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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 5454/2020

DHRUV KRISHAN MAGGU .... Petitioner

Through: Mr. Jagmohan Bansal, Advocate with Mr. Akhil Krishan Maggu, Advocate.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. S.V. Raju, ASG with Mr. Ravi Prakash, Mr. Aditya Shekhar, Mr. Shahan Ulla, Mr. Farman Ali, Mr. Guntur Pramod Kumar, Mr. Annam Venkatesh, Ms. Sairica S. Raju, Mr. Shaurya R Rai, Ms. Zeal Shah, Advocates for R-4/DGGI.
Mr. Chetan Sharma, ASG with Mr. Akshay Gadeock and Mr. Sahaj Garg, Advocates for UOI.

AND

\+ W.P.(C) 10130/2020

K P AND SONS & ORS................. Petitioners

Through: Mr. J.K Mittal, Advocate.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. S.V. Raju, Ld. ASG with Mr. Ravi Prakash, Mr. Aditya Shekhar, Mr. Shahan Ulla, Mr. Farman Ali, Mr. Guntur Pramod Kumar, Mr. Annam Venkatesh, Ms. Sairica S. Raju, Mr. Shaurya R Rai, Ms. Zeal Shah, Advocates for R-3.

Reserved on : 21st December, 2020

% Date of Decision: 08th January, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J:

CM No. 28105/2020 in WP(C) 5454/2020
CM No. 32276/2020 in WP(C) 10130/2020

1. While the CM No. 32276/2020 has been filed by the Petitioner in W.P.(C.) No. 10130/2020 seeking interim protection, CM No. 28105/2020 has been filed by Respondent nos. 2 and 3 in W.P.(C.) No. 5454/2020 seeking vacation of interim protection granted vide order dated 20th August, 2020.

2. It is pertinent to point out that when W.P.(C.) No. 5454/2020 was listed before this Court for the first time on 20th August, 2020, Mr. Chetan Sharma, learned Additional Solicitor General had fairly stated that in a similar matter the Supreme Court had directed that no coercive action be taken against the petitioner therein. On the basis of the said statement, this Court had granted interim protection to the petitioner. The relevant portion of the order dated 20th August, 2020 passed by this Court in W.P.(C.) No. 5454/2020 is reproduced hereinbelow:-

> *"Present writ petition has been filed seeking a declaration that Sections 69 and 132 of the CGST Act, 2017 are arbitrary, unreasonable and being beyond the legislative competence of the Parliament are ultra vires the Constitution.*
>
> *xxxx xxxx xxxx xxxx*
>
> *Mr.Chetan Sharma, learned ASG candidly states that the Supreme Court in a similar case being W.P.(Crl.) No.184/2020 has issued notice and directed that no coercive action be taken against the petitioner therein.*

Keeping in view the aforesaid order, it is directed that, till further orders, bail of the petitioner shall not be cancelled in the present case."

3. Subsequently upon an application being filed by the respondents for vacation of the interim protection on the ground that the interim order in W.P.(Crl.) No. 184/2020 had been vacated by the Supreme Court vide order dated 31st August, 2020, this Court had issued notice vide order dated 06th November, 2020.

4. This Court vide this order is deciding the common issues pertaining to interim protection in both the applications in the respective writ petitions.

5. Further, CM No. 344/2021 in W.P.(C.) No. 10130/2020 was filed by the Petitioner seeking permission to bring on record the rejoinder to the counter-affidavit filed by Respondent Nos. 2 and 3 in the interim application being CM No. 32276/2020. The aforementioned application was allowed vide order dated 06.01.2021 and the matter was re-heard in light of the rejoinder filed.

ARGUMENTS ON BEHALF OF THE PETITIONERS

6. Mr. Jagmohan Bansal and Mr. J.K. Mittal learned counsel for the Petitioners submitted that Sections 69 and 132 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') are unconstitutional as being provisions of criminal nature, they could not have been enacted under Article 246A of the Constitution of India, 1950. They emphasized that the power to arrest and prosecute are not ancillary and/or incidental to the power to levy and collect goods and services tax.

7. They further submitted that since power to levy Goods and Services Tax is provided under Article 246A, power in relation thereto could not be traced to Article 246 or any of entries in Seventh Schedule.

8. In the alternative, they submitted that Entry 93 of List 1 confers jurisdiction upon the Parliament to make criminal laws only with respect to

matters in List 1 and not CGST. Therefore, according to them, Sections 69 and 132 are beyond the legislative competence of the Parliament.

9. They also submitted that the procedure prescribed under the CGST Act is not just, fair and reasonable. They stated that there had been many cases where an assessee had been arrested at initial stage of investigation but the department had subsequently failed to establish its case in adjudication proceedings and in the process, the assessee had suffered irreparable loss on account of arrest. They emphasized that in the present cases no Show Cause Notice had been issued to the Petitioners either under Section 73 or Section 74 of the CGST Act by the Respondents for any unpaid tax, short paid tax, or erroneous refunds or where input tax credit had been wrongly availed or utilized.

10. They stated that the Respondents have erroneously claimed that since they are not the police officers and CGST Act is a special act containing provisions for arrest, search and seizure etc, Respondents are not bound by Chapter XII or any provision of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') governing commencement of investigation, maintaining case diary, etc. They submitted that despite the CGST officers being vested with powers of police officers as well as those of a civil court while investigating an offence, still the proceedings are termed as an 'inquiry' and the person summoned is not an 'accused'. They pointed out that as CGST officers are not police officers, no protection under Article 20(3) is available to the summoned persons – thereby causing them immense prejudice.

