

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Writ No. 76/2019

1. Bharat Raj Punj S/o Late Brij Raj Punj, Managing Director, M/s Leel Electricals Limited, R/o B-20, Greater Kailash Part 1, New Delhi.
2. M/s Leel Electricals Limited, Corporate Office 159, Okhla Industrial Estate, Phase Iii, New Delhi, Through Managing Director Bharat Raj Punj, R/o B-20, Greater Kailash Part1, New Delhi.

-----Petitioners

Versus

1. Commissioner Of Central Goods And Service Tax Department, Jaipur, Ncr Building, Statue Circle, C Scheme, Jaipur.
2. Superintendent (AE) Central Goods And Service Tax Commissionerate Jaipur, Ncr Building, Statue Circle, C Scheme, Jaipur.
3. Commissioner Of Central Goods And Services Tax Department Alwar, Block A, Surya Nagar, Alwar.
4. Superintendent (AE), Central Goods And Service Tax Commissionerate Alwar, Block A, Surya Nagar, Alwar.

-----Respondents

For Petitioner(s)	:	Mr. R.N. Mathur, Sr. Adv. with Mr. Vijay Choudhary, Mr. Aseem Chaturvedi, Mr. Anant Priya Jain
For Respondent(s)	:	Mr. Siddharth Ranka

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Judgment / Order

12/03/2019

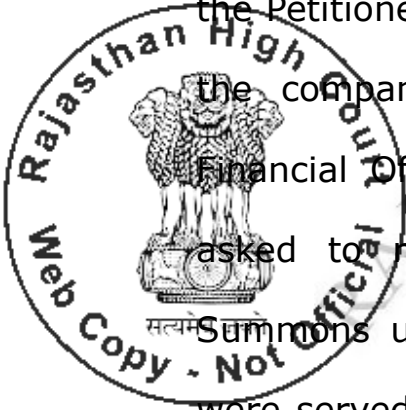
1. Petitioners have preferred this Writ Petition seeking quashing and setting aside of summons issued by the Commissioner of Central Goods and Service Tax Department,

Jaipur and Alwar and a further prayer that the authorities be directed not to take any coercive action against the Petitioners.

2. Succinctly stated facts of the case are that the Petitioner No.1 is the Managing Director of M/s Leel Electricals Limited, Petitioner No.2. The Central Goods And Service Tax Department conducted a raid on 17.01.2019, at the premises of the Petitioners' Company at Bhiwadi, Rajasthan. Senior Officials of the company, Shri Mukut Bihari Sharma, Director and Chief Financial Officer (CFO) and Shri Shobhan Singh Bhandari were asked to remain present at the premises of the Company. Summons under Section 70 of the Goods and Services Tax Act were served upon them. The raid continued till 19.01.2019. After recording of the statements of Officials of Company, they were arrested. As per the case of the Department, the Company had fraudulently availed input tax credit of Rs.40.53 crores by issuance of fictitious sale invoices and sister concerns of company and Petitioner-Company had fraudulently availed input tax credit of Rs.328 crores.

3. It is contended by counsel for the Petitioners that the Petitioner No.1 was residing in United States of America. It was only after demise of his father that he returned to India in November, 2017. He was appointed as M.D. on 30.05.2018 after demise of his father-Shri Brij Raj Punj. He has all apprehension that if he appears, in pursuance of the notice issued under Section 70 of the Goods and Services Tax Act by the Department, he would be arrested, as has been the fate of Senior Officials of the Company.

4. It is contended that Petitioner has deposited GST to the tune of Rs.7,15,06,124/- from 18.01.2019 till 02.02.2019, which

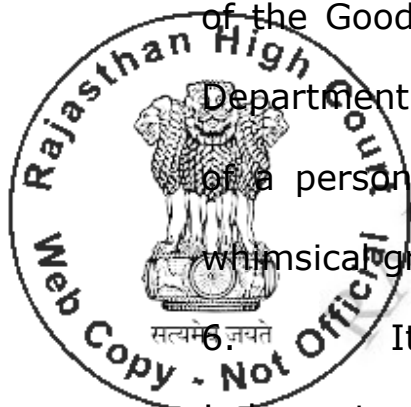


goes to show that Petitioner is a law abiding citizen. If any coercive action is taken by the Department against the Petitioner, it would seriously hamper his reputation.

