

**IN THE HIGH COURT OF JHARKHAND**

**AT RANCHI**

**ABA No.4745 of 2018**

**NIKIT MITTAL**

**Vs**

**THE STATE OF JHARKHAND**

**With**

**ABA No. 6521 of 2018**

**SMT RENU SINGH**

**Vs**

**THE STATE OF JHARKHAND**

**Anil Kumar Choudhary, J**

**Dated: September 23, 2019**

**Appellant Rep by:** Mr. Nitin Kr. Pasari, Adv. Ms. Sidhi Jalan, Adv.

**Respondent Rep by:** Mr. Suraj Verma, Addl. P.P

**GST** - Allegation is that the Proprietress did not transact any business and without any sale or purchase availed input tax credit on the basis of forged invoice to the tune of Rs.2,92,64,476.59/- in violation of Section 132 of the Jharkhand Goods and Services Tax Act, 2017 - similar allegation is against the other petitioner that without any sale or purchase, availed input tax credit on the basis of forged invoice to the tune of Rs.1,06,282/- in violation of Section 132 of the Jharkhand Goods and Services Tax Act, 2017 - Petitioners further submit that the prosecution has been initiated against the petitioners with oblique and mala fide motive just to harass the petitioners and without initiating any proceeding under sections 73 and 74 of the Act - Petitioners rely on the following decisions M/s. Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others - **2019-TIOL-1021-HC-MAD-GST** & Vimal Yashwantgiri Goswami Vs. State of Gujarat - **2019-TIOL-1746-HC-AHM-GST** in support.

**Held:**

+ Bench is inclined to grant privileges of anticipatory bail to the petitioners - Accordingly, the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh is directed to surrender in the Court of Chief Judicial Magistrate, Bokaro within four weeks and in the event of her arrest or surrendering, she will be enlarged on bail provisionally for a period of one month from the date of her surrender on showing proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department and on furnishing bail bond of Rs.25,000/- with two sureties of like amount each and with the condition that she will co-operate with the investigation of the case and appear before the investigating officer as and when noticed by him and furnish her mobile number and photocopy of the Aadhar Card with an undertaking that she will not change her mobile

number during the pendency of the case and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure - In case the petitioner of A.B.A. No.6521 of 2018 files another proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department within the period for which the provisional bail is granted, then the provisional bail shall be extended for further one month from the date of her deposit by the trial court - Accordingly, on showing proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department, the provisional bail granted to the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh shall be extended for a period of further one month and on the petitioner showing the last proof of reversing input tax credit of Rs.42,64,476.59 with the Goods and Service Tax Department thereby completing payment of the total amount of Rs.2,92,64,476.59 on or before six months of the date of her surrender, the provisional bail granted to the her shall be confirmed by the trial court till disposal of the case - it is made clear that in case of failure of the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh to reverse any of the installments of input tax credit as mentioned above, the provisional bail granted to her shall stand cancelled: High Court [para 10]

+ So far as petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is concerned, the petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is directed to surrender in the Court of Chief Judicial Magistrate, Bokaro within one month from today and in the event of his arrest or surrendering, he will be enlarged on bail on showing proof of reversing input tax credit of Rs.1,06,282/- to the Goods and Service Tax Department after the date of this order and on furnishing bail bond of Rs.25,000/- with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bokaro in connection with Bokaro Steel City P.S. Case No.121 of 2018 corresponding to G.R. No.663 of 2018 with the condition that he will cooperate with the investigation of the case and appear before the investigating officer as and when noticed by him and furnish his mobile number and photocopy of the Aadhar Card with an undertaking that he will not change his mobile number during the pendency of the case and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure: High Court [para 11]

**Provisional bail granted**

**Case laws cited:**

***Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others - 2019-TIOL-1021-HC-MAD-GST ...Para 5***

***Vimal Yashwantgiri Goswami Vs. State of Gujarat - 2019-TIOL-1746-HC-AHM-GST ...Para 5***

### **JUDGEMENT**

Apprehending their arrest in connection with Bokaro Steel City P.S. Case No.121 of 2018 corresponding to G.R. No.663 of 2018 instituted under Sections 409, 420 and 120-B of the Indian Penal Code read with Section 73, 74, 132(1)(e), 132(1)(f), 132(1)(i) and 132(1)(iv) of the Goods and Service Tax Act, 2017, the petitioners have moved this Court for grant of privileges of anticipatory bail.