11. Learned counsel for Petitioners also contended that the Apex Court in a number of cases, where investigation was being conducted under CGST Act, has ordered that no coercive steps be taken against the assessee. In support of their contention, they relied upon the orders passed by the Apex Court in ***W.P. (Criminal) No. 221/2020, Shyam Khemani Vs. State of M.P. & Ors., dated***

31st August, 2020; W.P. (Criminal) No. 118/2019, Mukesh Manackchand Kothari Vs. Union of India & Anr., dated 26th April, 2019; W.P. (Criminal) 212/2019, Gaj Raj Singh Baid Vs. Union of India & Anr. dated 09th August, 2019; W.P. (Criminal) No. 336/2018, Radhika Agarwal Vs. Union of India & Ors., dated 08th January, 2019; and ***W.P. (Criminal) No. 267/2019, Namrata Jain & Anr., dated 30th September, 2019***.

12. Mr. J.K. Mittal, learned counsel for the Petitioner in WP(C) No. 10130/2020 prayed for a declaration that Central Tax Officers have no jurisdiction over petitioner No.1 in the said petition as the jurisdiction had been assigned to the State Tax officers in view of the decisions taken by the Goods and Services Tax Council vide Circular dated 20th September, 2017. He relied upon the Circular at pages 97 and 98 of the paper book in W.P.(C.) No. 10130/2020 to contend that the jurisdiction to investigate in the said case vests with the State, Delhi Zone, Zone-2 Ward-16.

13. He also pointed out that vide Notification dated 19th June, 2017 issued by Respondent No.1 (in W.P.(C) No. 10130/2020), the jurisdictional Commissionerate for petitioner No.1 had been specified as Delhi North Commissionerate and not Delhi East Commissionerate.

<u>*ARGUMENTS ON BEHALF OF THE RESPONDENTS*</u>

14. *Per contra*, Mr. S.V. Raju, learned ASG for the Respondents submitted that Article 246A contains special provisions for making laws with respect to goods and services tax. According to him, Sections 69 and 132 are in respect of goods and services tax and the power to legislate on this subject is conferred by Article 246A . He emphasized that Article 246A contains the subject matter as well as the distribution of powers between the Parliament and the State legislatures. Therefore, he submitted that it was not necessary to ascertain the

source of power to enact the offences under the CGST Act within any of the legislative entries in the seventh schedule.

15. In the alternative, he submitted that Article 246 distributes the law-making power between the Parliament and the State Legislatures. He further submitted that Article 246 does not enumerate the subject matter of the laws to be made by Parliament or the State Legislatures as the same have been enumerated in the three lists in the Seventh Schedule. He also submitted that the expression *„make laws"* in Article 246 provides plenary powers of legislation to the Parliament and the State Legislatures includes the power to make laws with respect to offences with regard to the subject matters. In support of his submission, he relied upon the judgment of the Supreme Court in ***UOI v. Mohit Minerals, (2019) 2 SCC 599***.

16. Learned ASG submitted that if the power to enact Sections 69 and 132 of the CGST Act is not provided by Article 246A of the Constitution of India, then the said power to legislate would be deemed to have been conferred upon the Parliament by virtue of Entries 1 and 2 of List III read with Article 246(2) . He pointed out that parliament's power to make offences is not limited to Entry 93 of List I as otherwise no offences can be provided in enactments made under the concurrent list.

17. Learned ASG further submitted that CGST Act is a special enactment and in the absence of a specific provision to the contrary in the said Act, general provisions as laid down in the Cr.P.C. have to be followed. In support of his submission, he relied upon the judgment of the Supreme Court in ***Directorate of Enforcement vs. Deepak Mahajan, (1994) 3 SCC 440***.

18. He pointed out that upon grant of sanction, a criminal complaint is filed by a CGST officer before the Judicial Magistrate by following general criminal procedure under the Cr.P.C. He emphasised that under Cr.P.C. there is no provision regarding the manner of, format or the person eligible to make a

complaint. According to him, the absence of a provision for making a complaint under the CGST Act cannot be a ground for challenging the vires of Sections 69 and 132 of the CGST Act.

19. He also stated that under Section 190 of the Cr.P.C, a magistrate is competent to take cognizance of an offence on a complaint or a police report or upon any information regarding commission of an offence. He submitted that if the Cr.P.C. does not restrict the power of a magistrate to take cognizance of an offence, there is no reason why the impugned provisions can be held ultra vires for not providing a specific manner for lodging of complaints.

20. He stated that a person under the CGST Act can only be arrested, if the amount of tax evasion is more than Rs. 2 crores. He further stated that all offences wherein tax evasion is less than Rs. 5 crores are bailable and only grave offences involving tax evasion of Rs. 5 crores and above are non-bailable and cognizable.

21. Learned ASG stated that the issue of jurisdiction raised by the Petitioner in WP(C) 10130/2020 was contrary to facts and untenable in law. He submitted that under Section 6(2) of the CGST Act, proper officers of the Central tax are authorized to conduct proceedings under the Act if parallel proceedings had not been initiated by the officers of the State tax or Union Territory tax.

22. He pointed out that as the petitioner in WP(C) No.10130/2020 was situated within the jurisdiction of CGST- Delhi North, the Additional Commissioner, CGST-Delhi East had requested his counterpart in CGST-Delhi North to depute an officer from CGST-Delhi North to conduct the search at the said premises along with the officers of CGST-Delhi East. He emphasized that the search warrant dated 23rd November, 2020 was issued by the Additional Commissioner, CGST-Delhi North vide DIN No: 20201151ZI000041414B in the name of Inspector of CGST-Delhi North to search the registered office premises of the petitioner at Shop No. 313, 3rd Floor, 1170, Kucha Mahajani,

Chandani Chowk, Delhi-110006 on 23rd November, 2020. The said warrant was also served on the petitioner at the time of search. Therefore, according to him, the claim of the petitioner in WP(C) No.10130/2020 that the searches were conducted by non-jurisdictional officers was completely false.

