rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2462 OF 2022

Mahendra Javatraj Jain] .. Applicant
vs.
Superintendent , O/o Principal Commissioner]
CGST & Central Excise & Anr.] .. Respondents

Mr.Pankaj D. Jain a/w Tejashree Kamble i/b P.D. Jain & Co. for the Applicant.
Mr.Amit Munde, for Respondent No.1.
Ms.J.S. Lohkare, APP for the State

CORAM : BHARATI DANGRE, J

DATE : 12th OCTOBER, 2022.

P.C.

1] Heard the learned counsel for the Applicant. The learned counsel for Respondent No.1-Department, has filed Affidavit through the Superintendent, CGST and Central Excise.

2] The Applicant is apprehending his arrest in connection with the alleged offence under Section 132 of the CGST Act and the case of Respondent no.1 is to the effect that though summons was issued to the Applicant on 21.02.2022 and 01.03.2022, he responded to the summons which has made his custodial interrogation imperative.

3] The learned counsel for the Applicant allege that the Applicant is a sleeping/non acting partner of M/s.Rushabh Bullion and its active partner was one Jitendra Ganeshlal Dhakad, who has been released on bail on being arrested and since he was the main active participant in the business of M/s.Rushabh Bullion and by virtue of sub-section (3) of Section 137 and by taking recourse of sub-section (4) of Section 137, the Applicant is not answerable to the charges, as he was not dealing with the business of the partnership firm.

4] The case of Respondent No.1 as discerned from the show cause notice and reply placed on record is, that M/s.Rushabh Bullion having GSTIN No.27AAMFR1367B1Z9, was carrying on business on the given address and accusation faced by the said firm is that it has availed Input Tax Credit (ITC) fraudulently to the tune of Rs.7.11 Crore during the financial year 2019-20 and 2020-21 from its two suppliers viz.: M/s.Goldmine Bullion (GSTIN NO.27AAKPC5958M1Z5) and M/s.Riddhi Siddhi Gold (GSTIN No.27CACPC3607B1ZG).

On the basis of GSTR-2A Returns, the ITC availed by M/s. Rushabh Bullion from the two companies has been bifurcated as per the following chart :

Sr.No.	Name of Supplier	Taxable Value (in Rs.)	ITC availed (in Rs.)
1.	M/s.Goldmine Bullion	163,14,31,000	4,89,42,930
2.	M/s.Riddhi Siddhi Gold	74,10,97,000	2,22,32,910
	Total	2,37,25,28,000	7,11,75,840

The chart is also part of Affidavit where it is reflected that M/s.Rushabh Bullion availed ITC from M/s.Goldmine Bullion which in turn had received ITC from Vardhman Creation and the chart to that effect is drawn in the Affidavit, as under :.

Vardhman Creation (Total ITC available is Rs.5.57 Lakhs only)	ITC passed on	Goldmine Bullion Total ITC availed Rs.10.36 Cr. (Entire ITC is availed from M/s.Vardhman Creations)	ITC passed on	Rushabh Bullion
	Rs.10.36 Cr.		Rs.4.89 Cr.	

5] The learned counsel for Respondent No.1, would submit that the investigation has revealed that GSTR-2A of M/s.Riddhi Siddhi Gold have been downloaded, which reveal that entire purchase of goods by the said entity is from M/s.Neel Creation and M/s.Riddhi Siddhi Gold and M/s.Neel Creation, both are registered at the same principal place of business being located in Maganlal Chambers, Chinchbunder, Mumbai. It is, therefore, suspected that these two entities, without carrying any business, have availed ITC and in fact no goods have been received by M/s.Rushabh Bullion from M/s.Riddhi Siddhi Gold and despite this, the partnership firm has utilized ITC amount to the tune of Rs.7.55 crores and that has attracted offence under Section 132 of the CGST Act.

6] As far as contention of the learned counsel for the Applicant that he was sleeping partner, the Affidavit reveal that in response to the summons dated 15.03.2022, the Applicant had appeared before the Proper Officer and in his statement recorded on 17.03.2022 he has admitted that he is one of the partner in M/s.Rushabh Bullion.

The liability to pay tax is created by virtue of Section 90 of the CGST Act in respect of the partnership firm and where any firm is liable to pay any tax, interest or penalty under the Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment with proviso carved out. However, the instant Applicant in case cannot be claimed to be governed by the said proviso. For that purpose, the learned counsel for the Applicant has vehemently submitted that he is entitled for the benefit of sub-Section 3 and 4 of Section 137 of the CGST Act.

I do not think that his argument is available, since merely claiming himself that he is sleeping partner would not come to his rescue and similar order passed in the case of accused Jitendra Dhakad who has been released on bail, who was a Director, and who was playing active role in the partnership firm, do not absolve the present Applicant, who is also one of the partner in the said partnership firm. The accused Jitendra Dhakad underwent custodial interrogation and when he sought bail, on considering that investigation qua him is complete, he came to be released on bail. The said order, therefore, is of no succor to the Applicant as considering the summons issued to him, there is reason to believe that the Applicant has committed alleged offence. Hence, his custodial interrogation from the material surfacing on record is necessary.

The Application is hencerejected as the Applicant is accused of availing tax credit to the tune of RS.7.11 Crores.

[BHARATI DANGRE, J]