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CRM-M-30676-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 12.08.2021

1. CRM-M-30676-2021 (O&M)

Hema Garg and another

... Petitioners

Vs.

State of Haryana and another

... Respondents

2. CRM-M-31591-2021 (O&M)

Arpit Garg

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Amitabh Tewari, Advocate
for the petitioner(s) (in both petitions).

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

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Prayer in both these petitions is for grant of anticipatory bail to petitioners Arpit Garg, Hema Garg and Vijay Garg, in the proceedings initiated by the respondents, in pursuance of the inspection conducted on 24.06.2021 and consequential summons issued by the respondents under Section 70 of HGST/CGST Act, 2017.

Learned counsel for the petitioners submits that in CRM-M-30676-2021, petitioner No.1 Hema Garg is registered proprietor of the firm Shree Shyam Traders, having principal place of business at Dharam Colony, Sector-5, Palam Vihar Road, Gurugram, whereas petitioner No.2 Vijay Garg is authorized person of the said firm, who was dealing in wholesale dealing of iron and steel products having GSTIN No.06AKQPA4209F1ZH, vide registration certificate dated 28.07.2018 and they have another firm by the same name bearing GSTIN No.06AEQPG6869P1ZH, vide registration certificate dated 23.01.2019.

In CRM-M-31591-2021, petitioner Arpit Garg is registered proprietor of the firm Stasya Enterprises, having principal place of business at Ground Floor, Shop No.1 and 2, Dharam Colony, Sector-5, Palam Vihar Road, Gurugram and his firm is dealing in wholesale trading of iron and steel products having GSTIN No.06BDLPG3178G2ZH, vide registration certificate dated 18.09.2018.

It is further stated that a team constituted by ETO, Haryana State GST Intelligence Unit raided shops of the petitioners on 24.06.2021 and after carrying the inspection, summons under Section 70 of HGST/CGST Act, 2017

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were issued to appear before the concerned authority. Later on, accounts of petitioners Hema Garg and Vijay Garg, in Indian Bank and Punjab National Bank and petitioner Arpit Garg in Axis Bank, were frozen by the State Tax Unit, as provisional attachment order was passed. It is also submitted that the petitioners could not appear before the concerned authority, however, the reply was sent to extend the time.

Learned counsel for the petitioners further submits that during the analysis of inward supplies (purchases) of the firms, the petitioners have availed input tax credit on the strength of tax invoices issued from some suspicious firms of Delhi and the Department, on verification of E-way bills and invoices, has initiated the proceedings against the petitioners. It is also submitted that one of the ground for issuing the summons, is that on verification by the Department, of suspicious tax payers of Delhi, from whom the petitioners have shown the inward supplies (purchases) to their firms, were found to be non-existent and verification of some of the firms was pending. It is next submitted that the respondents have formed an opinion, after recording statements of the vehicle owners, that they have never transported the inward supplies from the firms of Delhi to firms of the petitioners, therefore, bogus documents are prepared by the petitioners.

Learned counsel for the petitioners has next argued that during pendency of the anticipatory bail before the Additional Sessions Judge, the respondents have filed the reply and in paras No.2 to 9 of the reply, it is stated as under: -

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“2) That during the analysis of inward supplies (purchases) of the firms mentioned in the table below, it was observed that these taxpayers had availed the input tax credit (hereinafter referred to as ITC) on the strength of tax invoices issued from some suspicious firms of UT of Delhi.

Sr. No.	Trade Name	Prop./ Parnter	GSTIN	Address	Remarks
1.	Stasya Enterprises	Arpit Garg	06BDLPG3178 G2ZH	Shop No.1 & 2, Ground Floor, Dharam Colony, Palam Vihar Road, Opp. ACP Office, Gurgaon, Haryana- 122017	Applicant
2.	Shree Shyam Traders	Hema Rani Garg	06AEQPG6869 P1ZH	Shop No.22, Dharam Colony, Sec-5 Road Palam Vihar, Gurgaon, Gurgaon, Haryana 122001	Applicant in separate anticipatory bail application
3.	Shree Shyam Traders	Vijay Garg	06AKQPA4209 F1ZH	Sector 5 Road, Dharam Colony, Palam Vihar, Gurgaon, Haryana 122001	Applicant in separate anticipatory bail application

It is important to mention here that Sh. Arpit Garg (proprietor of the firm mentioned at Sr. No.1 in table above) is son of Mrs. Hema Rani Garg and Sh. Vijay Garg, proprietor/partner of the firms mentioned at Sr. No.2 and Sr. No.3 respectively in table above. Thus it is evident that the above three firms are managed/operated by the members of the same family.

3) That in order to verify the movement/supply of goods from the suspicious taxpayers of UT of Delhi to the above mentioned

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firms, statements of some vehicle owners were recorded. All the vehicle owners, whose statement were recorded, categorically denied use of their vehicles in transportation/movement of any such goods as shown to have been supplied by the suspicious firms of UT of Delhi to the applicant's firms in their E-way bills.

4) That the above said firms namely M/s Stasya Enterprises GSTIN-06BDLPG3178G2ZH was inspected and searched along with M/s Shree Shyam Traders GSTIN-06AEQPG6869P1ZH and M/s Shree Shyam Traders GSTIN-06AKQPA4209F1ZH, (mentioned at Sr. No.2 & 3 respectively of the table above), under Section 67 of HGST/CGST Act, 2017, after obtaining due permission from Joint Commissioner of State Tax, Gurugram (Range) vide order No.6040-6045 dated 23.06.2021.