23. He emphasized that the present cases involve several non-functional and bogus firms that had fraudulently availed IGST refunds and/or ITC credits and had caused substantial loss to the Union of India. He stated that as per the investigation conducted till date, the fraudulent IGST refund was more than Rs.63 crores in the case of WP(C) 5454/2020 and the fraudulent ITC claimed in the case of WP(C) 10130/2020 was more than Rs 6.35 crores. He further stated that in W.P.(C) 10130/2020, the investigation has revealed that the petitioner therein has raised sale invoices of Rs. 211.89 crores while having stock worth only Rs. 2.95 crores, which indicates that the petitioner has been indulging in circular trading by raising fraudulent invoices. In view of the said facts, he prayed that no interim protection be granted to the Petitioners.

REJOINDER SUBMISSIONS IN W.P.(C) 10130/2020

24. Mr. J.K. Mittal, the learned counsel for the Petitioner argued that it is an admitted fact that the Petitioner fell within the territorial jurisdiction of the CGST-Delhi North and that the officers from CGST-Delhi East could not exercise jurisdiction over the Petitioner's premises. Mr. Mittal urged that when the search authorization was issued by CGST-Delhi North to an officer of that division, it was not permissible for an officer belonging to CGST-Delhi East to conduct the actual search at the premises of the Petitioner, that too in the absence of any officer from the CGST-Delhi North. Furthermore, it was contended by Mr. Mittal that while the search authorization was only for the office premises of the Petitioner, the officers from CGST-Delhi East had conducted search at the residential premises as well. This, per Mr. Mittal was patently illegal and malafide.

25. On a slightly different note, Mr. Mittal also pressed the argument that the Petitioner had been assigned to the State Tax Officers as per Circular No. 01/2017 dated 20th September, 2017 issued by the GST Council, which was to say that Central Tax Officers did not have the requisite jurisdiction to investigate the Petitioner.

SUR REJOINDER BY RESPONDENTS

26. In sur rejoinder, Mr. S.V. Raju, the learned ASG argued that there was no dispute regarding the fact that the search authorization dated 23rd November, 2020 for the Petitioner's premises was issued by the Additional Commissioner, CGST-Delhi North. He explained that as the address of the Petitioner fell under the jurisdiction of CGST-Delhi North therefore, Additional Commissioner, CGST-Delhi East vide letter dated 22nd November, 2020 requested Additional Commissioner, CGST-Delhi North to issue a search authorisation under section 67(2) of the CGST Act, 2017 and to depute an inspector of CGST-Delhi North for the purpose of search at the said address. The Additional Commissioner CGST-Delhi North issued search authorisation dated 23rd November, 2020 under section 67(2) of the CGST Act, 2017, in the name of the Inspector of COST-Delhi North to accompany the team of COST-Delhi East officers for search. He stated that this is the norm in cases where search is to be conducted in other jurisdictions. Further, the learned ASG drew our attention to page 78 of the writ petition which indicates that both CGST-Delhi and CGST-North come under the command of the Principal Chief Commissioner Delhi. Therefore, he submitted that it did not matter as to which division issued the search authorization as no prejudice had been caused to the Petitioner.

27. The second argument put forth by Mr. Mittal was countered by the learned ASG on the ground that there was in fact, cross-empowerment of the GST officers in accordance with the Circular No. 01/2017 dated 20th

September, 2017. Pursuant to the aforementioned circular, the Central Board of Excise and Customs issued a notification being No. 39/2017- Central Tax dated 13th October, 2017 which cross-empowers State and Union Territory GST officers to act as proper officers for the purpose of refund under CGST Act, 2017. This position was clarified by letter no. F. No. CBEC-20/10/07/2019-GST dated 22nd June, 2020 issued by the Central Board of Excise and Customs wherein it was stated that no separate notification would be needed to cross-empower State Tax and Central Tax officers with regard to intelligence-based enforcement actions. Therefore, the learned ASG stated that the Central Tax Officers are fully empowered to conduct intelligence-based enforcement action against taxpayers assigned to State tax administration under Section 6 of the CGST Act, 2017 and the corresponding provisions of the SGST/UTGST Acts.

28. Lastly, it was contended by the learned ASG that these issues would not be relevant at the stage of the present interim application as the application is regarding interim protection from arrest.

COURT"S REASONING

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.

29. Having heard the learned counsel for the parties and having perused the material on record, including the counter-affidavit dated 22nd December, 2020 filed by Respondent nos.2 and 3 in WP(C) 10130/2020, this Court is of the opinion that the principles for adjudicating the constitutionality of an enactment or any part thereof are well settled.

30. 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. Also, whenever constitutionality of a provision is challenged on the ground that it infringes a fundamental right, the direct and inevitable effect/ consequence of the legislation has to be taken into account. The Supreme Court in ***Namit Sharma vs. Union of India, (2013) 1 SCC 745*** has held as under:-

> *20. Dealing with the matter of closure of slaughterhouses in Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat [(2008) 5 SCC 33] , the Court while noticing its earlier judgment Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] , introduced a rule for exercise of such jurisdiction by the courts stating that* ***the court should exercise judicial restraint while judging the constitutional validity of the statute or even that of a delegated legislation and it is only when there is clear violation of a constitutional provision beyond reasonable doubt that the court should declare a provision to be unconstitutional****.....”*
>
> (emphasis supplied)

31. 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. In fact, it must be presumed, unless the contrary is proved, that administration and application of a particular law would be done *“not with an evil eye and unequal hand”*. The Supreme Court in ***Maganlal Chhagganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay & Ors., (1975) 1 SCR 1*** has held as under:-

> *“The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the*

statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. ***Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable.*** *And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers case."*

सत्यमेव जयते

(emphasis supplied)

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.

