IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3689 OF 2023

Prakash Kumar Rameshbhai Patel,
Age : 55 Years, Occu.: Business,
R/at : Room No.18, 2nd Floor, 20 Devki
Bhavan, Dhanji Street, Zaveri Bazar,
Mumbadevi, Mandvi, Mumbai – 400 003. .... Petitioner

Versus

1. State Of Maharashtra,
(Through PP Office, High Court)

2. Superintendent of CGST & CX,
Anti-Evasion, Mumbai South, 15th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021. .... Respondents

Mr. Sujit Saho, for the Petitioner.

Mr. V. B. Konde-Deshmukh, Addl.P.P for the Respondent No.1 – State.

Mr. Amit Munde, Spl. P.P. a/w Mr. Satya Prakash Sharma, Mr. Shivam Tiwari, for the Respondent No. 2 – CGST Dept.

CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 13th MARCH, 2024.
PRONOUNCED ON : 12th APRIL, 2024.

<u>JUDGMENT (PER MANJUSHA DESHPANDE, J.) :</u>

1. The petitioner is seeking direction to grant pre-arrest bail, to him pending investigation by the respondent No.2, in File No. V/CGST/MS/AE/Gr-9/CIU-714/Devika Bullion/2020/2022. It is further prayed that the respondent be restrained from exercising its powers to arrest as provided under Section 69 of The The Central Goods And Services Tax Act, 2017, (for short "*CGST Act, 2017* ") prior to determination of tax, and also before providing grounds of arrest, as contemplated in case of Pankaj Bansal V/s. Union of India And Ors., reported in 2023 SCC OnLine 1244.

2. The petitioner is a proprietor of a firm Devika Bullion, engaged in trading gold bullion and related items. According to the petitioner, the petitioner's firm has been scrupulously following the guidelines of the Government, including uploading of the invoices issued by the petitioner's firm on the E-invoicing portal of the Government as well as uploading of the invoices from where goods are purchased on the website. It is the petitioner's case, that on

compliance of the procedure, the petitioner's firm was eligible to avail ITC, reflected in the Credit Ledgor. Learned Counsel for the petitioner submitted that the petitioner's firm has issued proper invoices in compliance of the statutory provisions as mandated under the CGST Act, 2017, and has made the payment of invoice value, including the amount of tax, through proper banking channel.

3. It is contended by the petitioner that inspite of following the procedure, the respondent No.2 issued a communication to the petitioner on 27th January, 2021, for reversal of ITC (Input Tax Credit) passed on to him by his supplier M/s. Mahaveer Bullion. The petitioner appeared before the respondents and submitted the documents. According to the petitioner, the petitioner was forced to reverse the ITC for the purchase made by his supplier M/s. Mahaveer Bullion. A show cause notice was issued to the petitioner on 3rd November, 2022 proposing cancellation of his registration. The petitioner filed his reply on 16th November, 2022, to the show cause notice, however, *vide* Order dated 12th January, 2023 the registration

of the petitioner's firm i.e. Devika Bullion, was cancelled by the State Tax Officer, GST, Mumbai, from the date of registration i.e. 1st November, 2019. It is the petitioner's contention that, the office of the respondent No.2 has also attached the petitioner's bank account, under Section 83 of the CGST Act, 2017. It is further contended by the petitioner that, these actions are being taken by the concerned authorities without giving any show cause notice to the petitioner, in an arbitrary and high handed manner, without following principles of natural justice. According to the petitioner, the said action of the respondents resulted in heavy loss to the petitioner's business, and due to the ongoing investigation, petitioner's business operation has also virtually stopped.

4. The petitioner was summoned for interrogation by the authorities, pursuant to which the petitioner remained present before the concerned authorities, under the Protection Orders passed by this Court.

5. According to the petitioner, he has also filed an Appeal

against the cancellation of his registration before the appropriate authority and the proceedings pertaining to the said Appeal are under progress. Alongwith the said proceedings, the petitioner had also filed an Anticipatory Bail Application before the Sessions Court. Initially, interim protection was granted to the petitioner, however subsequently *vide* Order dated 30th October, 2023, the learned Sessions Judge has been pleased to reject the Anticipatory Bail Application of the Petitioner, on the ground of maintainability.

