misconceived and denied that the suppliers have only provided invoices to the Companies of the applicant without any supply of goods.

9. As regards 132(l)(e) of CGST Act, 2017, i.e. evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clause (a) to (d), it is submitted that the Companies of the applicant is not liable to pay tax for the goods exported by them as it falls under zero rated supply, in view of section 16 of ICGST Act, 2017. The Companies pay the IGST Tax by filing GSTR 1 return for their outward supplies, which is further refunded back to companies after filing GSTR 3B

return and GSTR 9C with Audit. Moreover, the exports made by the Companies are not disputed by the Respondent. Thus, allegations that the Companies of the applicant evade tax or/and has fraudulently obtained refund or ITC are wholly misconceived and thus denied.

10. I have heard learned counsel for the parties and perused the material available on record.

11. It is not in dispute that the suppliers have their valid PAN cards as well as Bank accounts and they have been granted registration by the Respondents itself after doing complete verification from their end, in terms of Chapter VI of CGST Act, 2017. Moreover, the suppliers of the Companies of the applicant have been filing requisite GSTR returns and doing all the compliances under CGST Act, 2017, on the basis of which ITC is credited to the Account of the Companies of the applicant.

12. From the material available on record, it established that the suppliers have supplied goods to the Companies, which have been further exported by the Companies to the buyer. In addition to it, payments received by the Companies from their foreign buyers are further transferred to account of the suppliers via-online. Copy of some of the Ledgers maintained by the

Company qua their suppliers are annexed herewith as Annexure A-32. Therefore, it is wholly misconceived that the suppliers are non-existent.

13. As regards the supply of goods by the transporter, it is submitted that the e-way bill is uploaded by the supplier with the concerned online portal of the Respondent wherein vehicle no. and HSN code are mentioned. This portal is also linked to the Regional Transport Authority to verify whether the vehicle is existent or not. In case of any discrepancy in vehicle arising therefrom, the system of the Respondent does not accept it. Moreover, after uploading the e-way bill, the goods are transported by the concerned vehicle at ICD, Tughlaqabad, wherein the entry pass are issued by the custom authorities and the goods are unloaded from the vehicle and are further inspected by the authorities. It goes to many levels of checks and inspection by the Custom Authorities and Export General Manifesto ("EGM") are issued at different stages. It leaves no doubt that the goods are not transported by the concerned vehicle as it goes through different level of checks and inspections. However, above facts have not been investigated by the respondents.

14. It is not in dispute that on the day the impugned order has been passed, the said Judge granted regular bail to the husband of the applicant

after spending nearly 50 days in custody who is the person involved in day-to-day affairs of the company, however, dismissed the anticipatory bail of the applicant.

15. It is also not in dispute that the applicant and her husband were called for investigation by the Investigating Agency/Department on 10.12.2020 and their statements were duly recorded. Husband of the applicant was arrested but applicant was released on the same day.

16. Admittedly, the export made by the companies of the applicant in crores of rupees. The Investigating Agency has conducted as many as 5 raids including the residence and office premises of the applicant and seized the evidence such as original documents, purchase and sale invoices, ledgers and Bank Statements, hard disks, CPU, export details, etc.

17. It is not in dispute that the W.P.(C) 10013/2020 and W.P.(C) 10014/2020 and W.P.(C) 10015/2020 filed by the applicant, challenging the powers of seizure, arrest, etc. However, the applicant was never called upon to join the investigation in about 1 year, but called first time i.e. after her husband and she had challenged the entire investigation before this Court in the abovementioned writ petitions.

18. In view of above facts, I am of the view that custodial interrogation of the applicant is not required.
19. Accordingly, the Arresting Officer is directed that in the event of arrest, the petitioner/applicant shall be released on her furnishing a personal bond in the sum Rs.25,000/-.
20. The petitioner shall cooperate with the investigation and make herself available for interrogation by police officer, as and when required.
21. She shall not directly or indirectly influence any witness or tamper with the evidence.
22. It is made clear that the Trial Court shall not get influenced by the observation made by this Court while passing the order.
23. The petition is, accordingly, allowed and disposed of.
24. Copy of this order be transmitted to SHO/IO for information and necessary compliance.
25. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 11, 2021
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