32. This Court is of the *prima facie* opinion that 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. Further, the scope of Article 246A

is significantly wide as it not only empowers both Parliament and State Legislatures to levy and/or enact GST Act, but it also grants the power to make all laws '*with respect to*" Goods and Service Tax.

33. It is settled law that unless the Constitution itself expressly prohibits legislation on the subject either absolutely or conditionally, the power of a Legislature to enact legislation within its legislative competence is plenary. Also, the words/expression in a constitutional enactment conferring legislative power have to be construed as words of widest amplitude, content and therefore the most liberal construction has to be placed upon them.

34. In fact, the power of arrest conferred by Section 69 of the Act is not a general power of arrest, but is restricted to certain offences which are specified under Section 69 of the Act namely some of the offences covered under Section 132 of the Act and the offences so specified are all offences relating to goods and service tax. Consequently, this Court is of the prima facie view that the expression *„with respect to"* goods and services tax used in Article 246A, being a constitutional provision, must be given its widest amplitude and would include the power to enact criminal law with regard to goods and services tax.

35. There is also no conflict between the operation of Article 246A and Article 246 as a non-obstante clause has been added to Article 246A to clarify that both Parliament and the State Legislatures have simultaneous powers in relation to Goods and Services Tax. Accordingly, this power has to be liberally construed empowering the Parliament to make laws with respect to goods and services tax and it remains unaffected by the distribution of legislative power as provided in Articles 246 & 254. (See ***Skill Lotto Solutions Pvt. Ltd. v. UOI, W.P.(C) No. 961/2018 dated 3rd December, 2020***).

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.

36. It is equally well settled that when a law is challenged on the ground of being ultra vires to the powers of the legislature, the true character of the legislation as a whole has to be ascertained. This Court is of the view that when a law dealing with a subject in one list is also touching on a subject in another list, what has to be ascertained is the pith and substance of the enactment – the true object of legislation. If, on examination of the statute, it is found that the legislation is in substance on a matter assigned to the legislature enacting that statute, then it must be held valid, in its entirety even though it may trench upon matters beyond its competence. Incidental encroachment is not prohibited. *"The question must be asked,"* said Lord Porter in ***Prafulla Kumar Vs. Bank of Commerce, AIR 1947 PC 60*** *"what in pith and substance is the effect of the enactment of which complaint is made."* In ascertaining the substance of the impugned legislation, one must have regard to the enactment as a whole, to its object and to the scope and effect of its provisions.

37. The justification of the doctrine of pith and substance is that in a federal Constitution, it is not possible to make a clear-cut distinction between the powers of the Union and the State Legislatures. There is bound to be an overlap and in all such cases, it is but reasonable to ask what in whole is the object or purpose of the law. A strict interpretation would result in a large number of statutes being declared invalid on the ground of overlapping. If the legislature is to have the full scope to exercise the powers granted to it, it is necessary to assume that the Constitution does not prevent a legislature from dealing with a matter which may incidentally affect any matter in the domain of the other legislature. Gwyer, C.J. in ***Subramanyan Chettiar v. Muttuswami Goundan [1940] F.C.R. 188*** in explaining the validity of the doctrine of pith and substance said:

"It must inevitably happen from time to time that legislation though purporting to deal with a subject in one List, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere."

38. Consequently, 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.

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.

39. This Court is of the prima facie opinion that 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 i.e. laws made with respect to matters in List II.

40. The Supreme Court in ***Kartar Singh v. State of Punjab, (1994) 3 SCC 569*** has emphasized that the language used in the aforesaid entry is couched in very wide terms and the scope of the term 'criminal law' has been enlarged to include any matter that could be criminal in nature. The Supreme Court held that the exercise of power under this entry has to be construed liberally so as to give full play to the legislative intent. The relevant portion of the said judgment is reproduced hereinbelow:-

"445. From the language used it is apparent that the entry is couched in very wide terms. The words following the expression „criminal law" enlarge the scope to any matter which can validly be considered to be criminal in nature. The exercise of power under this entry, therefore, has to be construed liberally so as to give full play to the legislative activity. The width of the entry, however, is controlled by the latter expression which takes away the power of either legislature to legislate in respect of offences against laws with respect to any of the matters specified in List I or List II. Since this part restricts and narrows the ambit of the entry it has to be construed strictly. Since under the federal structure the law made by the Parliament has supremacy (See Union of India v. H.S. Dhillon [(1971) 2 SCC 779 : AIR 1972 SC 1061]) any enactment made in exercise of power under entry in Concurrent List shall have overriding effect subject to restrictions that may be spelt out from the entry itself. A legislation by Union Parliament to be valid under this entry must satisfy two requirements; one, that it must relate to criminal law and the offence should not be such as has been or could be provided against laws with respect to any of the matters specified in List II. What is a criminal law? Any Act or rule dealing with crime, "(The) criminal justice system is a firmly societal defensive reaction to intolerable behavior. From the beginning it was considered as a tool designed to protect an established order of values attuned to the political organisation of the community. Transgression of some important norms reflecting these values was seen as a crime and, as such, demanded punishment."

