

2024 TAXONATION 2258 (MADHYA PRADESH)

MADHYA PRADESH HIGH COURT

Writ Petition No. 21641 of 2024

Deepak Singhal-Appellant

Versus

Union Of India And Others-Respondent

Coram: Hon'ble Shri Justice Sushrut Arvind Dharmadhikari And Hon'ble Shri Justice Duppala Venkata Ramana

Date of order: 11/09/2024

Decision-In Favour of Assessee

Held that: The petitioner filed a petition seeking to quash the proceedings initiated against them in a GST case. The petitioner argued that the GST authorities should have invoked the penal provisions of the GST Act instead of the Indian Penal Code. The court agreed with the petitioner and held that the GST authorities could not bypass the procedural safeguards provided under the GST Act. As a result, the court quashed the FIR and consequential proceedings against the petitioner.

Appearance:

Shri Shashwat Seth - Advocate For the Petitioner

Shri Sudeep Bhargava - Deputy Advocate General For the Respondent

JUDGMENT

Heard finally at motion stage with consent of the parties.

1. The petitioner herein has filed the present petition seeking following reliefs from this court:-

“7.1 To issue a writ of Mandamus thereby quashing the entire proceedings and ancillary proceedings in pursuance to the summons issued on 11/08/2021 against the petitioner.

7.2. *To issue a writ of mandamus thereby quashing the proceedings instituted against the petitioner in the Crime No. 62/2022 and its ancillary proceedings.*

7.3. *To issue a writ thereby seeking a clarification from the GST department and the police authority to explain its stance as to why the petitioner has been implicated in the whole proceedings of the Crime No. 62/2022.*

7.4. *To allow the petition with costs.*

7.5. *To issue or pass any such orders or direction as this Hon. Court may deem fit to pass in the matter in hand.”*

2. Brief facts of the case necessary for the disposal of present petition are as hereunder:-

i. Petitioner is a proprietor of the proprietor firm named as M/s. Agrawal Soya Extracts Pvt Ltd carrying out its business of trade of Soya beans seeds and Soya De-Oiled Cakes.

ii. On 11.08.2021, summon was issued to petitioner herein by Respondent No. 5 under [Section 70](#) of GST Act, 2017 read with Section 174 of M.P GST Act, 2017 pursuant to which statements of petitioner were recorded.

iii. On 14.02.2022, Respondent No. 5 in exercise of power conferred under [Section 67\(2\)](#) of GST Act, 2017, conducted search and seizure operations on the premises of M/s. Shreenath Soya Exim Corporate and prepared inspection report dated 04.07.2022 in which it has been alleged that M/s. Shreenath Soya Exim Corporate was bogus firm and fraudulently registered, which issued invoice/bill without supply of goods/services leading to wrongful availment or utilization of input tax credit/refund of tax.

iv. Complaint dated 25.12.2022 was made by Respondent No.5 to Respondent No. 6, on the basis of which FIR No. 62/2022 under Section(s) 420, 467, 468, 471 of IPC was registered by Respondent No. 6 on 26.12.2022 against M/s. Shreenath Soya Exim Corporate's proprietor Sachin Pateria in which petitioner has been implicated later on, on the basis of memorandum under Section 27 of Evidence Act.

v. Aggrieved of the same, petitioner has approached this court.

3. Learned Counsel for the Petitioner has submitted that GST Act, 2017 is a complete code which provides for procedure to be adopted by GST Authorities, penalties in case of breach of provisions of GST Act and punishment for offences committed under GST Act. It is further submitted that admittedly in the case at hand, search and seizure operations conducted by GST Authorities under Section 67(2) of GST Act revealed commission of offence which is punishable under Section 132 of GST Act and hence, GST being a special statute, any offence which is squarely covered by the GST Act, provisions of IPC could not have been invoked without invoking the provisions of GST Act and hence registration of FIR at the instance of GST Authorities under provisions of Indian Penal Code without invoking penal provisions under GST Act is bad in law and the FIR and consequential proceedings are liable to be quashed on this ground. It is further submitted that Section 132(6) of GST Act requires previous sanction of the Commissioner before a person can be prosecuted for offences committed under Section 132 of GST Act and GST Authorities in order to bypass such procedural safeguard have gotten FIR registered under the penal provisions of IPC without invoking penal provisions under GST Act which cannot be permitted and hence on this ground also, FIR and consequential proceedings are liable to be quashed. In support of his submission, Learned Counsel for the

petitioner has placed reliance on judgment of hon'ble apex court in ***Sharat Babu Digumarti Vs. Government (NCT of Delhi) 2017 (2) SCC 18.***

4. Per Contra, Learned Counsel for Respondents has submitted that offence under GST Act and IPC are distinct and there is no prohibition registration of offences under IPC by Police authorities on complaint being made by GST Authorities.