6. On this background, the petitioner has approached this Court, seeking protection, with a prayer that, no coercive action as provided u/s 69 of the CGST Act, 2017, be taken against him, unless grounds of arrest are made known to him. There is a further prayer to release the attached bank account. The petitioner apprehends that his liberty will be curtailed by the respondents without following due procedure of law. According to him, he has been issued summons under Section 70 of the CGST Act, 2017. The purpose of summons under Section 70 of the CGST Act, 2017, is to summon persons whose

attendance is necessary either to give evidence or to produce a document or anything in any inquiry in the same manner as in Civil Court, under the provisions of C.P.C. The petitioner apprehends that the respondent No.2 in exercise of his power under Section 69 of the CGST Act, 2017, would arrest him in violation of Article 20(3) of the Constitution of India.

7. The petitioner places reliance on the Judgment of the Hon'ble Supreme Court, in the case of ***State of Gujrat V/s. Choodamani Parmeshwaran Iyer*** reported in ***(2023) 8 Centax 224 (S.C.) [17-03-2023]*** wherein it has been held that, if a person fears that his personal liberty is likely to be curtailed, he can approach the High Court in its writ jurisdiction, seeking protection orders. Hence, the petitioner is seeking Protection Orders from this Court.

8. Reply affidavit has been filed by the respondent No.2 opposing the writ petition. It is stated in the affidavit that, the intelligence revealed that, M/s. Devika Bullion i.e. petitioner's firm had availed fake ITC during the financial year 2019-20 to 2021-22 from

suspicious entities. Based on the intelligence, a physical verification of M/s. Devika Bullion (legal name Shri. Prakash Rameshbhai Patel), was done as contemplated under Section 67(1) of the CGST Act, 2017. On physical verification of the registered places of businesses of the petitioner, which was carried on 7th July, 2022, it was revealed that the petitioner's firm is not existing on the registered address. During investigation, it was also noticed that Ms. Devika Bullion had availed ITC to the tune of Rs.10.38 Crores from entities, which were found to be non existent at their registered place of business. According to the respondent the petitioner claimed that his business is legal and sound, however all the major suppliers were found to be non existent, at their principal places of business. A search under Section 67(2) of the CGST Act, 2017, was again attempted on the declared residential addresses of the petitioner's firm as mentioned on the GST Portal, on 8th July, 2022, however, the said address was found to be fake, in as much as, the said address belonged to some other person, who was living on the said place, since 1987. A search was also attempted on 8th July, 2022, on the residential address given on PAN Card of the petitioner, however, even the said address was found to be fake.

9. Having found all the three addresses to be fake and the business non-existent, summons was issued under Section 70 of the CGST Act, 2017, to the petitioner on 15th July, 2022 to appear and tender oral evidence. Thereafter, again summons was issued to the petitioner, however, the petitioner remained elusive and non co-operative during the investigation.

10. The respondent No.2 in his affidavit has stated that since ITC availed by the petitioner appeared ineligible, in order to prevent him from further passing of such ineligible ITC, the operations from his credit account were blocked temporarily. The bank account of the petitioner was also provisionally attached on 25th August, 2022, as permitted u/s 83 of the CGST Act, 2017. There were various summons issued to the petitioner dated 9th September, 2022, 4th October, 2022, 15th November, 2022, 29th May, 2023 and 6th November, 2023, however, according to the respondents, the petitioner neither co-operated nor submitted any relevant documents during the

investigation.

11. During the course of investigation, the major suppliers of the petitioner were found to be non-existent at the given registered addresses. The petitioner has availed ITC, amounting to Rs.10.38 Crores, on the strength of purchase invoices issued by the non-existent/bogus suppliers without any actual supply of goods, and passed on ineligible ITC to its recipients during the said period. The said Act is in violation to Section 16(2) of the CGST Act, 2017, read with section 155 of the Act.