2. Heard learned counsel appearing for the petitioners and learned A.P.P appearing for the State.

3. Learned counsel appearing for the petitioners submits that the allegation against the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh is that she being the proprietor of Renu Raj Enterprises, Bokaro claimed to be situated at the address Flat No.12, Saraswati Nagar, Puruliya Road, Chas, Bokaro and claimed to transact business from there though in fact, she did not transact any business and she without any sell or purchase availed input tax credit on the basis of forged invoice to the tune of Rs.2,92,64,476.59/- in violation of Section 132 of the Jharkhand Goods and Services Tax Act, 2017. It is submitted that the allegation against the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh is false. It is submitted that the allegation against her of having a fake business premises is incorrect as in the enquiry report itself, it has been mentioned that the son of Smt. Renu Singh has intimated the Goods and Services Tax Authorities that the office of the petitioner- Smt. Renu Singh has been shifted to Co-operative Colony of Boakro and there the officials of Goods and Services Tax Department have traced the said establishment of which the petitioner- Smt. Renu Singh is the proprietor.

4. Learned counsel for the petitioners submits that the allegation against the petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is that the petitioner Nikit Mittal being the then Director of Sri Ram Alloys and Ingot Private Limited, without any sell or purchase availed input tax credit on the basis of forged invoice to the tune of Rs.1,06,282/- in violation of Section 132 of the Jharkhand Goods and Services Tax Act, 2017. It is submitted that the allegation against the petitioner is false.

5. It is next submitted that the prosecution has been initiated against the petitioners with oblique and mala fide motive just to harass the petitioners and without initiating any proceeding under sections 73 and 74 of the Jharkhand Goods and Services Tax Act, 2017 against the petitioners; pursuant to the inspection carried out by officials of the State Tax Department. Learned counsel for the petitioners relies upon the Order of this Court in the case of Mahaveer Prasad @ Mahaveer Pd. Versus The State of Jharkhand and Another dated 17.08.2019 passed in A.B.A. No.4782 of 2018 in which this Court relied upon the judgment of Hon'ble Madras High Court dated 04.04.2019 passed in Writ Petition No.5501 of 2019 & WMP No.6251 of 2019 in the case of M/s. Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others = **2019-TIOL-1021-HC-MAD-GST** wherein the Hon'ble Madras High Court has held as under:-

*"In the present case, the Department does not dispute that action was intended or envisaged in the light of Section 132 of the CGST Act, the counter fairly stating that the provisions of Section 132 of the CGST Act were 'shown' to the Assessee. There is thus no doubt in my mind that the Department intended to intimidate the petitioner with the possibility of punishment under 132 and this action is contrary to the scheme of the Act. While the activities of an assessee contrary to the scheme of the Act are liable to be addressed swiftly and effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the statute. I am of the*

considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post-determination of the demand due from an assessee, that itself has to necessarily follow the process of an assessment."(Emphasis Supplied)

6. Learned counsel for the petitioners next relied upon the unreported order of the Division Bench of Hon'ble Gujarat High Court dated 07.08.2019 in R/Special Civil Application No. 13679 of 2019, in the case of Vimal Yashwantgiri Goswami Vs. State of Gujarat = **2019-TIOL-1746-HC-AHM-GST** wherein the Hon'ble Gujarat High Court has observed that prosecution under section 132 of the Goods and Services Tax Act should normally be launched only after the adjudication is completed in terms of 73 and 74 of the Goods and Services Tax Act. The learned counsel for the petitioner also drew attention of this Court to paragraph no.35 of Judgment of M/s. Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others (Supra) wherein the decision of the Hon'ble Supreme Court of India in C.A. No. 8081 of 2018 & C.A. No. 8082 of 2018 dated 23.01.2019 has been quoted wherein the Hon'ble Supreme Court of India while considering the provisions of Finance Act, 1994 which are similar to the provision of section 69,73 and 74 of the Jharkhand Goods and Services Tax Act, 2017 observed as under:-

