



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

% *Judgment reserved on: 11th December, 2023*

Judgment delivered on: 19th January, 2024

+ **CRL.M.C. 4528/2023**

DIRECTORATE GENERAL OF GST INTELLIGENCE

..... Petitioner

Through: Mr.Satish Aggarwala, Senior Standing Counsel and Mr.Anurag Ojha, Senior Standing Counsel with Mr.Gagan Vaswani, Advocate.

versus

JITENDER KUMAR

..... Respondent

Through: Mr.Tanmay Mehta, Mr.Vijay Kasana, Mr.Kshitij Chhabra and Mr.Chirag Verma, Advocates.

+ **CRL.M.C. 4529/2023 & CRL.M.A. 17313/2023 (stay)**

DIRECTORATE GENERAL OF GST INTELLIGENCE

..... Petitioner

Through: Mr.Satish Aggarwala, Senior Standing Counsel and Mr.Anurag Ojha, Senior Standing Counsel with Mr.Gagan Vaswani, Advocate.

versus

JITENDER KUMAR

..... Respondent

Through: Mr.Tanmay Mehta, Mr.Vijay Kasana, Mr.Kshitij Chhabra and Mr.Chirag Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. CRL.M.C.4529/2023 has been filed by the petitioner Directorate General of GST Intelligence (DGGI) seeking setting aside of the order



dated 2nd February, 2023, passed by the learned Additional Sessions Judge (ASJ), Patiala House Courts, New Delhi, granting anticipatory bail to the respondent accused Jitender Kumar.

2. CRL.M.C.4528/2023 has been filed by the petitioner DGGI seeking setting aside of the order dated 24th April, 2023, whereby the learned ASJ has dismissed the petition filed on behalf of the DGGI seeking cancellation of the anticipatory bail granted to the respondent on 2nd February, 2023.

3. Brief facts, as agitated by the DGGI, are as follows:

3.1 The officers of DRI Gandhidham and DGGI, acting on intelligence, intercepted 21 containers carrying smoking mixtures from Mundra Port, Gujarat on 3rd October, 2022. The samples taken therefrom were sent to the Central Revenues Control Laboratory (CRCL), Kandla, wherein it was revealed that the aforesaid smoking mixture was a spurious product and not fit for human consumption.

3.2 Investigation was started and summons were issued to the exporter company, M/s Harsha International. However, the proprietor of M/s Harsha International, the present respondent, Jitender Kumar, did not comply with the aforesaid summons.

3.3 During search of the registered premises of M/s Harsha International, it was revealed that no business activity relating to export was being carried out and a *kirana* store was being operated by the father of Jitender Kumar, from the registered place of business.

3.4 During the course of investigation, it was found that M/s Radiant Traders, the manufacturers of smoking mixtures, had supplied the smoking mixture to M/s Harsha International. Upon search, it was found that no business activity was being conducted from the registered premises of M/s



Radiant Traders and no goods or plant or machinery was found at their premises.

3.5 Subsequently, statement of the proprietor of M/s Radiant Traders, Manish Goyal, was recorded under Section 70 of the Central Goods and Services Tax Act, 2017 (CGST Act), wherein he stated that no smoking mixtures have been supplied by his firm to M/s Harsha International.

3.6 The co-accused Manish Goyal was arrested on 25th November, 2022 under the allegations of having committed offences under Section 132(1)(b) and (c) of the CGST Act.

3.7 The co-accused Manish Goyal preferred a bail application before the learned ASJ, Patiala House Courts, New Delhi, which was allowed *vide* order dated 21st December, 2022 and he was released on regular bail.

3.8 Jitender Kumar preferred an anticipatory bail before the learned ASJ, which was granted *vide* order dated 2nd February, 2023.

3.9 The DGGI moved an application before the Sessions Court, seeking cancellation of the aforesaid anticipatory bail on the grounds of violation of the conditions mentioned therein, which was dismissed by the learned ASJ *vide* order dated 24th April, 2023.

