THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO.8330 OF 2023

ORDER:

1. This Criminal Petition is filed under Section 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/Accused in File No.INV/GST/1533/2023-AE-MDCL. The petitioner was arrested on 10.08.2023.

2. Briefly, the facts of the case are that the petitioner has availed Input Tax Credit irregularly from non-existent entities without any actual receipt of goods. The respondent department alleged that there are seven suppliers of goods of petitioner's firms which are non-existent and as per E way bill analysis vehicles did not make such travel as claimed. Petitioner/ accused is partner of M/s.Keshan Industries LLP. The firm is registered vide GSTIN 36ABFFA8447D1ZH at 26F, Telangana Industrial Park, Nagpur High Way Road, Muppireddypally, Toopran, Medak, Telangana and engaged in the manufacture of copper products. The company KILLP are involved in converting copper crap into other products of copper. Intelligence was received suggesting that KILLP has availed In-put Tax Credit irregularly and preliminary estimation of Rs.24.30 Crores, out of which Rs.8.1 Crores pertains to the

financial year 2023-24 till July, 2023 from non existent entities without any actual receipt of goods.

3. Sri Rajasripathi Rao, learned Senior Counsel appearing for Sri B.Arjun Rao, learned counsel for the petitioner would submit that the State GST Enforcement, Hyderabad conducted investigation in the month of May, 2023 and they are co-operating with the Department. The two departments i.e., Central GST and State GST are conducting parallel investigation about the very same alleged irregularities, which is not permissible under the Central Goods and Services Tax Act, 2017 (for short 'the Act'). The respondent is not following the procedure. Further, the date and time of arrest have been shown differently in the Panchanama and in the arrest Memo. He further submits that since the maximum punishment prescribed under Section 132 of the Act, 2017 is imprisonment for five years and also since the petitioner had complied with the notices for appearance, there is no necessity for the Commissioner to order their arrest under Section 69(1) of the Act, 2017.

4. It was further argued that under protest Rs.2.00 Crores was already paid to the department. The Hon'ble Supreme Court held that in the event of paying 10% of the outstanding amount, bail can

be considered. He relied on the judgment of Hon'ble Supreme Court in the case of Depesh Tiwari v. State of Madhya Pradesh[1].

5. On the other hand, Sri Dominic Fernandes, learned Senior Standing Counsel for GST would submit that the scope of investigation by the State and the Central Departments are different and also the period of fraudulent claims of GST payments. In the present case there was no delivery of any goods from the seven firms, as claimed by the petitioner's firm. However, the petitioner had played fraud and shown as deliveries have been made. Since fraud is played and there is evasion of nearly Rs.24.00 Crores as of now and further evasion can be revealed, petitioner is not entitled to bail. Counsel had also argued on the basis of statement made by the petitioner and also relied on several judgments.

6. The petitioner had filed W.P.No.22459 of 2023. The Hon'ble Division Bench of this Court held that there is no overlapping of the investigation being done by the State and Central departments. For the said reason, investigation is not hit under Section 6(2)(b) of the Act, 2017.

[1] (2023) 10 Centax 29 (S.C)

7. The offence is punishable to the maximum of five years and is also compoundable. Admittedly, amount of Rs.2.00 Crores was already paid. The petitioner has been assisting investigation. The Hon'ble Supreme Court in Depesh Tiwari's case (supra) granted relief of anticipatory bail when the accused therein was assisting investigation.

8. In the present case, it is not disputed by the learned Senior Standing Counsel for GST that the petitioner assisted investigation. However, he submitted that his partner was not joining investigation though summon is issued. The partner not appearing before the authorities cannot be made a ground to refuse bail to this petitioner who has been assisting investigation, even according to the department. The detention of the petitioner cannot be by way of punishment at this juncture. The Hon'ble Supreme Court in the case of **Arnab Manoranjan Goswami v. State of Maharashtra &Ors**[2], held that bail is the rule and jail is an exception.

9. Admittedly, all the documents have been seized. Delivery of goods by the Firm is not disputed but it is alleged that raw material was not received as claimed by the Firm from seven suppliers. Information about the suppliers and other details are available with

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[2] (2021) 2 SCC 427

the department. Placing reliance on Depesh Tiwari's case (supra), this Court is of the view that regular bail can be granted to the petitioner, subject to the following conditions.

i) The petitioner/Accused shall execute personal bond for a sum of Rs.2.00 lakhs (Rupees two lakhs only) with two sureties for a like sum each to the satisfaction of Special Judge for Economic Offences, at Hyderabad.

ii) The petitioner/Accused shall surrender his passport and shall not travel beyond the territory of India. Any travel outside India shall be with the permission of the Court.

iii) The petitioner/Accused after release shall appear before the concerned Investigating Officer of GST at 10:00 a.m. on every Monday and also on other days as and when required by the investigating officer for the purposes of investigation.

iii) The petitioner/Accused shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

10. Accordingly, this Criminal Petition is allowed. Miscellaneous applications, pending if any, shall stand closed.

K.SURENDER, J

Date: 08.09.2023
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Dt.08.09.2023

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