



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3635 OF 2022**

Neha Agrawal and Anr. ... Applicants
versus
The Commissioner of CGST and Central
Excise, Mumbai Central and Ors. ... Respondents

Mr. Bharat Raichandani with Mr. Roshil Nichani i/by Mr. Aansh Desai, for Applicants.

Mr. Jitendra Mishra with Mr. Ashutosh Mishra, Mr. Rupesh Dubey i/by Mr. D.B.Deshmukh, for Respondent Nos.1 and 2.

Smt. Ashwini A. Takalkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 3 OCTOBER 2023

P.C.

1. The Applicants apprehends arrest in connection with the notices F.No.V/AE/MC/TF-IV/Shreenathji/112/2022 dated 23 December 2022 issued by the Inspector, CGST and CX - Respondent No.2, pursuant to the authorization granted by the Commissioner of CGST, under Section 69 of the Central Goods and Services Tax Act, 1971 (the CGST Act, 2017), for the alleged offence punishable under Sections 132(1)(b) and (c) read with clause (i) of the CGST Act, 2017.

2. The Applicant No.1 is a proprietress of M/s. Shreenathji Enterprises. The Applicant No.2 is the husband of Applicant No.1. M/s. Shreenathji Enterprises, the applicants claim, is engaged in the business of trading alloy, steels and scrap etc.

3. A Summons under Section 70 of the CGST Act, 2017 was served on

M/s. Shreenathji Enterprises on 6 April 2022. It was alleged that the applicants had availed input tax credit using the invoices or bills without supply of goods in violation of the provisions of the CGST Act, 2017, and thereby committed offences punishable under Section 132 (1)(b) (c), read with Clause (i) of the CGST Act, 2017.

4. The Applicants had initially approached this Court in ABA No.2644 of 2022. By an order dated 7 December 2022 the Respondents were directed to give 72 hours notice in the event the Investigating Officer considered it necessary to arrest the Applicants. The Applicants were also directed to appear before the Respondents on the dates specified in paragraph No.8 of the said order.

5. It appears that the applicants did appear before the Investigating Officer and the statements of the applicants were also recorded. Eventually, vide notice dated 23 December 2022, the applicants were informed that the investigation revealed that the applicants had availed wrongful input tax credit to the tune of Rs.9,08,24,743/- and, thus, the competent authority had formed opinion that the applicants had violated the provisions contained in Section 132(1) (b) and (c) of the CGST Act, 2017 and, thereby, committed an offence punishable under Section 132(i) of the said Act and that the competent authority had authorized action under Section 69 of the CGST Act, 2017.

6. Apprehending arrest, the applicants again approached this Court.

7. On 5 April 2023 when the application was listed before the Court, the

Court was persuaded to grant interim bail observing, inter alia, that pursuant to the order dated 7 December 2022, the applicants had appeared before the Investigating Officer, their statements were recorded and the applicants had also paid an amount of Rs.88 Lakhs partly in cash and partly in reverse credit.

8. I have heard Mr. Raichandani, learned Counsel for the Applicants and Mr. Mishra, learned Special PP for Respondent Nos.1 and 2.

9. Mr. Raichandani, learned Counsel for the Applicants made an endeavour to take the Court through the developments in the investigation of the instant matter. It was urged that the applicants have co-operated with the investigation to the fullest and as many as seven statements of the applicant No.1 have been recorded. The Applicants have also paid the substantial amount of Rs.88 Lakhs. The indictment against the applicants is based on the ground that the applicant No.1 availed the input tax credit from the suppliers whose registration had already been cancelled. The major supplier is shown to be one, Mr. Nirakar Pradhan, proprietor of M/s. Sunshine Traders, from whom the applicants had allegedly availed and utilized Input Tax Credit to the tune of Rs.7.74 Crores.

10. Mr. Raichandani would urge that this Court in Writ Petition No.2534 of 2023 preferred by Mr. Nirakar Pradhan by an order dated 11 September 2023 had quashed and set aside the order of cancellation of registration of M/s. Sunshine Traders. Therefore, a major component of the alleged wrongful availment of Input

Tax Credit cannot now be pressed into service against the applicants. Mr. Raichandani would urge that the alleged wrongful availment of Input Tax Credit would fall below the threshold of Rs.5 Crores and, resultantly, the offence would be bailable under Section 132(4) of the CGST Act, 2017

11. As against this, Mr. Mishra, learned Special Public Prosecutor would urge that though the applicants have appeared before the investigating officer in terms of the directions of this Court, yet the applicants have not made full and true disclosure. Inviting the attention of the Court to the statements of the applicants recorded during the course of investigation, Mr. Mishra would urge that the custodial interrogation is indispensable for effective investigation in unearthing fraud in availing wrongful Input Tax Credit for a huge amount.

