

IN THE HIGH COURT OF DELHI

WP(CRL) 2020/2020

SARTAJ ALI

Vs

UNION OF INDIA AND ANR

Manmohan & Asha Menon, JJ

Dated: January 19, 2021

**Appellant Rep by:** Mr Vijay Aggarwal with Mr.Syed Urfee Haider, Advocates  
**Respondent Rep by:** Mr S V Raju, ASG with Mr.Ravi Prakash, CGSC, Mr.Vinay Yadav, Mr Akshay Gadeock, Mr Amit Gupta, Mr.Sahaj Garg and Mr R Venkat Prabhat, Advocates for UOI

**GST - IGST Refund fraud -** Writ petition has been filed challenging the constitutional validity of certain provisions of the CGST Act, 2017 - Court in a similar matter in Dhruv Krishan Maggu [ [2021-TIOL-89-HC-DEL-GST](#) ] has refused to pass any interim order holding that it is not inclined to interfere with the investigation at this stage and that too in writ proceedings - Petitioner states that the order in Dhruv Krishan Maggu (supra) is per incuriam as it is contrary to the Division Bench judgment in Rajbhushan Omprakash Dixit [ [2018-TIOL-312-HC-DEL-PMLA](#) ] - Court finds that another Division Bench in Vakammula Chandrashekhar vs. Enforcement Directorate WP Crl. 852/2017 dt. 08.05.2017 has taken a diametrically opposite view to the one enunciated in Rajbhushan Omprakash Dixit (supra) - Moreover, the Supreme Court in Directorate of Enforcement vs. Karti P Chidambaram TC (Crl.) no. 003 of 2018 has transferred the reference make to a Larger Bench of this Court to itself - Consequently, as there are two contrary Division bench judgments, it cannot be said that the order passed by this Court in Dhruv Krishan Maggu (supra) is per incuriam - Interim order passed by the Punjab & Haryana High Court in Akhil Krishan Maggu [ [2019-TIOL-2615-HC-P&H-GST](#) ] is not binding on this Court - Also, as the Supreme Court in the case of Sapna Jain & Ors. [ [2019-TIOL-217-SC-GST](#) ] has endorsed the Telangana High Court view, it cannot be urged that this Court committed an error in law in not following the High Court of Punjab & Haryana view (supra in Akhil Krishan Maggu) - Accordingly, on parity of reasoning, the application for interim relief is dismissed in view of the order passed by this Court in Dhruv Krishan Maggu (supra) - Matter to be listed on 18th March 2021 along with the case of Dhruv Krishan Maggu vs. UOI & Ors. (Supra): High Court [para 6, 7, 8, 9]

**Matter listed**

**JUDGEMENT**

**Per: Manmohan:**

**Crl.M.A.16841/2020 (exemption)**

Allowed, subject to all just exceptions.

Consequently, present application stands disposed of.

**Crl.M.A.16840/2020**

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the constitutional validity of certain provisions of the Central Goods and Services Tax, Act,

3. This Court in a similar matter in *Dhruv Krishan Maggu vs. Union of India & Ors.*, *W.P.(C) 5454/2020 = 2021-TIOL-89-HC-DEL-GST* has refused to pass any interim order holding that it is not inclined to interfere with the investigation at this stage and that too in writ proceedings. The relevant observations made by this Court in *Dhruv Krishan Maggu vs. Union of India & Ors.* (supra) are reproduced hereinbelow:-

(i) There is always a presumption in favour of constitutionality of an enactment or any part thereof and the burden to show that there has been a clear transgression of constitutional principles is upon the person who impugns such an enactment. Further, laws are not to be declared unconstitutional on the fanciful theory that power would be exercised in an unrealistic fashion or in a vacuum or on the ground that there is a remote possibility of abuse of power.

(ii) The Goods and Service Tax is a unique tax, inasmuch as the power as well as field of legislation are to be found in a single Article, i.e., Article 246A. The scope of Article 246A is significantly wide as it grants the power to make all laws 'with respect to' goods and service tax.

(iii) This Court is of the prima facie opinion that the pith and substance of the CGST Act is on a topic, upon which the Parliament has power to legislate as the power to arrest and prosecute are ancillary and/or incidental to the power to levy and collect goods and services tax.