446. What is a crime in a given society at a particular time has a wide connotation as the concept of crime keeps on changing with change in political, economic and social set-up of the country. Various legislations dealing with economic offences or offences dealing with violation of industrial activity or breach of taxing provision are ample proof of it. The Constitution-makers foresaw the eventuality, therefore they conferred such powers both on Central and State Legislatures to make laws in this regard. Such right includes power to define a crime and provide for its punishment. Use of the expression, "including all matters included in the Penal Code, 1860 at the commencement of the Constitution" is unequivocal indication of comprehensive nature of this entry. It further empowers the legislature to make laws not only in respect of matters covered by the Penal Code, 1860 but any other matter which could reasonably and justifiably be considered to be criminal in nature. ..."

41. Accordingly, this Court is of the prima facie opinion that even if Sections 69 and 132 of the Act could not have been enacted in pursuance to power under Article 246A, they could have been enacted under Entry 1 of List III, as laying down of a crime and providing for its punishment is *„criminal law"*. Consequently, this Court is of the *prima facie* view that in either option both Sections 69 and 132 of the Act are constitutional and fall within the legislative competence of Parliament.

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.

42. As far as the issue of application of Chapter XII of the Cr.P.C. to the CGST Act is concerned the Gujarat High Court in ***Vimal Yashwantgiri Goswami Vs. State Of Gujarat, R/Special Civil Application No. 13679 of 2019***, has recently held as under:-

> *"(3) Q. (i) Whether the provisions of sections 154, 155(1), 155(2), 155(3), 157, 172 of the Code of Criminal Procedure, 1973 are applicable or should be made applicable for the purpose of invoking the power to arrest under section 69 of the CGST Act? In other words, whether the authorised officer can arrest a person alleged to have committed non cognizable and bailable offences without a warrant of arrest issued by the Magistrate under the provisions of the Code of Criminal Procedure, 1973?*
>
> *xxxx xxxx xxxx xxxx*
>
> *(ii) When any person is arrested by the authorised officer, in exercise of his powers under Section 69 of the CGST Act, the authorised officer effecting the arrest is not obliged in law to comply with the provisions of Sections 154 to 157 of the Code of Criminal Procedure, 1973. The authorised officer, after arresting such person, has to inform that person of the grounds for such arrest, and the person arrested will have to be taken to a Magistrate without unnecessary delay, if the offences are cognizable and non bailable. However, the provisions of Sections 154 to 157 of the Code will have no application at that point of time. Otherwise, sub-section (3) of section 69 provides for granting bail as the provision does not confer upon the GST officers, the powers*

of the officer in charge of a police station in respect of the investigation and report. Instead of defining the power to grant bail in detail, saying as to what they should do or what they should not do, the short and expedient way of referring to the powers of another officer when placed in somewhat similar circumstances, has been adopted. By its language, the sub-section (3) does not equate the officers of the GST with an officer in charge of a police station, nor does it make him one by implication. It only, therefore, means that he has got the powers as defined in the Code of Criminal Procedure for the purpose of releasing such person on bail or otherwise. This does not necessarily mean that a person alleged to have committed a non cognizable and bailable offence cannot be arrested without a warrant issued by the Magistrate.

(iii) The authorised officer exercising power to arrest under section 69 of the CGST Act, is not a Police Officer and, therefore, is not obliged in law to register FIR against the person arrested in respect of an offence under Sections 132 of the CGST Act.

(iv) The decision of the Supreme Court in the case of Om Prakash (supra) has no bearing in the case on hand.

(v) An authorised Officer is a 'proper officer' for the purposes of the CGST Act. As the authorised Officers are not Police Officers, the statements made before them in the course of inquiry are not inadmissible under Section 25 of the Evidence Act.

(vi) The power to arrest a person by an authorised Officer is statutory in character and should not be interfered with. Section 69 of the CGST Act does not contemplate any Magisterial intervention.

(vii) The main thrust of the decision in the case of Om Prakash (supra) to ascertain whether the offence was bailable or non-bailable, was on the point that the offence being noncognizable, it had to be bailable. In other words, Om Prakash (supra) deals with the question, "whether the offences under the Customs Act, 1962, and the Central Excise Act, 1944, are bailable or not?" However, provisions of the subsections (2) and (3) of the Section 69 of the CGST Act, provides in built mechanism and procedure in case of arrest for non-bailable offences and bailable offences."

43. Further, a Coordinate Bench of this Court in a similar matter being ***Gautam Khaitan vs. Union of India & Anr. WP(C) 2658/2018***, vide order

dated 30th October, 2019, has adjourned the matter sine die without any interim order as the said issue is pending consideration before the Supreme Court. The order of this Court in ***Gautam Khaitan*** (supra) is reproduced hereinbelow:-

> *"Counsel appearing for both the sides jointly submit that the issue involved in this writ petition is also pending before the Hon'ble Supreme Court in several matters. One of such matter is Crl. Miscellaneous Petition Nos. 168-169/2014; hence, this writ petition is adjourned sine die."*

44. Consequently, this Court at the interim stage, cannot ignore that another High court has taken a view contrary to the contention raised by the Petitioner. At this interim stage, therefore, we cannot ignore the view of the Gujarat High Court.

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.

45. It is relevant to note that when any person is arrested under Section 132(5) of the CGST Act, the said person has to be informed of the grounds of arrest and must necessarily be produced before a Magistrate under Section 69 (2) within a period of twenty-four hours. This ensures judicial scrutiny over the acts of executive and it cannot be termed as unreasonable and/or excessive, as sought to be contended by the petitioners.