4. Senior Standing Counsels appearing on behalf of the DGGI have made the following submissions:

- I. The Sessions Court could not have granted anticipatory bail to Jitender Kumar in view of the recent order dated 17th July, 2023 passed by the Supreme Court in SLP (Crl.) No. 4212-4213 of 2019 titled *State of Gujarat v. Choodamani Parmeshwaran Iyer*, wherein it was observed that provisions of Section 438 of the Code of Criminal Procedure, 1973



(CrPC) are not applicable to cases involving offences under the CGST Act.

- II. Jitender Kumar is involved in a serious economic offence relating to evasion of Goods and Services Tax (GST) to the tune of Rs.218 crores.
 - III. In the present case, Input Tax Credit has been shown to be received on the basis of procurement of cigarettes which have been shown to be used as raw material to manufacture smoking mixture. It is pertinent to note that the prices of cigarettes are very high when compared to loose tobacco. Therefore, the aforesaid method is neither economically viable nor technically feasible and has been done only to commit fraud upon the exchequer.
 - IV. The smoking mixtures seized at Mundra port were tested by CRCL, Kandla, wherein it has been established that the smoking mixture is a spurious product and not fit for human consumption.
 - V. Analysis of the bank accounts of M/s Harsha International reveals that M/s Harsha International had obtained GST refund of Rs.198 crores, out of which, Rs.195 crores was transferred to M/s Radiant Traders.
 - VI. Jitender Kumar has violated the conditions of bail as prescribed in the order dated 2nd February, 2023 and therefore, his anticipatory bail should be cancelled.
5. *Per contra*, counsel appearing on behalf of Jitender Kumar has made the following submissions:
- I. The order passed in *Choodamani Parmeshwaran Iyer* (supra) is distinguishable from the present case as in



Choodamani Parmeshwaran Iyer (supra), the accused persons were only summoned under Section 69 of the CGST Act and there was no apprehension of arrest. However, in the present case, one of the co-accused Manish Goyal had already been arrested and therefore there was a genuine apprehension of arrest. Further, the order in *Choodamani Parmeshwaran Iyer* (supra) was delivered after the grant of anticipatory bail to Jitender Kumar and cannot have retrospective operation.

- II. The impugned judgment clearly records and correctly so, that the CRLC Report was inconclusive due to lack of testing facility and it has not been proved that the seized products were not made from cigarettes.
- III. The GST payable on purchase of cigarettes was duly paid by the accused persons and it is not the case of the DGGI that fake bills were made for the purchase of the cigarettes.
- IV. Merely on the basis that one of the consignments was found to be spurious, it cannot be assumed that all previous consignments were spurious as well.
- V. Jitender Kumar has reversed the Input Tax Credit of Rs.18,19,63,214/- taken by him, which has been recorded in the order dated 24th April, 2023, passed by the learned ASJ.
- VI. Jitender Kumar has moved the Hon'ble Supreme Court and the Supreme Court vide order 14th December, 2023 has directed that no coercive action shall be taken against him.
- VII. None of the bail conditions has been violated by Jitender Kumar and all the submissions made by the DGGI were



considered by the learned ASJ in the order dated 24th April, 2023.

6. I have heard the counsels for the parties and perused the material on record.

7. At the outset, I shall deal with the submission advanced on behalf of the DGGI that anticipatory bail could not have been granted to Jitender Kumar in view of the judgment of the Supreme Court in *Choodamani Parmeshwaran Iyer* (supra).

8. In *Choodamani Parmeshwaran Iyer* (supra), the Supreme Court has observed that if any person is summoned under Section 69 of the CGST Act for the purpose of recording his statement, provisions of Section 438 of the CrPC cannot be invoked. In the said case, the accused persons were not appearing before the authorities despite repeated summons being issued to them and had filed an application seeking anticipatory bail. It was in those circumstances that the Supreme Court made the aforesaid observations.