(iv) Even if it is assumed that power to make offence in relation to evasion of goods and service tax is not to be found under Article 246A, then, the same can be traced to Entry 1 of List III. The term 'criminal law' used in the aforesaid entry is significantly wide and includes all criminal laws except the exclusions.

(v) This Court, at the interim stage, cannot ignore the view is taken by the Gujarat High Court with regard to application of Chapter XII Cr.P.C. to the CGST Act.

(vi) In view of the Supreme Court judgment in *Directorate of Enforcement vs. Deepak Mahajan* (supra) and the aforesaid Gujarat High Court judgment, the arguments that prejudice is caused to the petitioners as they are not able to avail protection under Article 20(3) of the Constitution and/or the provisions of Cr. P.C. do not apply even when CGST Act is silent, are untenable in law.

(vii) Reliance on "no coercive orders" by counsel for the petitioners are untenable as the Supreme Court in *Union of India vs. Sapna Jain & Ors.*, *SLP (Crl.) 4322-4324/2019 dated 29th May, 2019 = 2019-TIOL-217-SC-GST* has 'spoken its mind'.

(viii) This Court prima facie finds force in the submissions of the learned ASG that the Central Tax Officers are empowered to conduct intelligence-based enforcement action

against taxpayers assigned to State Tax Administration under Section 6 of the CGST Act.

(ix) What emerges at the prima facie stage is that it is the case of the respondents that a tax collection mechanism has been converted into a disbursement mechanism as if it were a subsidy scheme.

(x) In view of the serious allegations, this Court is not inclined to interfere with the investigation at this stage and that too in writ proceedings. At the same time, innocent persons cannot be arrested or harassed. Consequently, the applications for interim protection are dismissed with liberty to the parties to avail the statutory remedies.

4. However, Mr. Vijay Aggarwal, learned counsel for petitioner states that the order passed by this Court in *Dhruv Krishan Maggu vs. Union of India & Ors.* (supra) is per incuriam as it is contrary to the Division Bench judgment of this Court in *Rajbushan Omprakash Dixit vs. Union of India & Anr.*, 2018 (1) JCC 506 = **2018-TIOL-312-HC-DEL-PMLA**.

5. He further submits that subsequent to the Telangana High Court judgment, the High Court of Punjab and Haryana in *Akhil Krishan Maggu & Anr. vs. Deputy Director, DGGI & Ors.*, C.W.P. No.24195/2019 (OM) = **2019-TIOL-2615-HC-P&H-GST** has refused to follow the Telangana High Court judgment and passed interim orders.

6. However, this Court finds that another Division Bench of this Court in *Vakamulla Chandrashekhar vs. Enforcement Directorate & Anr.*, W.P.(Crl.) 852/2017 dated 08th May, 2017 had taken a diametrically opposite view to the one enunciated in *Rajbushan Omprakash Dixit vs. Union of India & Anr.* (supra). Moreover, the Supreme Court in *The Directorate of Enforcement vs. Karti P. Chaidambaram*, TC (Crl.) No.003 of 2018 has transferred the reference made to a larger Bench of this Court to itself. Consequently, as there are two contrary Division Bench judgments, it cannot be said that the order passed by this Court in *Dhruv Krishan Maggu vs. Union of India & Ors.* (supra) is per incuriam.

7. Further, the interim order passed by the High Court of Punjab and Haryana in *Akhil Krishan Maggu & Anr. vs. Deputy Director, DGGI & Ors.* (supra) is not binding on this Court. Also as the Supreme Court in *Union of India vs. Sapna Jain & Ors.*, SLP (Crl.) 4322-4324/2019 = **2019-TIOL-217-SC-GST** has endorsed the Telangana High Court view, it cannot be urged that this Court committed an error in law in not following the High Court of Punjab and Haryana view.

8. Accordingly, on parity of reasoning, the application for interim relief is dismissed in view of the order passed by this Court in *Dhruv Krishan Maggu vs. Union of India & Ors.* (supra).

#### **W.P.(Crl.) 2020/2020**

9. List the matter before the roster Bench on 18th March, 2021 along with the case of *Dhruv Krishan Maggu vs. Union of India & Ors.* (supra).

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