5. Heard learned counsel for the parties and perused the record.

6. Upon hearing learned counsel for the parties, following issue arises for consideration before this court:-

“Whether the GST Authorities can launch prosecution invoking penal provisions under Indian Penal Code, without invoking the penal provisions of GST Act, when the alleged offences are covered under the provisions of GST Act and that too without obtaining Sanction under Section 132(6) of GST Act? If not, then whether the prosecution so launched is hit by legal bar against the institution or continuance of the proceedings so as to warrant quashment?”

7. Before adjudicating the present petition on merits, fruitful reference can be made to relevant statutory provisions under the GST Act which are liable to be referred to for adjudication of the present petition:-

“67. Power of inspection, search and seizure.—

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their

examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate, wherever it occurs, the word "Commissioner were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business

premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

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69. Power to arrest.—

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

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70. Power to summon persons to give evidence and produce documents.—

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code.

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122. Penalty for certain offences.—

(1) Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes

due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of subsection (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax

not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

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132. Punishment for certain offences—

(1) Whoever commits any of the following offences, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of subsection (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section

(5) shall be non- cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

8. Upon perusal of record, it is apparent that the petitioner herein had been summoned under Section 70 of GST Act vide Summon dated 11.08.2021 and he had given his statement with GST Authorities and thereafter no action under GST Act was taken against the petitioner by GST Authorities. GST authorities conducted search and seizure operations while exercising powers under Section 67(2) of GST Act, on the premises of M/s. Shreenath Soya Exim Corporate and prepared inspection report dated 04.07.2022, in which it has been alleged that Shri Vaibhav Laxmi Industries was bogus firm and has been fraudulently registered, which issued invoice/bill without supply of goods/services leading to wrongful availment or utilisation of input tax credit/refund of tax. Upon perusal of inspection report dated 04.07.2022 along with FIR, it becomes quite apparent that there is no allegation against the petitioner of forming the bogus firm and even if the allegations therein are taken at their face value, the same constitutes offence which are squarely covered by the penal provision of Section 132 of GST Act, 2017. It is not disputed that no sanction before launching prosecution i.e. registration of FIR, was taken from Commissioner as required under Section 132(6) of GST Act and no justification exists on part GST authorities to invoke penal provisions of IPC without invoking penal provisions under GST bypassing the procedure as prescribed under GST Act and in the considered opinion of this court, such justification is mandatory especially when uncontroverted allegations in the inspection report dated 04.07.2022 and FIR, constituted offence squarely covered under the provisions of GST Act, 2017, specifically Section 132 of GST Act.

9. In the considered opinion of this court, GST Act, 2017 is a special legislation which holistically deals with procedure, penalties and offences relating GST and at the cost of repetition this court cannot emphasise more that the GST Authorities cannot be permitted to bypass procedure for launching prosecution under GST Act, 2017 and invoke provisions of Indian Penal Code only without pressing into service penal provisions from GST Act and that too without obtaining sanction from commissioner under Section 132(6) of GST Act especially when the alleged actions squarely fall within the precincts of offence as enumerated under GST Act, 2017. This would defeat the very purpose of enacting a special statute such as GST Act, 2017, as the GST Authorities instead of conducting search and seizure and conducting proceedings as prescribed under GST Act, 2017 themselves would be delegating the same to local police authorities which cannot be said to be the intent of the legislature while enacting GST Act, 2017.

10. In view of the above, this court has no hesitation in holding that GST Authorities cannot bypass procedure prescribed under GST Act for launching prosecution by simply invoking penal provisions under IPC without invoking penal provisions under GST Act especially when the allegations so revealed as a result of search and seizure conducted by GST Authorities constituted offence covered under the penal provisions of GST Act as that would amount to bypassing procedural safeguards as provided under Section 132(6) of GST Act which requires sanction of the commissioner prior to initiation of prosecution, which is to the prejudice of the petitioner herein. Letting GST Authorities to

adopt such course of action would amount to abuse of process of law which cannot be permitted by this court.

11. At this juncture, fruitful reference can be made to judgment of hon'ble apex court in **Sharat Babu Digumarti Vs. Government (NCT of Delhi) 2017 (2) SCC 18**, in which it has been held as hereunder:-

*“32. The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. **Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.**”*

12. Resultantly, this petition deserves to be allowed and is hereby allowed. *Ex Consequenti*, FIR in Crime No. 62/2022 under Section(s) 420, 467, 468 and 471 of IPC registered with Respondent No. 6 and consequential proceedings emanating therefrom are hereby quashed, as against the petitioner. No order as to costs.