5) That at the time of inspection and search, a person named Sh. Rajesh Kumar was found present at the business premises and he claimed to be an employee for M/s Stasya Enterprises GSTIN-06BDLPG3178G2ZH, M/s Shree Shyam Traders GSTIN-06AKQPA4209F1ZH and M/s Shree Shyam Traders GSTIN-06AEQPG6869P1ZH. No stock of any goods was found at the premises during inspection and search proceedings. Three registers (books) containing record of outward and inward supplies made by above said three firms, were found during inspection and search proceedings. The same were seized

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following the due procedure prescribed under CGST/HGST Act, 2017.

6) That at the time of inspection and search, none of the proprietors/partners of the firms was found present at the premises. Sh. Vijay Garg and Sh. Arpit Garg were contacted telephonically, but Sh. Vijay Garg denied to join the proceedings, whereas Sh. Arpit Garg told that he was in Mumbai at that time.

7) That Sh. Arpit Garg, applicant was summoned to join further proceedings on or before 29.06.2021, but he failed to join the proceedings and sought adjournment on health grounds through E-mail. Further, summons/directions were again issued/conveyed to the applicant for dated 01.07.2021, 06.07.2021, 08.07.2021, 15.07.2021 to join the proceedings. But the applicant failed to comply with the directions and did not join the proceedings on the said dates. Now the case has been fixed for 22.07.2021.

8) That the suspicious taxpayers of UT of Delhi, from whom the applicants have shown inward supplies (purchases) to their firms, are being verified through the jurisdictional authorities of UT of Delhi. In some cases verification reports have been received also from the concerned jurisdictional authorities and in all such cases the firms have been reported non-existent. Whereas the verification reports regarding the remaining firms are pending.

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9) That based on the statements of the vehicle owners, reports received from the jurisdictional authority of UT of Delhi and analysis of data available on the common GST portal, intimations of demand in form GST DRC-01A have been issued to the firms mentioned in the table below and the firms have been advised to pay the amount of tax along with applicable tax and penalty mentioned in the table below:

Sr. No.	Trade Name	Prop./ Parnter	GSTIN	GST-DRC-01A No. with date	Total amount ascertained
1.	Stasya Enterprises	Arpit Garg	06BDLPG3178 G2ZH	55/PIR0621076 dated 09.07.2021	56,396,044 (5.63 crores)
2.	Shree Shyam Traders	Vijay Garg	06AKQPA4209 F1ZH	56/PIR0621076 dated 09.07.2021	248,032,333 (24.80 crores)
3.	Shree Shyam Traders	Hema Rani Garg	06AEQPG6869 P1ZH	54/PIR0621076 dated 09.07.2021	62,247,595 (6.22 crores)

The applicant has also been afforded an opportunity to file submissions, if any, against the above ascertainment of tax, interest and penalty.”

Learned counsel for the petitioners has further submitted that since the amount ascertained against petitioner Hema Garg is Rs.6.22 crores, against petitioner Vijay Garg is Rs.24.80 crores and against petitioner Arpit Garg is Rs.5.63 crores, it being exceeding Rs.5.00 crores, the respondents authorities, in pursuance of the summons, are competent to arrest the petitioners as per Section 69 of CGST Act, 2017, though custodial interrogation of the petitioners is not required. It is further submitted that vires of Section 69 of CGST Act, 2017 is

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under challenge in CWP-8268-2020, therefore, arrest of the petitioners may be stayed.

In reply, learned State counsel has argued that while verifying the movement/inward supplies of the goods, shown by the petitioners, from suspicious tax payers of Delhi, statements of the vehicle owners were recorded and they have denied to have supplied any goods to the petitioners' firms. It is further submitted that at the time of physical verification, while conducting the search proceedings, even no stock of any good, which was the inward supply from the suspicious tax payer, was found at the premises. It is also submitted that once the evidence was collected by the respondents-Department that the petitioners have prepared fake documents, showing inward supplies of goods for the purpose of evasion of tax of more than Rs.36.00 crores, notice was served upon them. It is next submitted that instead of appearing before the authorities or giving reply to the show cause notice, the petitioners have filed the petitions praying for anticipatory bail just to delay the proceedings.

Learned State counsel has relied upon a judgment dated 28.01.2021 passed in **CRM-M-1511-2021 (Rakesh Arora Vs. State of Punjab)**, wherein, regular bail application of the accused was dismissed, by observing that GST was introduced with the object of 'One Nation, One Tax', as there is chain of sellers and purchasers, who are inter-connected, as the purchasers get the credit of the tax paid or suffered by the sellers. This chain can be within the State or PAN-India and any ingenuine or bogus chain will lead to committing fraud with the State. In the said case also, the bills were procured from the firm based at

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Delhi, where no purchase was made and transactions were used by the firms, not only for availing ITCs, but for getting the refunds by showing the sales. It is submitted that in the instant case, the petitioners are praying for anticipatory bail, in response to the notices issued by the respondents-Department, just in the shape of demand in form GST DRC-01A with an advice to pay the amount of tax, as the petitioners have liability of paying tax of more than Rs.36.00 crores, which they are evading on the basis of certain fake documents. The petitioners have failed to appear before the authorities, which has issued the notices, as they are involved in availing and utilizing wrongful input tax credit on the strength of invoices and E-way bills, which are issued from the non-existent and suspicious firms and further passed on input tax credit to various taxpayers throughout the country, thereby causing huge loss to the State Exchequer.

For the reasons recorded above and finding no merit in both these petitions, same are dismissed.

12.08.2021
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No