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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12th December, 2022

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W.P.(C) 7517/2020

DHRUV KRISHAN MAGGU

..... Petitioner

Through: Mr. Akhil Krishnan Maggu,
Advocate.

versus

PRINCIPAL DIRECTOR GENERAL, DGGI (HQRS.), RK PURAM,
NEW DELHI & ANR. Respondent

Through: Mr. Ravi Prakash with Mr. Varun
Aggarwal & Mr. Farman Ali,
Advocates (M:9469448888)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner- Dhruv Krishan Maggu in the present case seeks return of his laptop, computer, documents and other things which were seized by the Respondents / Directorate General of GST Intelligence (DGGI) in a search conducted on 28th August, 2019 vide *panchnama* dated 28th August, 2019.
3. The brief background of this case is that the DGGI is stated to have received a communication from the Chief Manager, Allahabad Bank, Jawala Heri Market, Paschim Vihar informing the DGGI Headquarters of certain high level transactions related to refund of GST credited to four bank accounts. The said accounts were newly opened and the refund amount was being withdrawn immediately by the bank account holders. This communication was received in February, 2019. It was observed that the

addresses of all the firms were the same. Owing to the action taken at that time, the bank accounts of M/s Monal Enterprises, Aircon Overseas, Micra Overseas, and Ganeshi Inc., were frozen. The total amount credited in the bank accounts of the said companies was found to be to the tune of Rs.10,32,21,718/-. Follow up action and, further, enquiries accompanied with search conducted at the premises, which was a common address of all the four firms, revealed that the firms were, in fact, non-functional and non-existent.

4. The statements of the proprietors were recorded which revealed that the said individuals namely, Mr. Deepak Kumar Mishra, Mr. Santosh Prasad and Mr. Manoj Kumar were not aware of any details and they have merely provided their IDs such as PAN card, Aadhaar card to one Mr. Mukesh Kumar and signed a lot of documents. According to the DGGI, further investigation revealed that a total number of 23 fake firms were opened in the names of persons who were found to be labourers, drivers, cooks, street hawkers, *etc.* The fraudulent refunds of IGST of more than Rs. 63 crores is stated to have been siphoned off by these persons/firms.

5. The counter affidavit on behalf of the Respondents reveals that there are various allegations of IGST refund and certain individuals including Mr. Dhruv Maggu, the present Petitioner, Mr. Ramesh Wadera and Mr. Sanjeev Maggu and his brother Mr. Akhil Krishan Muggu were found to be involved in the process of availing IGST refunds and siphoning the same. FIRs are stated to have been registered in this regard. The counter affidavit claims that in the process of unearthing these transactions the search and seizure were conducted at B-773, Sushant Lok-1, Gurugram, Haryana in which computer, laptops, documents and other documents were seized on 28th

August, 2019, the release of which is sought for in this petition. The relief sought in this petition is as under:

“(i) To issue a writ of mandamus order to the respondent thereby directing the respondents to release the computer, laptop, documents and things seized on 28.08.2019 vide panchnama dated 28.08.2019 unconditionally.

(ii) To pass such other or further order/s which this Hon'ble Court may deem fit and proper.”

6. The submission of Mr. Akhil Krishnan Maggu, Id. Counsel for the Petitioner is that he had represented the four firms/ individuals and had sought defreezing of bank accounts in ***W.P.(C) 3304/2019*** titled ***Micra Overseas v. Directorate of GST Intelligence & Anr***, however, finally the said writ came to be withdrawn. It is his submission that since he was involved in that case, his family is sought to be implicated. He submits that despite substantial time having lapsed since 15th August, 2019, as per him when the seizure took place from the Petitioner, computer, laptops, documents, etc. are not being released. He relies upon Section 67(7) of the Central Goods and Services Tax Act, 2017 (*hereinafter 'CGST Act, 2017'*) and submits that when such seizure is affected, within six months, the goods ought to be returned. Id. counsel for the Petitioner further submits that there is no proper seizure which has been made in the present petition. Moreover, since the authorities have already taken the backup of the data the main laptop ought to be released to the Petitioner.