12. Mr. Mishra would urge that the quantum of the Input Tax Credit wrongfully availed on the basis of the invoices only without any supply of the goods is huge. Loss to the state exchequer is in the range of Rs.9 to 10 Crores. It was submitted that economic offences constitute a class in themselves. The custodial interrogation is indispensable in such matters. To lend support to this submission, Mr. Mishra placed reliance on the orders passed by this Court rejecting the applications for pre-arrest bail in the cases of **Dev Adania V/s. State of Maharashtra**¹; **Suresh Hukmat Rai Jadhvani V/s. Union of India and Anr.**² and **Hira Govind Bhatia V/s. State of**

1 ABA No.2030 of 2021 dt. 23 September 2021.

2 ABA 659 of 2022 dt. 4 July 2022

Central Goods and Service Tax³.

13. I have perused the aforesaid orders. In the backdrop of the allegations of creating fake entities to avail Input Tax Credit, without actual supply of goods, this Court has declined to exercise the discretion in favour of the applicants in the aforesaid cases. However, the case at hand stands on a different footing for a significant development in the intervening period.

14. The gravamen of indictment against the applicants is that the applicant No.2 operates M/s. Sunshine Traders, though Mr. Pradhan is shown to be the proprietor thereof. The applicants had availed and utilized Input Tax Credit to the tune of Rs.7.74 Crores from M/s. Sunshine Traders, whose registration had been cancelled by the Department.

15. In substance, the allegation is that M/s. Sunshine Traders is a fictitious as well as non-existent entity. It is the case of the Department that the registration of M/s. Sunshine Traders, of whom Mr. Pradhan is alleged to be the proprietor, was cancelled with effect from 22 November 2020.

16. It would be contextually relevant to note that Mr. Pradhan instituted Writ Petition No.2534 of 2023 assailing the notice dated 27 July 2022 to show cause as to why the registration be not cancelled. The said Show cause notice was followed by an order dated 11 November 2022 cancelling the registration of Sunshine Traders

3 ABA 2206 of 2022 dt. 6 July 2023

retrospectively with effect from 26 November 2020.

17. By an order dated 11 September 2023, this Court quashed and set aside the Show Cause Notice dated 27 July 2022 as well as consequential order dated 11 November 2022 of cancellation of registration.

18. From the perusal of the aforesaid order, it becomes evident the show cause notice and the order impugned therein were cancelled on account of failure to follow the principles of natural justice and non-application of mind. The Division Bench had averted to the serious lapses on the part of the concerned officer in issuing the show cause notice and passing the order of cancellation of registration.

19. What is of significance, for the determination of this application, is the fact that the said show cause notice dated 27 July 2022 was subsequent to the summons under Section 70 of the CGST Act, 2017. Secondly, the registration of Sunshine Traders came to be cancelled by an order dated 11 November 2022 retrospectively with effect from 26 November 2020. Prima facie, it cannot be urged that M/s. Sunshine was non-existent during the period the applicants allegedly availed Input Tax Credit.

20. Mr. Mishra submitted that the Division Bench has clarified that the revenue is not precluded from issuing any fresh order to suspend the registration of Mr. Pradhan, nor from exercising any other powers as may be available to the Respondents. Mr. Mishra attempted to salvage the position by canvassing a

submission that the Division Bench had quashed and set aside the order of cancellation of registration for not adhering to the principles of natural justice and, therefore, the applicants cannot draw any mileage therefrom.

21. I find it difficult to accede to this submission for the reason that the order of cancellation of registration was passed on 11 November 2022, to take effect from 26 November 2020. Resultantly, the alleged availment of Input Tax Credit cannot be said to be from the very entity whose registration had already been cancelled. Since the major component of the wrongfully availed Input Tax Credit to the tune of Rs.7.74 Crores is attributed to M/s. Sunshine Traders, the order of restoration of the registration does bear upon the Respondent's case against the applicants.

22. Secondly, the applicants have appeared before the Investigating Officer, as directed. As many as seven statements of the applicant No.1 have been recorded. Relevant documents appear to have been collected. It cannot be, thus, urged that the applicants have not co-operated with the investigation.

23. As the applicants have been protected since December 2022 and the sustainability of allegation of wrongful availment of Input Tax credit in respect of a major component (Rs.7.74 Crores) become debatable, at this length of time, I do not find that the custodial interrogation of the applicants is warranted for further investigation.

24. The applicants also appears to have roots in society. The possibility of

fleeing away from justice appears to be remote.

25. I am, therefore, inclined to make the order of interim bail absolute.

26. Hence, the following order :

ORDER

(i) The order of interim bail dated 5 April 2023 is made absolute.

(ii) The Applicants shall co-operate with the investigation and appear before the Investigating Officer as and when directed.

(iii) The Applicants shall not tamper with the prosecution evidence and give threat or inducement to the persons acquainted with the facts of the case.

(iv) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The Applicants shall furnish their address/es and contact details and intimate the change, if any, to the Respondent No.2.

(vi) The Application stands disposed.

(N.J.JAMADAR, J.)