2024:PHHC:015515

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

239

CRM-M-59384-2023 (O&M)
Date of decision : 05.02.2024

Gopi Chand Chaudhary ...... **Petitioner**

versus

State of Haryana ...... **Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Aman Pal, Advocate and
Mr. Japsehaj Singh, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

****

<u>PANKAJ JAIN, J. (Oral)</u>

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.644 dated 24.10.2020 registered for the offences punishable under Sections 406, 409, 419, 420, 465, 467, 468, 471 and 120-B of IPC at Police Station City Sirsa, District Sirsa.

2. As per the contents of the FIR it has been alleged as under:-

> “OFFICE OF DY EXCISE TAXATION COMMISSIONER (ST) SIRSA, VANIJYA BHAWAN, BARNALA ROAD SIRSA From Excise Taxation Officer Ward, No. 5 Sirsa To, The Superintendent of Police Sirsa, No.3645/ dated 12-12-19 subject - Regarding registration of FIR against Sh. Ashok Kumar S/o Sh. Nanak Chand R/o H. No 275B Sector 11 Gali Saraswati Colony, Near Bhakra Cotton Mill Rania Road Sirsa Prop M/s Nanak Chand Ashok Kumar Sirsa TIN 06312918951 Memo On the subject cited above, it is informed that a firm in the name of M/s Nanak Chand Ashok Kumar Sirsa TIN 06312918951 is found involved in claiming bogus refund on account of

input tax credit. During the assessment period 2011-12, this dealer has fraudulently obtained Refund of Rs. 1990842/- by using false and fabricated documents which includes sale invoices of cigarettes/Tiles regarding inter state sale to Rajasthan, VAT D-3 forms showing sale of cigarettes/tiles and C forms bearing No. R/C/2009/4444757, R/C/2009/4444764, RJ/C/2011-12/000001671. These refunds were obtained by using the above mentioned C forms procured from the dealers of Rajasthan who used to deal in the trading of tax free commodity i.c. khal, binola etc, on account of showing interstate sale of cigarettes/Tiles against said C forms. On perusal of the record, it has been found that actually dealer has used forged and false documents of sale (as mentioned above) and without making any actual movement of goods during the course of inter-state sale, dealer has obtained the refund to the tune of Rs. 1990842/-, This dealer has claimed input tax credit @13.125% 21% on account of purchases of Tiles/cigarettes and further shown disposal of these goods @2% in the course of interstate sale against C forms. It has also been observed by the Special Team (Refund) in his report bearing No 98 dated 26.1.2016 that no taxable goods were sold in the course of inter- state sale by M/s Nanak Chand Ashok Kumar Sirsa, rather, in Rajasthan, against these C forms, tax free goods (khal/Binola) have been shown accounted for which shows that benefit of input tax credit has been claimed and obtained by M/s Nanak Chand Ashok Kumar Sirsa despite the fact that no tax has been paid at any stage by the dealer. Moreover, claim of sale at concessional rate of tax against C forms has been claimed wrongly, In this way, by claiming false ITC and claiming sales at concessional rate of tax against the C forms by submitting false and fabricated documents, have caused revenue loss amounting to Rs. 12768349/- (Refund-Interest

> Penalty) to the State Exchequer as per re-assessment order No.812C dated 18.11.2019. It is accordingly, requested to register FIR against Sh. Ashok Kumar S/o Sh. Nanak Chand R/o H. No 275B Sector 11 Gali Saraswati Colony, Near Bhakra Cotton Mill Rania Road Sirsa Prop M/s Nanak Chand Ashok Kumar Sirsa TIN 06312918951 as per relevant provisions/sections of IPC and any other penal law if applicable, for investigation in the matter as per law. s/d Chap Singh Excise Taxation officer, ward no. 5, Sirsa Endst. No. 3646-47 /TI dated 12-12-19 A copy is forwarded to the following for information please:- 1. The Excise Taxation Commissioner, Haryana Panchkula 2. The Dy Excise Taxation Commissioner (ST) Sirsa s/d Chap Singh Excise Taxation officer, ward no. 5, Sirsa."

3. The FIR relates to allowing refund on the basis of forged and fabricated documents.

4. State Counsel submits that role of the petitioner is similar to the one in the connected CRM-M Nos.57559, 60624 and 59913 of 2023.

5. On the specific query being asked to Counsel representing the State as to what was the role of the petitioner in issuing refund to the accused-firm as unearthed in the investigation, he on instructions from the Investigating Officer submits that the petitioner used to charge 2% to 3% commission on refund.

6. Having heard rival contention of the parties, this Court finds that the allegation in the FIR is w.r.t. the assessee having claimed refund wrongly by submitting forged and false documents of sale. Thus the role of the petitioner primarily relates to error in judgment. There is no such allegation that the petitioner acted in cahoots with the assessee to award refund illegally.

7. It is not disputed by State Counsel that the Challan already stands

presented. Investigation is complete and as on date the evidence w.r.t. meeting of minds between the petitioner and the main accused remains amiss.

8. The petitioner is stated to be 67 years old Senior Citizen earning pension from the State. It is also not disputed that the petitioner served State with clean record and has no criminal antecedents.

9. In view of above this Court finds that there is no reason to prolong custody of the petitioner as a punitive measure. Resultantly, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

05.02.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No