5. Counsel for the Petitioners has placed reliance on **"Make My Trip (India) Pvt. Ltd. vs. Union of India"** 2016 SCC online Del.4951, wherein the Delhi High Court held that Section 70 of the Goods and Services Tax Act does not permit the Sale Tax Department to by pass procedure before going ahead with arrest of a person. Decision to arrest a person must not be taken on whimsical grounds, it must be based on 'credible material'.

6. It is contended by counsel for the Petitioners that the judgment passed by the Delhi High Court was affirmed by the Apex Court in Civil Appeal No.8080/2018 **"Union of India & Ors. vs. Make My Trip (India) Pvt. Ltd."** decided on 23.01.2019, wherein the Apex Court has affirmed the judgment of the Delhi High Court and held that it is mandatory to follow the procedure contained in Section 73-A(3) & (4) of the Finance Act, 1994 before going ahead with the arrest of a person under Sections 90 & 91 of the Act.

7. Reliance has also been placed on **"Meghraj Moolchand Burad vs. Directorate General of GST (Intelligence), Pune and Anr."** SLP (Criminal) No(s). 244/2019 dated 13.12.2018 of the Apex Court, wherein the Apex Court granted protection to the Petitioner from arrest and permitted the Petitioner to appear before the Directorate General of GST (Intelligence). Reliance has also been placed on **"Rakesh Kumar Chaubey vs. Union of India & Ors."** wherein the Uttrakhand High Court permitted the Petitioner to appear before the concerned Authority and tender all support to the investigation.



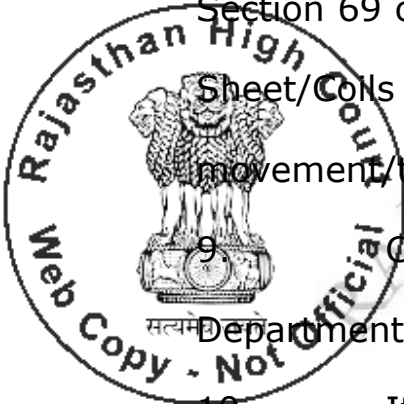
The Court restrained the authority from arresting the Petitioner except with the leave of the Court.

8. It is contended by counsel for the Petitioner that the tax has not been determined in accordance with Section 73 and 74 of the Act and till the tax is determined, Department has no right to summon the Petitioner or arrest the Petitioner under Section 69 of the Act. It is also contended that fake invoices of CR Sheet/Cols were issued without any physical movement/transaction of the goods.

9. Counsel for the Central Goods And Service Tax Department has opposed the writ petition.

10. It is contended that a detailed reply has been submitted by the Department. The details of related/sister concerns of the Company at Jaipur and the amount of fraudulent input tax credit availed by such related/sister concerns is detailed out in the reply. As per which, around Rs.328 crores input tax credit has been fraudulently claimed by the Petitioner and its sister concerns. The fraudulent claim of input tax credit by the Petitioner No.2 is to the tune of Rs.40 crore 53 lakh.