9. In the present case, it has rightly been contended on behalf of Jitender Kumar that one of the co-accused persons, Manish Goyal, was arrested by the DGGI and therefore, there was a genuine apprehension of arrest.

10. Further, the order in *Choodamani Parmeshwaran Iyer* (supra) was delivered on 17th July, 2023, which is subsequent to the order dated 2nd February, 2023 passed by the learned ASJ granting anticipatory bail to Jitender Kumar. I find merit in the submission of the counsel appearing for Jitender Kumar that *Choodamani Parmeshwaran Iyer* (supra) cannot have retrospective operation.



11. In any event, while considering the present petitions, this Court can exercise jurisdiction vested in it under Article 226 of the Constitution of India, which confers the power to grant pre arrest protection. Therefore, I do not find merit in the submission of the DGGI that Jitender Kumar could not have been granted anticipatory bail in light of *Choodamani Parmeshwaran Iyer* (supra).

12. Hence, I proceed to consider the present case on merits.

13. From the material on record, it appears that Jitender Kumar was not the main player involved in the GST fraud and was acting on instructions from the main accused Chirag Goel and Chaman Goel. It is the case of the DGGI itself that out of the receipt of GST refund of Rs.198 crores by M/s Harsha International, Rs.195 crores were transferred to M/s Radiant Traders. Even otherwise, Jitender Kumar has clean antecedents and has been co-operating in investigation and has given his statement under Section 70 of the CGST Act. Therefore, I am inclined to sustain the grant of anticipatory bail to Jitender Kumar.

14. Now, I shall deal with the submissions of the DGGI with regard to cancellation of bail on account of non-compliance of bail conditions.

15. The DGGI has contended that Jitender Kumar has not co-operated in the investigation after grant of anticipatory bail. This contention was raised by the DGGI before the learned ASJ as well and the same was rejected by the learned ASJ observing that Jitender Kumar has joined the investigation on several dates including 20th and 21st February, 2023, when the statement under Section 70 of CGST Act was recorded. Hence, I do not agree with the aforesaid submission of the DGGI that Jitender Kumar has not joined investigation.



16. It has been strongly urged on behalf of the DGGI that the bail granted to Jitender Kumar should be cancelled as he did not deposit his passport with the Investigation Officer (IO). This contention of the DGGI has been rightly rejected by the learned ASJ in his order dated 24th April, 2023 by observing that the passport of Jitender Kumar had expired in 1998 and thereafter was never renewed. The DGGI was not able to rebut the aforesaid submission.

17. As regards the contention of the DGGI that Jitender Kumar has violated the condition relating to leaving NCR without informing the IO, the learned ASJ has already dealt with the same and a warning has been issued to Jitender Kumar.

18. As regards the reversal of the Input Tax Credit of Rs.18,19,63,214/-, the learned ASJ has noted the debit entry dated 2nd February, 2023 in the electronic credit ledger of M/s Harsha International and the IO could not deny the same. A perusal of the electronic credit ledger filed on behalf of the DGGI also confirms the aforesaid debit entry.

19. In these circumstances, I am not inclined to interfere with both the orders impugned in the present petition.

20. However, it is made clear that Jitender Kumar shall strictly comply with the conditions imposed *vide* order dated 2nd February, 2023, passed by the learned ASJ.

21. Though, this Court is confirming the anticipatory bail granted to Jitender Kumar, he is warned that in the future, if he does not appear pursuant to summons issued by the DGGI, his anticipatory bail would be liable to be cancelled. However, the DGGI shall give a notice of at least 48 hours to appear pursuant to the issuance of summons.



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22. Liberty is given to the DGGI to seek cancellation of anticipatory bail in the event Jitender Kumar fails to appear in a timely manner pursuant to summons issued.

23. Accordingly, the present petitions are dismissed. All pending applications stand disposed of.

24. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

JANUARY 19, 2024

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