7. On the other hand, Mr. Ravi Prakash, Id. Counsel appearing for the Respondents has taken the Court through the scheme of Section 67 read with Section 74 of the CGST Act, 2017. It is his submission that Section 67(7)

would not be applicable in the present case, as there were no goods which were seized. In the present case confiscation has taken place of ‘documents, books or other things’ which would be governed by Section 67(2) of the Act. As per second proviso of Section 67(2), so long as ‘the documents, books, or other things’ are required for enquiry or proceedings under the Act, the same can be retained by the officer. He, further, submits that under Section 74 (10) of the CGST Act, 2017, when a determination of tax is to be made in respect of Input Tax Credit which is wrongly availed of by reason of fraud or wilful misstatement or suppression to evade tax, the proper officer has to pass an order within a period of five years. This is in contrast with determination of tax under Section 73(10), where no fraud or wilful misstatement or suppression is involved, wherein the period of three years is provided for passing the order.

8. He submits that, in the present case, Section 67(2) read with Section 67(3), Section 74(2) and Section 74(10) would show that the period as prescribed in these provisions have not yet lapsed and in view thereof, the Respondents would proceed in accordance with law. It is the further stand of the department that it was able to unearth a scam involving GST refunds and the Petitioner and his family was found to be complicit in the same.

9. Heard Id. Counsel for the parties. The relevant sub sections of Sections 67 and Section 74 of the CGST Act 2017, read as under:

“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.

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(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

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(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.

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74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or

suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

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(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund."

10. There is a clear distinction brought about in the CGST Act, 2017 in case of inspection, search and seizure of 'documents or books or things' in contrast to seizure of 'goods'. A perusal of sub-section 67(2) of the CGST Act, 2017 makes it clear that whereas the first proviso would apply *qua* seizure of goods, the second proviso would apply in respect of documents or books or things. In the case of documents or books or things, the same can be retained by the officer for so long as it is required for examination and for inquiry of proceedings under the CGST Act, 2017. This is in contrast with Section 67(7) as per which when goods are seized, the said seized goods have to be returned to the person who whom they were seized within six months of the seizure of goods, unless and until, the proper officer, on

sufficient cause, extends the same for a further period of not exceeding then six months.

11. Section 74 of the CGST Act, 2017 deals with wrong availment of Input Tax Credit on grounds of egregious nature such as fraud, wilful misstatement or suppression of facts. The present case would be governed by Section 74 owing to the nature of the seizure made, the facts revealed and the investigation currently being conducted. The proper officer under Section 74(2) has to issue a show-cause notice as per Section 74, at least six months prior to the time limit specified in Sub-section 74(10) for issuance of the order. Under sub-section 74(10) the proper officer has five years from the date of erroneous refund to pass the order in such cases. A conjoint reading of Section 74(2) and Section 74(10) would clearly show that the maximum period for issuance of the show-cause notice is six months prior to five years from the date of the erroneous refund. As per Section 67(3), if the documents, books or things are not being relied upon for the issuance of notice under the CGST Act, 2017, the same are supposed to be returned within a period not exceeding thirty days from the issue of the said notice. Thus, by a conjoint reading of sections 67(2) second proviso, 67(3), 74(2), 74(10) the 'documents or book or things' can be retained for a maximum period of four and half years, within which period the notice has to be issued, plus thirty days from the date of erroneous refund. In the present case, the said period had not yet lapsed. Accordingly, at this stage, this Court does not deem it appropriate to direct release of the computer, laptop, documents and other things seized vide *punchnama* dated 28th August, 2019.

12. Needless to add that the authorities shall proceed in accordance with law and adhere to the timelines which are prescribed in law.

13. The writ petitions are accordingly dismissed. All pending applications, are disposed of.

PRATHIBA M. SINGH, J

DECEMBER 12, 2022

dj/sk

