IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.180 of 2024

Saurabh s/o Kamlesh Gupta
vs.
Directorate General of GST Intelligence, Nagpur Zonal Unit, Nagpur

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Mr. D.V. Chawhan, Mr. Jasprit Singh Chilotra and Mr. G.S. Gour, Advocates for the Petitioner.
Mr. Kunal Nallamwar, Advocate for the Respondent sole.

CORAM : M.W. CHANDWANI, J.
DATE : 21st FEBRUARY, 2024.

Heard.

02] Apprehending his arrest in connection with the investigation of availment of fake input tax credit by the petitioner under the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) in GSTIN-27ARJPG8420A1Z5, the petitioner has filed the present petition.

03] It is contended on behalf of the petitioner that the petitioner has been issued summons under Section 70 of the CGST Act alleging fake input tax credit, wherein he was called to attend before the Officers of the Central Goods and Services Tax Department to give evidence or produce documents and to tender a statement and all other supporting documents to justify his input tax credit. Further contention is that, under Section 69 of the CGST Act, if the Commissioner has reason to believe that a person has committed any offence under the provisions of Section 132, he may authorize any Officer of the Department to arrest such person. Apprehending arrest, the petitioner has filed this petition under Article 226 of the

Constitution of India. The contention is that in the G.S.T. case, no F.I.R. is being lodged, therefore, the petitioner cannot invoke Section 438 of the Code of Criminal Procedure (Cr.P.C.) for anticipatory bail and in that event, the writ petition under Article 226 of the Constitution of India lies before the Court. To buttress his submission, the learned Counsel for the petitioner seeks to rely on the decision of the Supreme Court in the case of **State of Gujarat etc. vs. Choodamani Parmeshwaran Iyer and Another – 2023 SCC OnLine SC 1043,**

04] In the wake of advance notice issued by learned Counsel Mr. Chawhan for the petitioner, learned Counsel Mr. Kunal Nallamwar appears on behalf of the respondent-department along with Ms. Jayshree Gawai, Deputy Director of Directorate General of GST Intelligence, Nagpur Zonal Unit, Nagpur. It is the contention of the learned Counsel for the respondent that the investigation is at a very preliminary stage. The petitioner is given chance to justify his input tax credit by producing evidence and only after the investigation, if the petitioner is found to have committed an offence under Section 132 of the CGST Act, the power of arrest will be invoked.

05] The sum and substance of the argument of the learned Counsel for the respondent is that at present, the petitioner has to submit the documents and evidence. He submits that he will file a detailed reply. Ms. Jayshree Gawai, Deputy Director of the respondent is also present. She submits that till reply is filed, they will not take any coercive action against the petitioner.

06] The statement made on behalf of the respondent is accepted.

07] Issue notice to the respondent, returnable on 26th February, 2024.

08] Mr. Kunal Nallamwar, learned Counsel waives service on behalf of the respondent and seeks time to file reply.

09] The petitioner to appear before the concerned Officer in pursuance of summons on Thursday i.e. 22/02/2024, between 11:00 am and 01:00 pm.

10] Authenticated copy of this order be supplied to the learned Counsel appearing for the parties to act upon.

JUDGE

**sandesh*