IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2022	Pronounced on : 10.03.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.3725 of 2022

Thiru.Yasar Arabath,
S/o.Kaleel Rahman,
Proprietor of Tvl.Golden Traders ... Petitioner/Accused No.1

/versus/

Deputy Commissioner (State Taxes),
Inspection – II, Intelligence Wing,
Chennai – 600 006. ... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 439 of Cr.P.C., praying that the petitioner/accused may be enlarged on bail in the above proceedings in R.R.No.01 of 2022 on the file of the respondent.

For Petitioner : Mr.Mubarak Ahmad, for
M/s.Ahmad Associates

For Respondent : Mr.M.Venkateswarn,
Special Government Pleader (Taxes)

ORDER

This Criminal Original Petition is filed by the petitioner who was arrested on 10.01.2022 and remanded to judicial custody for the offences under Section 132(1)(b) & (c) of TNGST Act, 2017, in R.R.No.01 of 2022, on the file of the respondent police, seeks bail.

2. The magnitude of the loss to Government revenue as alleged to Rs.5,16,66,620/-. The remand application of the Deputy Commissioner (State Taxes), Inspection – II, Intelligence Wing Chennai/complainant indicates that the petitioner herein is the Proprietor of Tvl.Golden Traders engaged in bill trading activities and passing on Input Tax credit to various companies fraudulently and on the date of filing the complaint, the loss of revenue to the Government is assessed as Rs.4,78,47,505/-. In the complaint, it is stated that without any stocks worth mentioning in a place business premises having 10*10 (100sq.ft), the petitioner created document as if he is transacting several crores of rupees and created bills for the purpose of availing input tax credit. After giving opportunity to the accused/petitioner herein, on verification of ledgers for the year from 2018-2019 to 2021-2022 (upto November 2021) Input tax credit has been adjusted against its liabilities and has paid a meager amount as cash. Also on verification of the returns, it has come to the notice of the authorities, the accused has raised invoices without making actual movement of goods and passed over input tax credit also the accused in the name of Tvl.Golden Traders for the year 2018-2019 (February 2019) to 2021-2022 upto (July 2021) have effected inward supply from the tax payers who are declared as "Non-existence". The availed input tax credit for a value of Rs.3,39,18,138/- stating that having committed an offence of enriching himself by issuing invoice without supply of goods and availed input tax credit fraudulently without genuine invoice and wrongful utilization of the amount, all put together over and above Rs.5 crores liable to be prosecuted for non-cognizable offence.

3. The petitioner herein seek bail on the ground that the allegation against him is evasion of input tax credit to a tune of Rs.3.39 crores which is bailable offence as per Section 132 of the TNGST Act 2017. Further, no adequate opportunity was given to him before remand which is mandatory requirement under Section 132 (1)(ii) of the TNGST Act. The grounds of arrest ought to have been provided to the accused persons as per Section 69(2) of the TNGST Act

2017, which was not communicated to the accused. In any event, the petitioner being in bail for about 60 days is entitled for bail since custodial interrogation already over and his deterioration in prison not more required.

4. In the counter filed by the respondent would submit that the complaint was raised after proper inspection of the petitioner's premises and collection of records. The petitioner was given adequate opportunity and he appeared before the authority on 24.08.2021 and produced certain document which lacks authenticity and thereafter, when he again summoned for production of document, he failed to produce the document though he appeared on 08.12.2021. His sworn statement was recorded on that day and the petitioner accepted that he has produced the fake invoices to Tvl.Selva Vinayagar Steet and others without supply of goods and also accepted to pay the liability which has wrongly passed to be beneficiaries. When he was again summoned to appear on 11.12.2021 on behalf of the petitioner, his legal representative turned up and sought time till 07.01.2022. In spite of seeking extension of time, no record was produced and therefore, with the available record the tax evasion and fraud has been arrived as below:-

Year	Taxable TO	Tax Due (?)			Tax Paid (?)		
		IGST	CGST	SGST	IGST	CGST	SGST
2018-19	784900	0	70641	70641	0	1386	1386
2019-20	105631681	0	9506851	9506851	0	179961	179961
2020-21	129637591	0	11667382	11667382	0	127467	127467
2021-22	54873297	0	4938598	4938598	0	56348	56348
Total	**290927468**	**0**	**26183472**	**26183472**	**0**	**365162**	**365162**

5. Thus, sufficient materials available to show the petitioner without having inward supply of goods, have issued fake invoices without actual movement and supply of. He made total cash payment of Rs.7,30,324/- only as against the Rs.5,23,66,944/-. Hence, the offence committed exceeds Rs.5 crores. The offence committed falls under Section 132(1) of TNGST Act 2017. Hence, it is a non-bailable offence. The evidence gathered against the petitioner and the total loss of the State due to the tax credit evasion being detailed out in the counter elaborately. It is further stated that the investigation not yet completed to identify the other fake floated by the petitioner. Therefore, the investigation has entered very crucial stage, if the petitioner is granted bail, it will cause hindrance to the investigation and he may even tamper the evidence.

Section 132 of Tamil Nadu Goods and Services Tax Act, 2017

Punishment for certain offences:-

"132. (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences] namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, [*****] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of

his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) <u>in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds five hundred lakh</u>

rupees, with imprisonment for a term which may extend to five years and with fine; (Emphasis added)

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and

(iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub- section shall be cognizable and non-bailable.(Emphasis added)

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term- "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and cess levied under the Goods and Services Tax (Compensation to States) Act."

6. The reading of Sections 132 (1) (a), (b) and (c), 132(5) of Tamil

Nadu Goods and Services Tax Act and the explanation thereof made amply clear that in the instant case the tax evasion exceeds Rs.500 Lakhs i.e., Rs.5 lakhs.

7. It is correct to say the arrest memo and remand report does not reflect the same figure. However, the material placed along with the remand report would show that the tax evasion on different heads had exceeding more than Rs.500 Lakhs. From the material placed by the prosecution show a continuous offence committed by the petitioner herein since 2018-2019 and the figure of Rs.4,78,47,505/- was only till July 2021. Whereas, the remand application is on 10.01.2022 which reflects the loss of revenue under three different heads with exceeds more than Rs.5 crores. Therefore, the plea of the petitioner that offence committed by him is only a bailable offence and the tax evasion is less than Rs.5 crores is contrary to the records placed by the prosecution.

8. As far as, the custodial interrogation viz., grant of bail it is necessary to take into account the apprehension of the respondent that the petitioner who has floated fictitious companies and create records, if let out on bail will tamper the evidence. Since the investigation has entered the crucial stage, the release of the petitioner at this stage will lead to tampering of evidence. The objections of the respondent is well found and therefore, this Criminal Original Petition is dismissed.

10.03.2022

Index :Yes/No.
Internet :Yes.
Speaking order/Non Speaking order

To:-

1. The Additional Chief Metropolitan Magistrate, E.O. II Court, Egmore.
2. The Deputy Commissioner (State Taxes), Inspection – II, Intelligence Wing, Chennai – 600 006.
3. The Central Prison, Puzhal.
4. The Section Officer, V.R.Section, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
Crl.O.P.No.3725 of 2022

10.03.2022