46. Further, the argument 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. The Supreme Court in ***Directorate of Enforcement vs. Deepak Mahajan*** (supra) has held as under:-

"87. In Ramesh Chandra Mehta v. State of W.B. [AIR 1970 SC 940 : (1969) 2 SCR 461 : 1970 Cri LJ 863] a Constitution Bench of this Court while examining the admissibility of a statement recorded under Section 171-A of the Sea Customs Act of 1878 (which Act is now repealed) corresponding to Section 108 of the Customs Act of 1962 has held that a person arrested by a Customs Officer is not a person accused of an offence within the meaning of Article 20(3) of the Constitution or within the meaning of Section 25 of the Evidence Act.

88. In Veera Ibrahim v. State of Maharashtra [(1976) 2 SCC 302: 1976 SCC (Cri) 278] a Division Bench of this Court following the dictum laid down in Ramesh Chandra Mehta [AIR 1970 SC 940 : (1969) 2 SCR 461 : 1970 Cri LJ 863] observed that in order to claim the benefit of the guarantee against testimonial compulsion embodied in clause (3) of Article 20 it must be shown, firstly that the person who made the statement was "accused of any offence"; secondly that he made the statement under compulsion. It has been further held that when the statement of a person is recorded by the Customs Officer under Section 108, he is not a person "accused of an offence under the Customs Act" and that an accusation which would stamp a person with the character of an accused of any offence is levelled only when the complaint is filed against that person by the Customs Officer complaining of the commission of any offence under the provisions of the Customs Act.

89. In a recent decision, this Court in Poolpandi v. Superintendent, Central Excise [(1992) 3 SCC 259 : 1992 SCC (Cri) 620] has reiterated the same view and held that a person being interrogated during investigation under Customs Act or FERA is not a person accused of any offence within the meaning of Article 20(3) of the Constitution. See also Percy Rustomji Basta v. State of Maharashtra [(1971) 1 SCC 847] .

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122. ……The combined operation of Sections 4(2) and 26(b) of the Code is that the offence complained of should be investigated or inquired into or tried according to the provisions of the Code where the enactment which creates the offence indicates no special procedure.

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128. ……In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the Code reading, "... but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

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132. For the aforementioned reasons, we hold that the operation of Section 4(2) of the Code is straightaway attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of Section 167."

47. Also just because CGST Act provides for both adjudication of civil liability and criminal prosecution doesn't mean that the said Act is unfair or unreasonable.

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 HAS „SPOKEN ITS MIND".

48. The *"no coercive orders"* relied upon by learned counsel for the Petitioners are ad-interim orders. It is relevant to point out that the Supreme Court in ***Union of India Vs. Sapna Jain & Ors., SLP (Crl.)*** 4322***-4324/2019 dated 29th May, 2019*** has *„spoken its mind"* and clarified that the High Courts while entertaining request for grant of pre-arrest bail shall keep in view that the fact that the Apex Court vide order dated 27th May, 2019 passed in SLP (Crl.) 4430/2019 has dismissed the SLP filed against the judgment and order of the Telangana High Court. The relevant portion of the Supreme Court order in ***Union of India Vs. Sapna Jain & Ors*** (supra) as well as the judgment and order dated 18th April, 2019 passed by the Telangana High Court in W.Ps. No.

4764, 4769, 4892, 5074, 5130, 5329, 6952 and 7583 of 2019 are reproduced hereinbelow:-

A) ***Union of India Vs. Sapna Jain & Ors*** **(supra):-**

> *"As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court. Hence, the notice.*
>
> *As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27. 5. 2019 passed in SLP(Crl.) No. 4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.*
>
> *Beyond the above, we do not consider it necessary to observe anything further."*

B) Judgment and order dated 18th April, 2019 passed by the Telangana High Court in W.Ps. No. 4764, 4769, 4892, 5074, 5130, 5329, 6952 and 7583 of 2019:-

> *"13. However, the propositions of law that could be culled out from the aforesaid decisions, can be summed up in brief as follows: AIR 1966 SC 1746 AIR 1970 SC 940 AIR 1970 SC 1065 1970 (1) SCC 847 1976 (2) SCC 302 1992 (3) SCC 259 21.*
>
> *i) that officers under various tax laws such as the Central Excise Act etc., are not police officers to whom Section 25 of the Indian Evidence Act 1872 would apply,*
>
> *ii) that the power conferred upon the officers appointed under various tax enactments for search and arrest are actually intended to aid and support their main function of levy and collection of taxes and duties,*
>
> *iii) that a person against whom an enquiry is undertaken under the relevant provisions of the tax laws, does not automatically become a person accused of an offence, until prosecution is launched,*

iv) that the statements made by persons in the course of enquiries under the tax laws, cannot be equated to statements made by persons accused of an offence, and

v) that as a consequence, there is no protection for such persons under Article 20(3) of the Constitution of India, as the persons summoned for enquiry are not persons accused of any offence within the meaning of Article 20(3) of the Constitution of India.

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58. Therefore, all the technical objections raised by the petitioners, to the entitlement as well as the necessity for the respondents to arrest them are liable to rejected. Once this is done, we will have to examine whether, in the facts and circumstances of these cases, the petitioners are entitled to protection against arrest. It must be remembered that the petitioners cannot be placed in a higher pedestal than those seeking anticipatory bail. On the other hand, the jurisdiction under Article 226 has to be sparingly used, as cautioned by the Supreme Court in Km.Hema Misra (cited supra).

59. We have very broadly indicated, without going deep, that the petitioners have allegedly involved in circular trading with a turnover on paper to the tune of about Rs.1,289.00 crores and a benefit of ITC to the tune of Rs.225.00 crores. The GST regime is at its nascent stage. The law is yet to reach its second anniversary. There were lot of technical glitches in the matter of furnishing of returns, making ITC claims etc. Any number of circulars had to be issued by the Government of India for removing these technical glitches.

