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SADANAND
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION NO. 888 OF 2022

Getalong Enterprises Ltd.

... Petitioner

vs.

Superintendent (Anti Evasion)
CGST and C-Excise, Navi Mumbai
Commissionerate & Anr.

... Respondents

.....

Mr. Parth Badheka for the Petitioner.

Mr.P.S.Jetly, Senior Advocate with Mr.Sham Walve and
Ms. Sangeeta Yadav for the Respondents.

.....

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 7 FEBRUARY 2023

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioner has sought various reliefs in this writ petition. First, is that investigation carried out under section 67 of the Central Goods and Services Tax Act, 2017, and summons issued under section 70 and consequent proceedings be quashed. The Petitioner then seeks a declaration that the payment of tax by way of reversal of

Input Tax Credit is coerced by the Respondents from the Petitioner and it should be refunded.

3. On the basis of intelligence gathered by CGST authorities, it was alleged that the Petitioner has availed total ITC of Rs.7.61 crores in respect of bogus firms, which were non-existent. The Respondents- authorities proceeding on the basis that the offences are cognizable and non-bailable, arrested the Directors of the Petitioner, and they were produced before the Judicial Magistrate, and the Directors of the Petitioner applied for remand. Subsequently, the Directors of the Petitioner were granted bail.

4. Under section 69 of the CGST Act, when the Commissioner has reason to believe that the offences committed under section 132 of the CGST Act, the arrest can be effected and the arrested person can be produced before the Magistrate. In this civil writ petition filed by the Petitioner, the Petitioner is seeking relief in respect of the investigation and proceedings leading to an offence and, consequently the bail.

5. In this context, the decision of the Division Bench of this Court in the case of *Nagpur Cable Operators Association vs. Commissioner of Police, Nagpur and another*¹ will have to be noticed. The Division Bench considered the legal position in detail as to which circumstances a civil writ petition can be filed and in

¹ 1995 (2) Mh. L.J. 753

which circumstances a criminal writ petition can be filed. After referring to the decision of the Hon'ble Supreme Court in the case of *I.S.A.L. Narayan Row and anr. vs. Ishwarlal Bhagwandas and anr*², the Division Bench of Patna High Court in the case of *Ram Kishun Upadhyaya v. State of Bihar and Ors.*³, the Division Bench observed thus :

“21.... Applying the tests laid down by the Apex Court in Narayan Row's case (supra), we are of the view that if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out or relates to a proceeding in which, if carried to its conclusion ultimately it may result in sentence of death or by way of imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of the Constitution of India and / or under Article 227 of the Constitution, should be treated as a "criminal writ petition" and styled as such. For hearing and decision of such petition, it should be listed before the Division Bench allocated such business by Hon'ble the Chief Justice or if it pertains to the single Judge jurisdiction, before the bench assigned such work. As regards petitions/applications under Article 226 of the Constitution seeking writs or orders in the nature of habeas corpus, rule 1 of Chapter XXVIII of Appellate Side Rules, also provides only allocation of such writ petitions to the Division Bench taking criminal business of the Appellate Side of the High Court. Obviously, since the petitions/applications under Article

² AIR 1965 SC 1818

³ AIR 1995 Patna 140

226 of the Constitution of India for issuance of writs of habeas corpus arise out of the unlawful detention, in its very nature, such petitions too should be styled as criminal writ petitions. Criminal writ petitions would also cover those writ petitions which arise out of the orders and the matters relating to prevention or breach of peace or maintenance of peace and order or such orders aimed at preventing vagrancy contemplated to be passed. 'Criminal Writ Petition' shall also take in its embrace the petitions/applications under Articles 226 or 227 of the Constitution of India if it arises out of or relates to investigation, enquiry or trial of the offences either under special or general statute. When a statute commands or prohibits an act, disobedience of such statute is prima facie criminal unless criminal proceedings are excluded by such statute and the petitions/applications under Articles 226 and 227 of the Constitution of India in connection thereto or arising therefrom would be criminal proceeding and should be styled as 'Criminal Writ Petition'. However, such cases are to be distinguished from the cases where an act may be prohibited or commanded by the statute in such a manner that the person contravening the provision is liable to pecuniary penalty and such recovery is to be made a civil debt. In such type of cases the contravention would not be a crime and, therefore, petitions/applications under Articles 226 and 227 of the Constitution of India arising therefrom would not be criminal proceeding.

22. We would, therefore, direct the Registrar (Appellate Side), the High Court of Judicature at Bombay to take steps in implementing the following directions immediately:--

(i) Every petition/application under Articles 226 and 227 of the Constitution of India should be styled as 'Civil Writ Petition' or 'Criminal Writ Petition', as the case may be.

(ii) Every petition/ application under Articles 226/227 of the Constitution of India presented through the Counsel or where such petition/application is presented in person, should be accompanied by the Certificate of the counsel or petitioner in person, as the case may be, that such petition/application is 'Criminal Writ Petition' or 'Civil Writ Petition'.

(iii) The Registry should examine such writ petition filed under Articles 226 and 227 of the Constitution of India styled as "Civil Writ Petition" or "Criminal Writ Petition" by finding out the nature of the relief/reliefs claimed in such writ petition and the grounds of such relief/ reliefs and if the Registry finds that the writ petition has been wrongly styled, such objection must be raised.

(iv) Civil Writ Petitions should be registered by the office in the separate Register under the title, "Civil Writ Petitions under Articles 226 and 227 of the Constitution of India." Expression 'Special Civil Applications' occurring in clause (vi) of Rule 10 of Chapter V of Appellate Side Rules be read as 'Civil Writ Petitions'. This is so done to continue with the

existing practice since 1980.

(v) Criminal Writ Petitions should be registered under the separate head in Register maintained by the office bearing the title, "Applications under the Constitution" under Chapter XXVI, Rule 4(6) of Appellate Side Rules".

(emphasis supplied)

Therefore, the present civil writ petition for prayer of quashing the investigation and consequent summons, is not properly filed. The learned Counsel for the Petitioner then states that this prayer is not being pressed.

6. As regards the second prayer seeking refund of the ITC is concerned, reversal of the ITC is done by the Petitioner; however, then it is stated that it was on coercion during the criminal investigation. We note that in this petition, the only parties are the Superintendent (Anti Evasion) and the Deputy Commissioner CGST and C-Excise, and they are not joined by name. It is stated that on account of the aggressive posture of authorities, the Petitioner proceeded to reverse the balance ITC and therefore, what is alleged is force and coercion by an individual officer, and in the reply affidavit filed by the Respondents, this fact has been denied, and the case against the Petitioner of creating fraudulent ITC has been refuted. It is argued by the learned Counsel for the Respondents that when the Directors of the Petitioner were produced before the Magistrate, they made no grievance of any ill-

treatment, and they had, in fact, stated that they were not ill-treated, and this theory is an after thought. After that, a rejoinder is filed.

7. Investigation into the matter is pending. Reply, and rejoinders are raising seriously disputed questions about how the ITC is reversed. It is not possible for us to render a finding in a writ jurisdiction that it was due to coercion. There could be various reasons why the Directors of the Petitioner have reversed the ITC. As an accused, if the Petitioner is subjected to a threat or coercion by the investigation officer, then the Petitioner would have their legal remedies open. If the Petitioner is entitled to a refund, on any other legal ground, that the Petitioner was not liable to reverse the ITC, then it is open to the Petitioner to apply for reversal/ refund by making a proper application or adopting such proceedings as available.

8. With these observations, the writ petition is disposed of.

ABHAY AHUJA, J.

NITIN JAMDAR, J.