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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.M.C. 6553/2019 & CRL.M.A. 3756/2020, CRL.M.A. 3758/2020**

DIRECTORATE GENERAL OF GST INTELLIGENCE .....Petitioner

Through: Mr. Satish Aggarwala, Senior Standing Counsel, Indirect Taxes, Department of Revenue.

versus

SUDHIR AGARWAL .....Respondent

Through: Mr. Kunal Bawa, Mr. Jatin Kalra, Mr. Deepanshu Yadav, Ms. Naina and Mr. Piyush Ahluwalia, Advs.
Mr. Aayush Agrawal, Adv. (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% 11.09.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) challenging the order dated 16.12.2019 (hereafter ‘**the impugned order**’), passed by the Chief Metropolitan Magistrate (‘**CMM**’), New Delhi District, Patiala House Courts, New Delhi, in the proceedings under Section 132 of the Central Goods and Services Act, 2017 titled ‘*CGST v. Sudhir Kumar Aggarwal*’.

2. It is the case of the prosecution that the respondent had fraudulently evaded GST and availed the undue advantage of bogus Input Tax Credit (‘**ITC**’) to the tune of approximately

₹7.90 crores on the strength of fake bills and invoices without actual supply of goods. The respondent was arrested on 16.11.2019.

3. The respondent was granted bail by the learned CMM by the impugned order considering the totality of facts and circumstances, including the contention of the learned counsel for the respondent that the respondent had already deposited ₹2 crores under protest to show his *bonafides*.

4. The impugned order is challenged on the ground that the learned CMM had erroneously granted bail to the respondent at the initial stage of the investigation without taking into consideration the involvement of the respondent in a matter booked by DRI for evasion of Customs Duty and other submissions agitated by the department during the course of the arguments.

5. It is argued that the respondent never deposited the sum of ₹2 crores and the learned CMM erroneously granted bail to the respondent on the said assumption.

6. The learned counsel for the respondent contended that the ITC balance in the account of the respondent's company was adjusted to the extent of ₹2 crores against the total demand.

7. An affidavit has been tendered by the Senior Intelligence Officer of the petitioner department stating that the amount of ₹2 crores that is claimed to have been deposited by the respondent by debit from his ITC ledger cannot be considered as rightful payment of government dues.

8. It is relevant to note that the impugned order records no such objection from the end of the learned Senior Standing Counsel for the petitioner department.

9. Even if it is to assumed that the said amount cannot count

as payment towards government dues, concededly, the Show Cause Notice was issued to the respondent only after it was pointed out on 04.07.2024 that the petitioner department was not keen on investigating and adjudicating the matter.

10. It appears that in the initial stages, serious allegations were made regarding tax evasion of a huge amount of money and the respondent having employed unscrupulous means to avail the undue advantage of the Input Tax Credit generated on the basis of fake bills and invoices. However, despite the same, the Show Cause Notice was only issued after a delay of more than five years. It is unclear as to why the petitioner department has been contesting the present case for such a long period of time in regard to the custody of the respondent, when the department was obviously not concerned with taking the case to its logical conclusion.

11. It is not the case of the petitioner department that the respondent has misused the liberty pursuant to being admitted on bail. It is apparent that the only interest of the department is in the custody of the respondent and not in the adjudication of the case. The respondent cannot be subjected to unending incarceration merely at the whims of the petitioner department when the department itself has taken no active steps in the case.

12. This Court fails to understand why the proper action was not pursued by the petitioner department for more than five years, even though, at the time of opposing the bail of the respondent, serious allegations were made that the case involves a large amount of public money. Such attitude of the department defeats the very purpose of the taxation statutes and has a serious effect on the *ex chequer* also.

13. In view of the above, this Court finds no reason to cancel

the bail granted to the respondent after a period of more than half a decade.

14. The petition is therefore dismissed.

15. A copy of this order be sent to the Director General (North), Directorate General of GST Intelligence for information.

AMIT MAHAJAN, J

SEPTEMBER 11, 2024