60. If, even before the GST regime is put on tracks, some one can exploit the law, without the actual purchase or sale of goods or hiring or rendering of services, projecting a huge turnover that remained only on paper, giving rise to a claim for input tax credit to the tune of about Rs.225.00 crores, there is nothing wrong in the respondents thinking that persons involved should be arrested. Generally, in all other fiscal laws, the offences that we have traditionally known revolve around evasion of liability. In such cases, the Government is only deprived of what is due to them. But in fraudulent ITC claims, of the nature allegedly made by the petitioners, a huge liability is created for the Government. Therefore, the acts complained of against the

petitioners constitute a threat to the very implementation of a law within a short duration of its inception.

61. In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances which we have indicated above."

49. Consequently, this Court is of the view that this argument does not advance the case of the Petitioners.

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.

50. Insofar as the jurisdictional issue raised in W.P.(C.) No. 10130/2020 is concerned, 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. At this interim stage, we cannot vitiate the search action on the premise that the plea that the officer carrying out the search was incompetent. Learned ASG has explained that the address of the Petitioner falls under the jurisdiction of CGST-Delhi North therefore, Additional Commissioner, CGST-Delhi East vide letter dated 22.11.2020 requested Additional Commissioner, CGST-Delhi North to issue a search authorisation under section 67(2) of the CGST Act, 2017 and depute an inspector of CGST-Delhi North for the purpose of search at the said address. This contention is of course controverted by the Petitioner and would have to be examined in

depth at the final stage, but for now, we do not find the action of search to be without jurisdiction.

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.

51. Turning to the facts of the present cases, in the application for vacation of stay in W.P.(C) No. 5454/2020, it has been averred by the respondents as under:-

> *"(iii) The statements of the proprietors of the said 04 firms were recorded. In their statements, the Proprietors namely Sh. Deepak Kumar Mishra of M/s Monal Enterprises, Mr. Santosh Prasad of M/s Micra Overseas and Mr. Manoj Kumar of M/s Ganeshi Inc. stated that they do not know anything about these firms, they have only provided their IDs such as PAN Card and Aadhar Card to one Shri Mukesh Kumar and have signed a lot of papers/documents. That the investigations have so far revealed a total of 23 bogus/fake firms opened in the name of persons who are labourers, drivers, cook, street-hawkers etc.* ***These 23 firms have claimed a fraudulent IGST refund of more than Rs.63 crore.*** *Searches/Verifications were also conducted in relation to above firms and all the said firms have been found to be non-existent/non-functional.*
>
> *xxxx xxxx xxxx xxxx*
>
> *(v) The investigation further revealed that the Proprietors of 4 firms are dummy people who have been enticed/coerced into signing various documents/papers in order to avail fraudulent IGST Refund on export of goods. It was revealed that Sh. Deepak Kumar Mishra who has been projected as the proprietor and beneficiary of M/s Monal Enterprises, was actually working as a cook with M/s Dudleys Kitchen in Gurugram, Haryana, which fact has been confirmed by the Manager of M/s Dudleys Kitchen vide his letter dated 15.05.2019.*
>
> *(vi) That, in the present case, statements dated 27.08.2019 of Sh. Manoj Kumar and Sh. Santosh Prasad and statement dated 04.09.2019 of Sh. Gyanender Kumar (Proprietor of M/s Cubo Enterprises) were recorded wherein, they have categorically pointed out that Sh. Dhruv Maggu is actively involved in the fraudulent availment of IGST refund racket along with Sh. Ramesh Wadhera, who is the main mastermind*

of this racket, his father Sh. Sanjeev Maggu, and his brother Sh. Akhil Krishan Maggu. It is apposite to mention here that Sh. Ramesh Wadhera has several old cases of DRI/Customs against him and is a habitual offender and he along with respondent's father Sh. Sanjeev Maggu has perpetrated similar racket of economic crime in the past also, wherein the dummy proprietorship/partnership firms were created in the name of gullible persons to defraud the government exchequer……

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(viii) The voluntary statement of Sh. Dhruv Maggu was recorded under section 70 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, wherein he accepted that his ***brother Sh. Akhil Maggu and he are business partners.*** *That they have opened several firms and their bank accounts in the name of various poor persons whose IDs have been obtained through Sh. Mukesh Kumar, who is their manager, on payment basis. The GST registration process and documentation is handled by his other three partners with the assistance of Sh. Mukesh Kumar. Parallelly, the IEC from DGFT is also obtained in respect of these firms. Then they arrange trash or low-quality goods and then export the same in the name of the aforesaid created firms, parallelly, they file the GST returns of these firms and pay the GST liability through ITC in these firms. They then claim the IGST refund from the govt. in respect of the GST paid on the exports through fake ITC. Then the IGST refund amount received in the account of exporter firms is transferred to other accounts by his partners and then the money is withdrawn as cash from these other accounts. The cash so withdrawn is received by his partners and then distributed among the partners after adjusting the commission or other expenses incurred during the entire process of exports. That he looks after the work related to issuance of invoices and after issuing of the invoices, he handed them over to either his brother Sh. Akhil Maggu or his father Sh. Sanjeev Maggu or Sh. Ramesh Wadhera who then take care of the export related documentation formalities using the same invoices."*

52. Similarly serious allegations have been made against the Petitioners in W.P.(C.) No. 10130/2020. The relevant portion of the counter affidavit is reproduced hereinbelow:-

"II. ***On perusal of the data retrieved from the system it was found that M/s Rajdarbar Commodities Pvt. Ltd. had raised invoices worth Rs.196.28 crores involving GST of Rs. 5.88 crores to M/s Vertical***

Vyapaar Pvt. Ltd. and of Rs. 15.57 crores involving GST of Rs. 46.72 lakh to M/s N.S Software totalling to goods value of Rs. 211.86 crore and GST of Rs. 6.35 crores, M/s N.S Software had raised invoices of Rs. 15.57 crores involving GST of Rs. 46.72 lakh to M/s Vertical Vyapaar Pvt. Ltd., M/s Vertical Vyapaar Pvt. Ltd. had raised invoices of Rs. 211.81 crores involving GST of Rs. 6.35 crores to M/s K.P. and Sons and M/s K.P. and Sons had raised invoices of Rs. 211.89 crores involving GST of Rs. 6.35 crores to M/s Rajdarbar Commodities Pvt. Ltd. therein completing the whole circle.