12. The respondents have also given the details of the visits to the given addresses of the suppliers in a tabular form, with the Tax Value of which, ITC is claimed by the petitioner. The place of business registered as well as residential address declared by the petitioner while obtaining GST registration was found to be fake. It is contended by the respondent that, the petitioner has availed the ITC of 10.38 Crores approximately on the strength of purchase invoices issued by the non-existent suppliers, which is in violation of Section 16(2) of the GST

Act, 2017, which reads as under :

"16(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

[Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(c) subject to the provisions of section 41, the tax charged

in respect of such supply has been actually paid to the Government, either in cash or through utilisation ofinput tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed: Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

13. It is the contention of the respondent No.2 that, as per Section 155 of the CGST Act, 2017, the burden of proof is on the person who claims that he is eligible for ITC. According to the intelligence, the ITC was claimed by the petitioner, on the basis of non-existent entities, and hence the burden was on the petitioner to prove that he is eligible for the said ITC.

14. We have heard the parties at length and after hearing the parties it appears that, the petitioner's registered suppliers were found to be non-existent at their registered address and the petitioner has availed ITC on the basis of purchase invoices issued by the non-existent/bogus suppliers, without any actual supply of goods. Prima-facie, the same is in clear violation of Section 16(2) of the CGST Act, 2017. It is pertinent to note that, the petitioner's firm, is not in existence on the three addresses given as the registered addresses, but even the suppliers, from whom the petitioner has claimed to have purchased the goods, are non-existent at their given address. The petitioner has not come before this Court with clean hands. The

petitioner has been time and again issued various summons adhering to the provisions of law, in order to provide an opportunity to the petitioner, to participate in the investigation and put forth his case. He has failed to participate in the proceedings on various occasions. The fake addresses of the petitioner's firm as well as suppliers do not make him eligible for any protection from this Court. The conduct of the petitioner is availing ineligible ITC of Rs. 10.38 Crores, amounts to playing fraud on the Public Exchequer.

15. The case of the petitioner would *prima facie* be covered by Section 132(1)(c) read with Section 132(5) of the CGST Act, 2017, which reads thus :

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

16. Considering that the Appeal of the petitioner regarding the cancellation of registration is already subjudice before the appropriate authority, and the allegations made by the petitioner in the present writ petition, prima-facie, do not appear to be correct, therefore, we do not think that the petitioner should be granted any order of protection. After going through the petition alongwith the annexures, and the reply filed by the respondent No.2 herein, we do not find that the petitioner has made out a case for grant of any protection. Prima-facie, it appears that the petitioner, has in fact, availed the ITC, from non-existent entities. The burden of proof on the contrary is on the petitioner, as per Section 155 of CGST Act, 2017 to prove he is eligible for ITC. The petitioner has been granted several opportunities. The petitioner was summoned, to participate in the investigation and submit documents/information regarding the ongoing investigation as provided under Section 70 of the CGST Act, 2017. The petitioner has failed to show to the respondents, the existence of the entities. Hence,

there is no merit in the contention of the petitioner that principles of natural justice have not been followed. The petitioner has placed reliance on the Judgment of the Hon'ble Apex Court, in the case of State of ***Gujrat V/s. Choodamani Parmeshwaran Iyer*** *(Supra)*, in order to demonstrate that a person summoned under the CGST Act, 2017, cannot invoke Section 438 of the Cr.P.C., for Anticipatory Bail. The petitioner therefore claims to have approached this Court seeking protection Orders. However, after going through the reply filed by the respondent No.2 herein, we do not find that the petitioner has made out a prima-facie case for grant of any protection to the petitioner. The petitioner has also placed reliance on ***Neha Agrawal V/s. Commissioner of CGST And Central Excise, reported in (2023) 11 Centax 328 (Bom.) [03-10-2023].*** The facts in this Judgment are different from the facts of the present case, therefore, the ratio in the said Judgment, cannot be made applicable to the case in hand. In the present case, the petitioner as well as the suppliers are fake entities, whereas in the above referred case, the supplier was in existence, yet the registration of the supplier was cancelled, and hence, the said cancellation of registration was set aside subsequently.

17. Therefore, in view of the aforementioned facts and circumstances, we are not inclined to grant protection to the petitioner. Hence, the writ petition stands dismissed. As a result, the interim protection stands vacated.

18. Petition stands disposed of accordingly.

19. All the parties to act on the authenticated copy of this Order.

MANJUSHA DESHPANDE, J. ***REVATI MOHITE DERE, J.***

CHAITANYA ASHOK JADHAV

Digitally signed by CHAITANYA ASHOK JADHAV
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