

Bail Application No. 897/2022
Central Goods and Service Tax v. Pawan Kumar Sharma
File no. CBIC-DIN-202205DNN10000F092
U/s 132(1)(a)(b)(c) (D) of Central Goods and Service Tax

31.05.2022

Present: Sh. Lalit Gupta, Ld. Counsel for applicant/accused.

By way of the instant order, I propose to dispose of the application moved on behalf of applicant/accused Pawan Kumar Sharma for grant of bail. It is submitted that on 12.05.2022, the house of applicant/accused situated at Chandni Chowk, Delhi was searched by the Intelligence Officer of DGGI, Gurugram Zonal Unit and after search, he was asked by the department to accompany them and later he was informed that he has been placed under arrest on 13.05.2022 at 4.53 a.m. It is submitted that prima facie no offence is made out against the applicant/accused and there is no ground to keep the applicant/accused under custody any further.

It is further submitted that applicant/accused was engaged in business of dry fruits etc through his sole proprietorship firm in the name of M/s Pawan Traders which was closed vide cancelled/surrendered order dated 17.09.2021 and there were no outstanding dues on the part of the applicant/accused to be paid to the department (GST) for which the relevant documents has also been placed on record. It is submitted that applicant/accused had already duly deposited the due GST amount of the relevant period and now the department is wrongly accusing him to have availed and passed on Input Tax Credit (ITC). It is submitted that the applicant/accused was informed by the Intelligence Officer that they were searching the records of the firm M/s Laxmi Trading company, a sole proprietorship firm of Late Smt. Laxmi Devi, who was the real sister of the

applicant/accused. It is submitted that applicant/accused had merely some business transactions with M/s Laxmi Trading Company and the applicant/accused had no control or relation with the business transactions of M/s Laxmi Trading Company nor he is the owner or the operator of the said firm and no CGST liability can be fastened upon the applicant/accused in respect of any operations of M/s Laxmi Trading Company. It is submitted that applicant/accused had never had any business transaction with M/s Imperial Merchants Pvt. Ltd.

It is further submitted that during the search of the premises of the applicant/accused on 12.05.2022, one Madan Lal, father-in-law of son of Late Smt. Laxmi Devi was found present at the premises of M/s Laxmi Trading Company who was also asked to accompany the Intelligence Officer but he was permitted to leave on the same day for the reasons best known to the department.

It is further submitted that applicant/accused has been falsely implicated and arrested in the present case merely on the disclosure of one Sanjeev Goel of M/s Imperial Merchants Pvt Ltd. who was operating from Khari Baoli in relation to transactions of M/s Laxmi Trading Company but the applicant/accused has never had any transactions whatsoever with Sanjeev Goel or his said firm. It is forcefully argued that the persons behind M/s Imperial Merchants Pvt. Limited have been mischievously let off by the concerned IO for ulterior motives. Ld. Counsel for the accused has gone to the extent of alleging that since the applicant/accused has failed to grease the palms of the investigating agency, therefore, he has been arrested whereas the real culprits, who managed to please the raiding team, have been let off. It is forcefully argued that in any case the overall tax liability of the applicant/accused is not more than Rs.5 crores in total and therefore, the applicant/accused deserves bail.

It is submitted that applicant/accused is ready and willing to cooperate in the on going investigations. It is submitted that applicant/accused has deep roots in the society. It is thus prayed that he may be released on bail.

Ld. Standing Counsel for the complainant department has vehemently opposed the bail application arguing that during the search of the premises no. 1062/3, Gandhi Gali, Fatehpuri, Chandni Chowk, Delhi-110006 by the officers of DGCI, various incriminating documents such as stamps of various suspected fake firms i.e. M/s Pawan Indotrade Pvt Ltd, M/s Jagannath Indotrade Pvt. Ltd, M/s Jagan Nath Traders, M/s Sai Overseas, M/s Breej Deep Developers Pvt. Ltd, M/s Pawan Kumar HUF, M/s Kajuwala, M/s Ram Impex, M/s Krishna Investments, M/s Govindajee Indotrade Private Limited, M/s Govind International, M/s Jatin Sharma were recovered which on investigation were found to be fake and non-existing.

It is further submitted that during investigation, while investigating about the tax invoices issued by M/s Pawan Traders to M/s Babu Lal Subhash Chand, which was recovered from the office of applicant/accused, applicant/accused disclosed that he was signing the invoices of M/s Pawan Traders to M/s Babu Lal Subhash Chand, which were goodsless invoices issued to M/s Babu Lal Subhash Chand on the instructions of nephew of applicant/accused. It is submitted that during investigation it was revealed that the address of M/s Pawan Traders was same as mentioned in the PAN card of Laxmi Devi who was also dummy proprietor of M/s Laxmi Trading Co. It is further submitted that as per the statements made by Sh. Sanjeev Goel, Controller and Anish Goel, Director of M/s Imperial Merchants Pvt. Ltd, applicant/accused used to contact them for receiving duty paid goodsless bills for M/s Laxmi Trading Company through mediator Arvind and these bills were further used for passing on

fraudulent ITC to defraud government exchequer and the conduct of applicant/accused clearly establishes on record that applicant/accused used to manage M/s Laxmi Trading Co. alongwith his nephew Gopal Sharma and was also proprietor of M/s Pawan Traders. It is submitted that applicant/accused is also proprietor /controller of entities like M/s Pawan Traders, M/s Jagannath, M/s Kajuwala, M/s Jatin Sharma, M/s Sai Overseas, etc which are also suspected to be involved in availing and passing on fraudulent ITC to non-existing companies.