III. The above transactions between these parties took place in five months only i.e. January 2018, February 2018, March 2018, February 2019 and March 2019. Also, it was found that all these companies have raised invoices on the same day among themselves. For example, on 30.01.2018, M/s K.P. and Sons raised a sale invoice of Rs. 2,70,00,000/- involving GST of Rs. 8,10,000/- to M/s Rajdarbar Commodities Pvt. Ltd., M/s Raj Darbar Commodities Pvt. Ltd. then raised a sale invoice dated 30.01.2018 of Rs. 2,69,91,000/- involving GST of Rs. 8,09,730/- to M/s Vertical Vyapaar Pvt. Ltd., M/s Vertical Vyapaar Pvt. Ltd. then raised a sale invoice dated 30.01.2018 of Rs. 2,69,95,500/- involving GST of Rs.8,09,865/-. This practice has been followed by all these parties for all the invoices raised among themselves.

IV. That, on 30.01.2018, the first time when M/s K.P. and Sons raised a sale invoice to M/s Rajdarbar Commodities Pvt. Ltd. for sale of gold bullion worth Rs. 4.5 crores as per their GSTR-2A, they only had stock of gold bullion of Rs. 2.95 crores. Therefore, only with a stock of Rs. 2.95 crores worth of gold bullion, M/s K.P. and Sons had raised sale invoices of Rs.211.89 crores to M/s Rajdarbar Commodities Pvt. Ltd. and has purchased gold bullion totalling to Rs. 211.81 crores from M/s Vertical Vyapaar Pvt. Ltd. From the above it is clear that the goods are traded by these above entities within themselves and all the GST payments are made through ITC passed on by these firms to each other. Also, from analysing the GSTR-2A of these firms it was found that except from the above transactions none of the above firms are found to have purchased the gold worth Rs. 211 crores either locally or through import.

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VII. The searches at all the above locations were conducted on 23.11.2020 and statement of Sh. Vasudev Garg, Director of M/s Rajdarbar Commodities Pvt. Ltd. was recorded on the spot. Sh.

Vasudev Garg informed that M/s Rajdarbar Commodities Pvt. Ltd., M/s Vertical Vyapaar Pvt. Ltd. and M/s N.S Software are all firms of Rajdarbar Group. He further stated that there was no supply of goods i.e. gold bullion involved in the business transactions done between M/s K.P. and Sons, M/s Rajdarbar commodities Pvt. Ltd., M/s N.S Software and M/s Vertical Vyapaar Pvt. Ltd. He accepted his mistake and has deposited GST of Rs. 4.5 crores till date vide DRC-03 challans dated 24.11.2020, 01.12.2020, 03.12.2020, 04.12.2020 and 08.12.2020.

VIII. Statement of Sh. Gaurav Agrawal, proprietor of M/s K.P. and Sons was also recorded on 26.11.2020 in response to summons issued under DIN No- 20201151ZK000044254A. Sh. Gaurav Agarwal in his statement recorded voluntarily also stated that the goods i.e. gold bullion never changed hands as they used to buy the same quantity of gold bullion from M/s Vertical Vyapaar Pvt. Ltd. that they have sold to M/s Rajdarbar Commodities Pvt. Ltd. on the same day itself. Sh. Gaurav Agrawal accepted his mistake and stated that he is ready to pay any dues or liabilities along with applicable interest and penalty."

(emphasis supplied)

53. To conclude, 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.

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.

54. It is settled law that though the powers of constitutional courts are wide and discretionary, yet there exist certain fetters in the exercise of such powers. In ***Hema Mishra Vs. State of U.P., (2014) 4 SCC 453,*** the Supreme Court held that despite the fact that provision regarding pre-arrest bail, had been

specifically omitted in Uttar Pradesh, the power under writ jurisdiction is to be exercised extremely sparingly.

55. This Court is of the view that the allegation that a tax collection mechanism has been converted into a disbursement mechanism most certainly requires investigation. Accordingly, 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. This Court has no doubt that the trial court, while considering the bail or remand or cancellation of bail application, '*will separate the wheat from the chaff*' and will ensure that no innocent person against whom baseless allegations have been made is remanded to police/judicial custody.

56. Consequently, with the aforesaid observations and liberty, the CM No.32276/2020 in WP(C) 10130/2020 for interim relief as well as the prayer for interim relief in WP(C) 5454/2020 are dismissed with liberty to the petitioners to avail the statutory remedies and the CM No. 28105/2020 filed by respondent nos. 2 and 3 in WP(C) 5454/2020 is allowed and the interim order dated 20th August, 2020 passed in W.P.(C) 5454/2020 is vacated.

57. It is clarified that the observations made herein are prima facie and shall not prejudice either of the parties at the stage of final arguments of the present writ petitions or in the proceedings for interim protection.

W.P. (C) 5454/2020 & W.P.(C) 10130/2020

List before regular roster Bench on the date already fixed.

MANMOHAN, J

SANJEEV NARULA, J

JANUARY 08, 2021
rn/js/as