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

% ***Date of decision: 24th October, 2024***

\+ CM(M) 3324/2024 & CM APPL. 51175/2024

KANWAR ENTERPRISES PVT LTD

.....Petitioner

Through: Mr. Rajiv Bakshi with Ms. Kajal Sharma, Mr. Shrey Shrivastava and Mr. R P Rai, Advocates.

versus

JASWINDER SINGH BHATIA .....Respondent

Through: Mr. Rajesh Banati with Mr. Ashish Sareen, Mr. Adil Asghar and Mr. Aditya Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T ***(oral)***

1. Petitioner is defending a commercial suit.

2. When the case was at the stage of defendant's evidence, the defendant wanted to examine one official from concerned GST Office in order to show that no *input tax credit* with respect to the invoices in question was ever passed on to him.

3. DW-2 Mr. Sushant Mann, Senior Assistant from the concerned Department, appeared before the learned Trial Court who, in his deposition, claimed that the details with respect to the GST in question were not available with them and, therefore, they could only produce the returns filed by the party.

4. Pursuant to the above said deposition, learned counsel for defendant,

requested, the learned Trial Court to summon the concerned official from GST Office situated in Noida so that the relevant record is duly proved.

5. However, such permission has been declined and the above said order is under challenge.

6. I have seen the cross-examination of PW-1 Mr. Jaswinder Singh Bhatia (plaintiff) and in his such cross-examination, the said witness himself, volunteered, during the cross-examination that the *GST input of all these invoices has already been taken by the defendant. According to him, these could also be seen on GST Portal.*

7. The contention of the learned counsel for the petitioner (defendant) is to the contrary as according to them, they did not receive any such input.

8. It does become obvious that despite making best efforts, the defendant could not examine the competent official of GST and, therefore, in such a peculiar situation, the learned Trial Court should have rather given one opportunity to call the concerned official from the GST Office situation in Noida, where such record is stated to be available.

9. It is apprised that the learned Trial Court has already heard final arguments.

10. It is noticed that this matter was taken up by this Court on 04.09.2024 and, thereafter, on 22.10.2024 and keeping in mind the urgency, a very short date was given in this matter.

11. Undoubtedly, the petitioner should have been vigilant in the first

instance and should have summoned the official from appropriate Branch but keeping in mind the specific stand taken by him and also in view of the question put by him to the plaintiff in cross-examination, the present petition is allowed and petitioner is granted one opportunity to take requisite steps for purposes of summoning the concerned Official.

12. Learned counsel for the petitioner states that, if permitted, he would take the process dasti in order to ensure that such witness is duly summoned and provides the record before the learned Trial Court.

13. Learned Trial Court is, accordingly, requested to hear the arguments afresh, after recording of the evidence of the above said official to be summoned from GST, Noida.

14. Learned Trial Court would give one effective opportunity to petitioner in this regard and it would be ensured that summon is issued by all possible means so that there is no further delay in the matter.

15. Both the sides shall appear before the learned Trial Court on 04.11.2024 and learned Trial Court, keeping in mind its board position, would fix up a date for examination of said witness and may, accordingly, issue process to such witness through all permissible modes.

16. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 24, 2024/*sw*