*"Heard learned counsel for the parties at length.*

*The issue is as to whether the power of arrest under Section 91 of the Finance Act, 1994 ('the said Act') can be exercised without following the procedure as set out in Section 73 A(3) and (4) of the said Act. The High Court has decided, after detailed discussion, that it is mandatory to follow the procedure contained in Section 73 A(3) and (4) of the said Act before going ahead with the arrest of a person under Sections 90 and 91. We are in agreement with the aforesaid conclusion and see no reason to deviate from it.*

*Accordingly, these appeals are dismissed."* (Emphasis Supplied)

7. It is next submitted that the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh is ready and willing to reverse the input tax credit allegedly taken by her on the basis of forged invoice to the tune of Rs.2,92,64,476.59/- in installments to the Goods and Service Tax Department and the petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is also ready and willing to reverse the input tax credit allegedly taken by him on the basis of forged invoice to the tune of Rs.1,06,282/- to the Goods and Service Tax Department within a month. It is then submitted that without following the procedures contained under Section 72 and 73 of the Jharkhand Goods and Service Tax Act, 2017, the prosecution ought not to have been initiated. It is lastly submitted that the petitioners are ready and willing to co-operate with the investigation of the case. Hence, it is submitted that the petitioners be given the privileges of anticipatory bail.

8. Learned Addl.P.P appearing for the State opposes the prayer for anticipatory bail.

9. Considering the submissions of learned counsels and the facts and circumstances stated above, I am inclined to grant privileges of anticipatory bail to the petitioners. Accordingly, the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh is

directed to surrender in the Court of learned Chief Judicial Magistrate, Bokaro within four weeks from today and in the event of her arrest or surrendering, she will be enlarged on bail provisionally for a period of one month from the date of her surrender on showing proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department after the date of this order and on furnishing bail bond of Rs.25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bokaro in connection with Bokaro Steel City P.S. Case No.121 of 2018 corresponding to G.R. No.663 of 2018 **with the condition that she will co-operate with the investigation of the case and appear before the investigating officer as and when noticed by him and furnish her mobile number and photocopy of the Aadhar Card with an undertaking that she will not change her mobile number during the pendency of the case** and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure. In case the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh files another proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department within the period for which the provisional bail is granted, then the provisional bail shall be extended for further one month from the date of her deposit by the trial court. Accordingly, on showing proof of reversing input tax credit of Rs.50,00,000/- with the Goods and Service Tax Department, the provisional bail granted to the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh shall be extended for a period of further one month and on the petitioner showing the last proof of reversing input tax credit of Rs.42,64,476.59 with the Goods and Service Tax Department thereby completing payment of the total amount of Rs.2,92,64,476.59 on or before six months of the date of her surrender in the learned court below, the provisional bail granted to her shall be confirmed by the trial court till disposal of the case.

10. It is made clear that in case of failure of the petitioner of A.B.A. No.6521 of 2018 namely Smt. Renu Singh to reverse any of the installments of input tax credit as mentioned above, the provisional bail granted to her shall stand cancelled and the trial court will take appropriate steps for her apprehension for facing the trial.

11. So far as petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is concerned, the petitioner of A.B.A. No.4745 of 2018 namely Nikit Mittal is directed to surrender in the Court of learned Chief Judicial Magistrate, Bokaro within one month from today and in the event of his arrest or surrendering, he will be enlarged on bail on showing proof of reversing input tax credit of Rs.1,06,282/- to the Goods and Service Tax Department after the date of this order and on furnishing bail bond of Rs.25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bokaro in connection with Bokaro Steel City P.S. Case No.121 of 2018 corresponding to G.R. No.663 of 2018 **with the condition that he will cooperate with the investigation of the case and appear before the investigating officer as and when noticed by him and furnish his mobile number and photocopy of the Aadhar Card with an undertaking that he will not change his mobile number during the pendency of the case** and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.