It is further submitted that during investigation, it was revealed that M/s Laxmi Trading Company, prima facie, has availed fraudulent ITC for a sum of Rs.22.62 crores and passed on fraudulent ITC of Rs.26.31 crores. It is submitted that during verification of inward suppliers, it has been revealed that M/s Laxmi Trading has availed fraudulent ITC from non-existent or non-traceable firms to the tune of more than Rs.10 crores.

It is further submitted that applicant/accused is involved in more than one financial frauds and his past antecedents are tainted. Hence his bail application deserves to be dismissed.

I have heard the rival submissions and carefully gone through the material available on record.

GST has been hailed as a major tax reform in the post liberalisation era to check the cascading effects of taxation. However, unfortunately, some of the mischievous brains are busy removing the nuts and bolts from the vehicle of tax reforms to hinder the forward course of growth. The Courts of this country cannot afford to take a lenient view against such mischief.

Economic offences cannot be treated as an ordinary crime and deserves to be dealt with sternly. Reliance is placed upon *State of Gujarat vs. Mohan Lal Jitamalji Porwal & Ors*, (1987) 2 SCC 364, *Sanjiv Kohli & ors*

v. State in bail application no. 659/2005 and Y. S. Jagan Mohan Reddy vs. CBI (2013) 7SCC 439.

In the case at hand, applicant/accused is a key member of a crime syndicate involved in a multi crores GST fraud. As per Section 132 of CGST Act, not only the person who issued goodsless invoices but even the person who causes the issuance of such invoices is also liable to be prosecuted.

From the statement of Sh. Sanjeev Goel, Sh. Anish Goel and Sh. Arvind, it is evident that applicant/accused in complicity with his absconding nephew Gopal Sharma was instrumental in issuance of goodsless invoices and availing fraudulent Input Tax Credit for M/s Laxmi Trading Company. Therefore, the facile contention of Ld. Defence counsel that the role of the applicant/accused deserves to be assessed in isolation as he has no connection with M/s Laxmi Trading Company deserves to be discarded.

Furthermore, it is reported by Ld. Standing Counsel for complainant department that M/s Laxmi Trading Company, prima facie, has availed fraudulent ITC from the fake/non-existent/non-traceable firms to the tune of Rs.22.62 crores and has further passed on ITC to the tune of Rs.26.31 crores. It is further reported that upon verification of the inward suppliers, it has been revealed that M/s Laxmi Trading Company has availed fraudulent ITC from non-existent/non-traceable firms to the tune of more than Rs.10 crores. Thus, I do not find any merits in the contention of Ld. Defence counsel that the total liability of the applicant/accused is less than Rs.5 crores.

Furthermore, reliance placed by the Ld. Defence counsel upon the No Dues Certificate dated 13.01.2021 is also misplaced. It is pointed out by Ld. Standing Counsel, that the said certificate is a provisional document and is issued without prejudice to the claim of the Government to recover

the outstanding tax upon the submission of final return to be filed by the applicant/accused.

Prima facie, the contention of Ld. Defence counsel that he has not been dealt evenly by the investigating agency as compared with principal offenders i.e. the persons behind M/s Imperial Merchants Pvt. Ltd. deserves some consideration. As per the remand application of the complainant department, it is reported that Sanjeev Goel, controller of M/s Imperial Merchants Pvt. Ltd has admitted that he issued goodsless invoices involving Input Tax Credit to the tune of Rs.69.13 crores. Admittedly, the liability of the applicant/accused reported by the complainant department is much less as compared to M/s Imperial Merchants Pvt. Ltd. Therefore, letting off persons behind M/s Imperial Merchants Pvt. Ltd is infact disturbing.

Be that as it may, two wrongs can never make a right. The failure of the investigating agency to deal with M/s Imperial Merchants Pvt. Ltd sternly would not absolve the applicant/accused of his individual liability. Thus, the contention of Ld. Defence counsel that the applicant/accused also deserves bail as others have not been arrested is merit less and the same deserves to be discarded.

Before parting, I am constrained to observe that the investigations in the instant matter smacks of whimsical and arbitrary action on the part of the investigating agency. It is infact baffling as to why two accused persons have been treated with different gloves by the investigating agency and the person whose role appears to be more graver and serious with respect to the alleged offences seems to have been treated with a softer glove.

I am conscious of my limited jurisdiction while hearing bail applications and I am also conscious of the fact that investigation is at an initial stage but I find myself duty bound to bring the matter to the notice of

the higher echelons of the complainant department so as to retain public trust and confidence in public institutions and also to ensure free and fair investigation.

Copy of the instant order be accordingly sent to the worthy Principal Director General having its registered office at DGGI HQRS, 1st & 2nd Floor, Wing Number 06, West Block-08, Sector-1, R. K. Puram, New Delhi-110066 with a request to look into the matter personally and address the concerns raised by Ld. Defence counsel in the case at hand. It is expected of the worthy Principal Director General that this court shall be duly apprised about the remedial actions initiated at his end to ensure free and fair investigation in the case at hand.

Considering the nature of offence, seriousness of allegations and the crucial juncture of the investigation, I do not find any merits in the application at hand and the same is accordingly dismissed.

Application is disposed off accordingly.

Needless to say that nothing observed herein shall have a bearing upon the merits of the case.

Copy of the order be given dasti.

(Dharmender Rana)
Roster Judge
ASJ-02, NDD/PHC/New Delhi
31.05.2022