Orders Reserved on **04.09.2023**	Orders Pronounced on **26.09.2023**

Crl.O.P.No.16926 of 2023

RMT. TEEKAA RAMAN., J.

The petitioner was served with summons under Section 70 of CGST ACt 2017. First summon was served on 17.05.2023 and the second on 06.06.2023. This petition has been filed under Section 438 of Cr.P.C. seeking pre-arrest bail.

2. The petitioner is the Managing Director of a Private Limited Company in the name and style of "Creations Infra India Private Limited" and obtained a Registration Certificate under Regn.No.33AAFCC1910P1ZQ. After receipt of the summons, apprehending arrest, he has filed this petition under the above stated section.

3(i) The learned counsel for the petitioner submitted that neither the petitioner nor M/s.Creations Infra Private Limited of which the petitioner is the Managing Director has not committed any evasion of Goods and Services Tax or has committed any act that could tantamount to contravention of provisions of Goods and Services Tax Act, 2017. He would further state after issuance of second notice, the petitioner was forced to remit a sum of Rs.1,07,00,000/- and further submitted that during the course of investigation and based on the records being asked for, the respondent appears to investigate into alleged issuance of invoices without underlying supply of goods or services and it is submitted that this being the case, in as much as the entire tax is on the supply of goods or services, as the case may be, there cannot be any evasion of taxes as there was no taxable supply and if at all there is an offence, the same would not lie within the realm of Section 73 or Section 74 of the GST Act, 2017.

3(ii) The learned counsel for the petitioner relied upon the judgment of this Court in Jayachandran Alloys v. Superintendent of GST reported in 2019 (TMI) 895 MHC, Make my trip (India) Pvt. Ltd. v. Union of India reported in 2016 (TMI) 52 Del.HC and Union of India vs. Make my trip (India) Pvt. Ltd. reported in 2019 (TMI) 4 SC.

4(i) Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor for the respondent filed counter and based upon the counter contended that further investigation reveals that at various instances where the supply of goods from M/s.ETPL and M/s.HIPL to CIIPL, neither the movement of vehicles nor the details of the vehicles were declared in the e-way bills for having transported the goods to some other locations apart from supplies made in between the said companies; that the nature of business carried out is prima facie appears to be a circular trading activity, that in common view have been adopted by many business entities just for inflating the turnover of the company. There is no outward supply of goods as ascertained from the outward e-waybill; that till now, an amount of Rs.6,06 Corres (Rs.3.95 crores ITC availed on the strength of invoices issued by HIPL and ETPL + Rs.1.06 Crores on the strength of invoices issued for the goods "Cements"from M/s.GM Traders + Rs.1.05 Crores ITC by circulation of goods/issuance of invoices by M/s.SKLS Ventures, M/s.Venmur Automotive, M/s.Shri Chakra Flavors and M/s.Colour Box.

4(ii) Prima facie, GST evasion amounting to Rs.6,06 Crores have been detected in favour incidents occurred in companies viz. 3.95 Crores of ineligible ITC availed on the strength of invoices issued by HIPL and ETPL wherein no supply of goods appears to be happened and Rs.1.06 Crores of ineligible ITC availed on the strength of invoices issued for the goods "Cements" from M/s.GM Traders, however no onward supply of the same goods "Cements" was found and in continuation, Rs.1.05 Crores ITC availed on the strength of circular trading of goods cum issuance of invoices in between CIIPL, HIPL, ERPL, SKLS Ventures, Venmur Automotive, Shri Chakra Flavors and Colour Box. Moreover, in furtherance of investigation, the petitioner accepted the contention of circular trading and in response to which, he voluntarily remitted the GST amount of Rs.1.07 Crores vide GST DRC-03 dated 08.06.2023 & 09.06.2023 u/s.73 (5) of the CGST Act. The learned Special Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court in **Crl.Nos.4212 to 4213 of 2019 in The State of Gujarat v. Choodamani Parmeshwaran Iyer & anr.**

5. Heard the learned counsel for the petitioner as well as the Special Public Prosecutor and perused the records.

6(i) As per the typedset, summons are issued by the respondent to the petitioner on 17.05.2023 and 06.06.2023 under Section 70 of CGST Act. In the above stated **Choodamani Parmeshwaran Iyer's case,** *cited supra,* the Hon'ble Supreme Court has categorically held that if any person is summoned under Section 69 of CGST, for the purpose of recording of his statement, the provisions of Section 438 of Criminal Procedure Code, 1908 cannot be invoked. At the stage of summons, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure.

6(ii) There is a fundamental distinction between a petition for anticipatory bail and the writ of mandamus directing an officer not to effect arrest under 226 of the Constitution. In the later case, the guidelines of the Hon'ble Supreme Court reported in ***Kartar Singh v. State of Punjab reported in1994 (3) SCC 569.***

6(iii) In the instant case, as the summons have been issued under Section 70 of the CGST Act, as per the decision of the Hon'ble Supreme Court, I have no hesitation to hold that the person who summoned cannot invoke under Section 438 of Cr.P.C. Accordingly, this Criminal Original Petition is dismissed. However, it is open to the petitioner to seek the remedy before the appropriate forum.

26.09.2023

rgr

RMT. TEEKAA RAMAN.,J.

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order in
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