11. It is contended that Section 70 of the Goods and Services Tax (hereinafter referred to as the 'Act'), Act gives powers to the proper officer to summon any person whose attendance is necessary either to give evidence or to produce document or any other thing in any inquiry. It is argued that notices have been issued and Petitioner is bound by the law to appear before the Proper Officer. It is also contended that though power of arrest is available under Section 69 of the Act, but the same depends on all the facts of each case and it is only when the Commissioner has reasons to believe that a person has committed

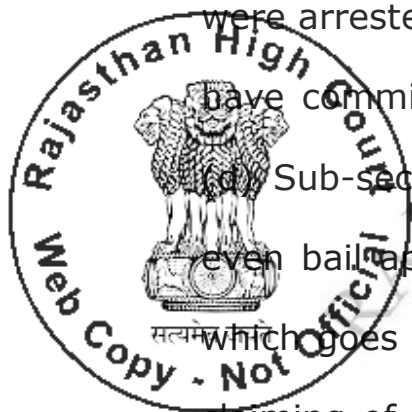


any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

12. It is also contended that the Officials of the company were arrested as there was reasonable ground to believe that they have committed offence under clause (b) or clause (c) or clause (d) Sub-section (1) of Section 132 of the Act. It is argued that even bail applications of the officials stand rejected by the Court which goes to show that the company was involved in fraudulent claiming of input tax credit by furnishing fake invoices. It is also contended that though Petitioner No.1 was residing at United States of America, he was the Director of the company from August, 2012 and was receiving managerial remuneration from the company to the tune of about Rs.60 lakh per annum. Hence, he cannot shake off his responsibilities from the criminal act committed by him and the company.

13. With regard to the judgment referred to by the counsel for the Petitioners **"Make My Trip (India) Pvt. Ltd. vs. Union of India"** (supra), it is contended that facts of that case are entirely different in "Make My Trip (India) Pvt. Ltd. vs. Union of India" case. Make my trip collected amount with GST but the GST was not deposited. The amount was passed on to the hotels alongwith GST after retaining commission, no effort was made by the Department to collect evidence from the hotels, as to whether, they had deposited GST with the Department.

14. It is also contended that from the evidence of the Officials of Petitioner No.2, Company, it is revealed that M/s Leel



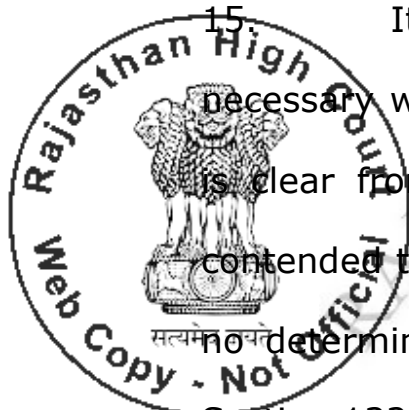
Electricals Limited, Petitioner No.2, and its various group/sister/related companies, as per the statutory disclosure of related party mentioned in Note 40 of the Balance Sheet, availed fraudulent input tax credit to the tune of Rs.328 crores 36 lakhs. It is contended that till date six summons have been issued to the Petitioner but he has failed to appear before the Authorities.

15. It is contended that determination of tax is not necessary when input tax credit has been availed fraudulently, as is clear from the plain reading of Section 73 of the Act. It is contended that Sections 73 & 74 of the Act are not applicable and no determination is to be done in a case where offence under Section 132 of the Act is committed by a person.

16. It is contended that the judgment referred to by the counsel for Petitioner has no applicability to the facts of the case as there is fraudulent availment of input tax credit to the tune of Rs.328 crores against the Petitioner No.2 and other related firms which were working as a syndicate to defraud the Government Exchequer by issuing fake invoices and availing and utilizing fraudulent input tax credit.

17. I have considered the contentions.

18. It is pertinent to note that it is clear case of the Department that the Petitioner and its sisters concerns have availed input tax credit to the tune of Rs.328,36,73,701/- on the basis of fake invoices, out of which Rs.40,53,58,772/- is the fraudulent input tax credit claimed by Petitioner No.2 of which Petitioner No.1 is the Managing Director. This fact is not controverted by the Petitioner, nor there is any pleading or counter pleadings on behalf of the Petitioner in the Writ Petition that a



wrong allegation has been levelled by the Goods and Services Tax Department.

