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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 07.12.2023

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W.P.(C) 12304/2023**BHAGAT RAM OM PRAKASH AGRO PRIVATE
LIMITED & ANR.**

..... Petitioners

Through: Mr. Avi Singh, Mr. Tanuj Bhadana
& Mr. Shikhar Garg, Advs.

Versus

**THE COMMISSIONER CENTRAL TAX
GST DELHI- EAST**

..... Respondent

Through: Mr. Atul Tripathi & Mr. V.K. Attri,
Advs. along with Mr. Pawan Kumar
& Mr. Rajesh Kumar,
Superintendents.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The petitioners have filed the present petition, *inter alia*, praying that the records of the search authorization dated 22.08.2023 issued by the respondent, for conducting the search at the premises of the petitioner, be re-called and that the same be quashed. The petitioners also impugn summons dated 05.09.2023 issued under Section 70 of the Central Goods & Services Tax Act, 2017 (hereafter '**the CGST Act**') and the proceedings initiated pursuant thereto. Additionally, the petitioners pray that the respondent be directed to return the documents belonging to the petitioner company along with the photocopies, which were collected during the search/inspection conducted on 22.08.2023.



2. A search under Section 67(1) of the CGST Act was conducted at the premises of the petitioners on 22.08.2023.

3. We have perused the original file produced by the respondent and it substantiates the petitioners' case that the said inspection was conducted pursuant to the order dated 05.04.2023 passed by the Special Judge (P.C. Act) in M. No. 139/2022 and 140/2022, whereby the learned Special Judge had directed the Income Tax Department, GST Department and Enforcement Directorate to check the source of ₹50,00,000/- received by the petitioners.

4. It is stated that petitioner no.2 – Prem Shankar Verma had purchased a property from one Mr. Rajesh Kumar Anand for a sum of ₹50,00,000/-. Mr. Rajesh Kumar Anand deposited the said consideration in a Fixed Deposit Receipt (hereafter 'FDR') and furnished the FDR as a collateral for securing bail of one of the accused in another matter pending before the learned Special Judge. It is apparent that the learned Special Judge suspected the source of the funds that were furnished, in the form of a FDR, as a security. Accordingly, the learned Special Judge had issued the aforesaid directions. The relevant extract of the order dated 05.04.2023 is set out below:

“16) Applicant in his reply has alleged that all these above persons/entities are related to purchaser M/s Baikuntham Agro Foods and Beverages Pvt. Ltd. and he had no reason to suspect as to the source of money at the hands of the purchaser cannot be believed and the role of applicant in these transactions is also highly doubtful especially when the version of the Sh. Prem Shankar Verma referred above is not matching with his own documents. Accordingly, I am of the view that matter is also



required to be referred to Income Tax Department, GST department and ED to check the source of Rs. 50 lakhs which was received by the applicant as well as whether this amount was genuinely earned by Sh. Prem Shankar Verma or it is a unaccounted black money or is a part of the proceeds of banks which was embezzled by Wadhawan Brothers.

17) In view of the above discussions, both the applications of the applicant are disposed off. Though surety bond of applicant is ordered to be cancelled but FDR deposited by him cannot be released unless clearance is received from all the concerned departments. In case, these departments after inquiry find prima facie that money of Rs. 50 lakhs transferred in the account of applicant was unaccounted or black money or was a part of the amount which was cheated or embezzled by Wadhawan Brothers from the banks qua which this case is registered, then the concerned departments can get this amount released from court after encashment of FDR in question and also can take legal action against the person at fault as per law.

18) IO is directed to serve the copy of this order upon SHO Police Station I.P. Estate, concerned competent authorities of Income Tax Department, GST Department and Enforcement Department for compliance and for further appropriate actions and submit report to this court within 6 months regarding action taken and status of investigation/inquiry. The file of both these applications be consigned to record room.”

5. On the basis of the aforesaid directions, a letter dated 11.04.2023 was issued by the DIG & Head of Branch, CBI to the Principal Chief Commissioner, Delhi CGST to take appropriate action in compliance of the order dated 05.04.2023.

6. The record does not indicate that any further investigation was conducted prior to authorizing the inspection under Section 67(1) of the CGST Act. On 22.08.2023, the Commissioner, Central Tax GST issued an authorization (in FORM GST INS-01) for conducting inspection under Section 67(1) of the CGST Act at the premises of the petitioners.



7. A perusal of the said authorization indicates that all grounds as stated in Clause 'A' of the requisite form were recorded as reasons for authorizing the inspection. Clause 'A' of FORM GST INS-01 is set out below:

“A.

M/s. _____

- has suppressed transactions relating to supply of goods and/or services
- has suppressed transactions relating to the stock of goods in hand,
- has claimed ITC in excess of his entitlement under the Act
- has claimed refund in excess of his entitlement under the Act
- has indulged in contravention of the provisions of this Act or rules made thereunder to evade tax under this Act;”

8. It is clear from the record that apart from the directions issued in terms of the order dated 05.04.2023, there were no reasons for the respondent to initiate the search against the petitioners under Section 67(1) of the CGST Act. The authorization issued is thus, patently erroneous as none of the grounds as set out in the said authorization are borne out from the information or material on the record of the respondent. Concededly, the inspection was conducted pursuant to the order dated 05.04.2023, passed by the learned Special Judge.

9. We have serious reservations as to whether any such directions could have been issued by the Special Judge for conducting a roving and fishing inquiry by the GST authority. It is clear that the said directions were given without reference to the statutory provisions of



the CGST Act and without being cognizant of the powers of the GST authorities to conduct inspection, search and seizure operations under the said Act.

10. This Court is informed that Mr. Rajesh Kumar Anand has also filed a petition impugning the order dated 05.04.2023 passed by the Special Judge and the same is pending adjudication before a learned Single Judge of this Court. We are refraining from making any further observations in regard to the order dated 05.04.2023, passed by the Special Judge as the same is the subject matter of a petition pending adjudication before the learned Single Judge.

11. Insofar as the petitioners' prayer that the documents be returned to the petitioners, is concerned, it is stated on behalf of the respondent that no documents have been seized, however, certain photocopies of the documents / documents were collected. Clearly, since the conditions for inspection under Section 67(1) of the CGST Act were not satisfied, the said documents are required to be returned to the petitioners. It is so directed.

12. Insofar as the summons issued under Section 70 of the CGST Act are concerned, we do not consider it apposite to issue any directions. The GST authorities are not precluded from continuing or initiating proceedings in accordance with the provisions of the CGST Act. Thus, if any information is available with the Department that requires an inquiry to be conducted against the petitioners, the respondent authorities are not impeded to do so. However, we clarify that no further inquiries or action is required to be conducted or taken by the



GST authorities, for complying with the order dated 05.04.2023 passed by the Special Judge.

13. No further orders are required to be passed in the present petition. The same is disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 7, 2023
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