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

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Reserved on: 21st February, 2022Decided on: 29th April, 2022

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W.P.(CRL) 1267/2021

AMIT GUPTA Petitioner
 Represented by: Mr.Rajesh Jain, Advocate with
 Mr.Viraj Tiwari and
 Mr.Ramashish, Advocates.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE
 HEADQUARTERS Respondent
 Represented by: Mr.Harpreet Singh, Sr.Standing
 Counsel.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****W.P.(CRL) 1267/2021****CRL.M.A. 10704/2021 (for stay)**

1. By this petition, petitioner challenges the order dated 9th July, 2021 passed by the learned CMM, Patiala House Courts whereby the bail granted to the petitioner vide order dated 23rd December, 2019 was cancelled by the learned CMM. Though in the prayer clause the petitioner has also sought quashing of the proceedings initiated by the respondent under Section 67/70 of Central Goods and Services Tax Act, 2017 (in short 'CGST') as also the release of the records seized from the various premises of the petitioner, however, during the course of arguments the petitioner pressed prayers (a), (b) and (c) in the present petition, that is, setting aside of order dated 9th July, 2021 cancelling the bail of the petitioner and restoring the order dated 23rd December, 2019 granting regular bail to the petitioner.



2. Briefly the case of the prosecution against the petitioner is that the petitioner is one of the Directors/key persons in M/s Brilliant Metals Pvt. Ltd., M/s. Progressive Alloys India Pvt. Ltd. and M/s JBN Impex Pvt. Ltd. and allegedly the mastermind behind devising a mechanism of availing Input Tax Credit (in short 'ITC') on the strength of bills of various suppliers which were non-existing and fictitious and thus availed fraudulent ITC worth ₹27.05 crores which he further passed on. Further the total ITC availed by the petitioner in the three companies mentioned above was totalling to ₹260 crores.

3. After the arrest, the petitioner was granted regular bail vide order dated 23rd December, 2019 on his furnishing a personal bond in the sum of ₹1 lakh with one surety of the like amount further subject to the following conditions:

1. *He shall deposit the amount of ₹2,70,00,000/- with the complainant department latest by 06.01.2020.*
2. *he will join the investigation with the IO as and when required.*
3. *he shall not tamper with evidence or influence any witness in any manner whatsoever.*
4. *he shall appear before the court on each and every date of hearing.*
5. *he shall not leave the country without prior permission of the court.*

4. In respect of condition No.1 of deposit of amount of ₹2.70 crores, the petitioner deposited ₹1.10 crores through cash ledger and ₹1.60 crores by way of debiting/reversals through electronic ITC ledger.

5. According to the respondent as also the impugned order since the ITC availed were through fraudulent means and thus the entire ITC claimed by the companies were under cloud, therefore, the petitioner could not have



furnished ₹1.60 crores by reversal of the ITC as a condition of bail.

6. Learned Trial Court further held that the petitioner never took prior permission of the Court to deposit the amount of ₹1.60 crores through reversal of credit from electronic ledger and merely placed the compliance by way of challans before the Court on 21st January, 2020 whereafter the respondent filed an application dated 24th January, 2020 seeking cancellation of bail of the petitioner.

7. Even as per the case of the respondent the investigation carried out till now reveals availment of fraudulent ITC worth ₹27.05 crores and the total amount of ITCs availed by the petitioner is ₹260 crores. Thus it is not the case of respondent that ITCs worth approximately ₹232.95 crores are fraudulent. Thus the short issue in the present petition is whether in respect of the condition of deposit of amount of ₹2.70 crores which was a condition for grant of bail the petitioner could have deposited part amount through the ITCs.

8. Though not stated before the Trial Court or in reply before this Court, during the course of arguments learned counsel for respondent stated that besides ₹27.05 crores of ITC availed in the present case, the petitioner have been found to have availed fraudulent ITC worth ₹15 crores which are pending investigation by DGGI, Meerut. Thus even as per the case of the respondent till date beyond approximately ₹42 crores of ITCs, the rest of the ITC have not been found to be fraudulent based on the invoices from non-existing suppliers.

9. Learned counsel for the petitioner submits that form GST-DRC-03 issued under Rule 142(2) and 142(3) of the GST Rules permit deposit of



amount through cash/credit of the ITC ledgers. Further Section 49 (4), (5) and (6) of the GST Act reads as under:

“Section 49 –Payment of tax, interest, penalty and other amounts.-

(1) ...

(2) ...

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other



amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.”

10. Rule 86(2) of the CGST Rules, 2017 reads as under:

86. *Electronic Credit Ledger*

(1) ...

(2) *The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of Section 49 [or Section 49A or Section 49B].”*

11. Further Rule 86A which was introduced on 26th December, 2019 in the Act provides for the conditions of use of amount available in electronic credit ledger as under:

“Rule 86A. Conditions of use of amount available in electronic credit ledger- (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as:-

- a) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-*
 - (i) *issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
 - (ii) *without receipt of goods or services or both; or*
- b) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
- c) *the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
- d) *the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,*

may, for reasons to be recorded in writing, not allow debit of an



amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”

12. Thus a reading of Section 49 of GST Act permits availing of the amount in electronic ledger for making any payments towards output tax under the Act or under the Integrated Goods and Services Tax Act. Further Section 49 (5) and (6) describes the manner in which the amount of input tax credit available in the electronic ledger is to be utilised and provides that the balance in electronic cash ledger after payment of tax, interest, penalty, fee etc. may be refunded in accordance with the provisions of Section 54 of the GST Act.

13. Though before the learned CMM and in the reply, the case of the respondent is that the ITCs being fraudulent the same cannot be availed of, during the course of arguments, learned counsel for the respondent does not dispute that the payment of tax could be made from the electronic ledger under Section 49 (4) of the GST Act however, contends that since the learned Trial Court directed the petitioner to deposit the amount of ₹2.70 crores, he could not have availed the amount of ₹1.60 crores by debiting the ITCs.

14. As noted above, the petitioner has to his credit ITC worth ₹260 crores and the investigation does not show that beyond approximately ₹42 crores ITCs rest are fraudulent till now. Hence the reversal of the ITC credit for



depositing the part amount of ₹2.70 crores with the department as directed by the learned Trial Court cannot be said to be illegal or unwarranted, warranting cancellation of the bail granted to the petitioner.

15. Undoubtedly, non-compliance of the conditions of bail is a ground for cancellation of the same however, in the present case the condition was to deposit a sum of ₹2.70 crores with the department which stands satisfied by the petitioner depositing part amount by transfer of ITCs. Further in case the learned Trial Court felt that its order warranted deposit of money only with the department it could have granted time to the petitioner to deposit the same. The petitioner having fulfilled the condition of deposit of the amount partly by cash ledger and partly by debit ledger of the ITC it cannot be said that the petitioner has failed to fulfil the conditions imposed on him.

16. Consequently, the impugned order dated 9th July, 2021 passed by the learned CMM, Patiala House Court is set aside.

17. Petition and application are disposed of.

18. Judgement be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

APRIL 29, 2022

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