19. The Petitioners' Writ Petition is confined to technicalities as also to the fact that the Petitioner No.1 was residing abroad and was not involved in day to day affairs of the company. This Court is not convinced by the arguments advanced by the counsel for the Petitioner for the very reason that Petitioner No.1 is the Director of the company since 08.08.2012 and has been receiving managerial remuneration from the company to the tune of about Rs.60 lakh per annum. Petitioner No.1 became the Managing Director of Petitioner No.2 on 30.05.2018, hence contention of counsel for the Petitioner that he was not involved in day to day affairs of the company, cannot be accepted.

20. The case set up by the Department is that the Petitioner has claimed input tax credit on fake invoices, which fact is not controverted by the Petitioner. Hence, Department has all rights to take any action permissible by law.

21. The contention that the tax is to be first determined under Section 73 & 74 of the Act does not have any force for the very reason that in an offence committed under Section 132 of the Act determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender.

22. It is clear case of the Department that a raid was conducted at the premises of the Petitioner company at Bhiwadi and two officials and Petitioners were summoned and their statements were recorded and from the statements, it is revealed that from July, 2017, company has not done any business and that fake sale purchase bills were prepared and only trading

activities were shown. All the trading activities were conducted without any banking transaction or movement of goods. It was also revealed from the statements that input tax credit was wrongly claimed to the tune of more than Rs.40 crores and 53 lakhs by the Petitioner No.2.

23. From investigation, it is also revealed that no manufacturing process was conducted at Bhiwadi and CR Sheet/Coils and Iron Sheets were not used in the manufacturing process at Bhiwadi. It was also revealed that M/S Fedders Electric and Engineering Ltd, M/S PSL Engineering Pvt. Ltd, M/S Air Serco Pvt. Ltd, M/S Perfect Radiators Pvt. Ltd. & M/S Punj Engineering are related companies to Petitioner No.2 and the total input credit wrongly claimed by the company and its sister concerns is to the tune of Rs.328 crores.

24. From searches, it was revealed that the company had taken input tax credit on bills issued by other concerns, whereas CR Sheet/Coils and iron sheets mentioned in the bills never reached the unit. Petitioner No.2 issued exit pass even when they had not received the goods, the company had thus shown fake purchase of Rs.225.90 crores and had wrongly claimed input credit to the tune of Rs.40.53 crores.

25. The judgment referred to by the counsel for the Petitioners **"Make My Trip (India) Pvt. Ltd. vs. Union of India"** (supra) has no applicability to the facts of this case as in make my trip, the company collected money from the travellers including service tax, the service tax was paid to the hotels and the responsibility to pay service tax was on the hotels. The Court held that officers of Make My Trip were wrongly arrested and Provisions of Finance Act, 1994 were not followed. The case was



thus of collection of the tax and its non-deposition with the Government, whereas in the present case, false input credit was claimed on fake invoices without conducting any trading activities.

26. **"Meghraj Moolchand Burad vs. Directorate General of GST (Intelligence), Pune and Anr."** (supra) also does not have any applicability as Meghraj Moolchand Burad_case pertains to Anticipatory Bail and the facts are not relevant to present case. Petitioner in the present case has not disputed the factum of fraudulent availing of input tax on basis of fake invoices.

27. Since offence under Section 132 is made out and Senior Officials of Company are behind bars, Petitioner being Managing Director is responsible and Department has the right to proceed under Section 69 and 70 of the Act.

28. I do not find any force in the Writ Petition. Petitioners have claimed tax input credit on the basis of fake invoices hence Writ Petition is dismissed with cost of Rs.1,00,000/- only.

29. The cost amount be deposited with the Rajasthan High Court Legal Services Authority within four weeks of the date of this order and proof thereof, be submitted with the Registrar (Judicial). If the proof of depositing of amount is not submitted, let the matter be listed before the Court for appropriate course of action.

30. Stay application also stands disposed of.

(PANKAJ BHANDARI),J