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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA/170/2024

FAIRDEAL METALS LIMITED
VS
ASST. COMMISSIONER OF REVENUE,
STATE TAX, BUREAU OF
INVESTIGATION (NB), ALIPURDUAR ZONE AND ORS.

Mr. Sandip Choraria,
Mr. Rajeev Parik,
...For the Petitioner.

Mr. Subir Kr. Saha, Ld. AGP.,
Ms. Rima Sarkar.
..For the State.

In the instant writ petition the petitioner prays for cancellation of the impugned detention order, the impugned show cause notice dated 31.12.2023 and the subsequent impugned order dated 05.01.2024.

The specific case of the petitioner is that there is no allegation against the petitioner but the entire allegation has been made against the supplier from whom the petitioner procured the goods. Show cause notice mentions that M/S. Navaraj Trading Company i.e., the supplier of the petitioner was registered recently under the GST Act with effect from 09.10.2023 in the State of Assam. M/S. Navaraj Trading Company has shown the nature of occupancy over the place of business as 'rented' and in support of its claim rent agreement and the trade license was supplied. No documents like electricity bill, municipal khata copy or any such document could be shown to show the legal occupancy of the owner over the place of business as required under WBGST Act, 2017, corresponding to

CGST Act, 2017 and the corresponding Rules made there under.

The authority mentioned that there was a need for physical examination of the goods and other verification of the documents produced before the proper officer. Show cause notice further mentions that M/S. Navaraj Trading Company was found to have filed returns in GSTR-3B for the month of October and November, 2023 but on verification certain discrepancies were noticed.

It was noticed that the goods that were being transported did not have the coverage as per their GST registration. The proper officer after perusal of the documents opined that M/S. Navaraj Trading Company was involved in receiving and passing on fictitious/bogus ITC to other parties. The said Company has been set up solely for the purpose of circulating bogus ITC. The goods were observed to be of suspicious origin and the purchase was merely a 'paper sale' to hide the original supplier with the intention of evading payment of tax.

It was found that the movement of the goods under the cover of such invalid document is contrary to the provision of Section 68(1) of the WBGST Act, 2017, CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Rules framed there under. Penalty was calculated and the petitioner was directed to show cause within four days as to why the proposed tax and penalty should not be payable failing which further proceeding would be initiated. The date of appearance was fixed on 04.01.2024.

The supplier M/S. Navaraj Trading Company on 30.12.2023 paid the input tax in the cash ledger. On 05.01.2024 order was passed directing payment of penalty.

The specific contention of the petitioner is that the petitioner was not supposed to know the antecedents of the supplier Company. As the supplier Company was a registered taxable person in the State of Assam, the petitioner did not have any information or did not have any mechanism to verify the details of the supplier Company.

There is no allegation of tax evasion against the petitioner. In such a situation, it was absolutely improper for the respondent authority to direct payment of penalty by the petitioner.

In support of the aforesaid submission the petitioner has relied upon the decision dated 04.02.2022 passed by the Hon'ble Division Bench of the High Court of Punjab and Haryana in the matter of M/S. Shiv Enterprises Vs. State of Punjab & Ors. wherein the Court after observing that the petitioner was not responsible for contravention of any of the provisions of the Act and the contravention so alleged was against the supplier who was shown to have indulged in outward supply without having any inward supply, the Court was pleased to set aside and quash the impugned notice issued under Section 130 of the CGST Act. The respondent authority was directed to release the conveyance and the goods forthwith.

It has been submitted that the facts of the case in M/S. Shiv Enterprises (supra) is similar to the facts of the instant case and similar relief ought to be allowed by the Court.

Learned advocate representing the respondent authorities opposes the prayer of the petitioner. It has been submitted that the supplier has been set up by the petitioner. The documents of the supplier was found to be dubious and, accordingly, the respondents have rightly detained the vehicle and the goods and

have rightly imposed penalty which the petitioner is liable to pay.

Reliance has also been placed on the Standard Operating Procedure which has been published by the Commissioner, Central Board of Indirect Taxes and Customs, GST Investigation Wing on 12.05.2019.

One of the salient features of the GST frauds involving fake invoices mentioned in the said SOP is that in many cases dummy firms are credited/floated to commit the fraud. The addresses are often incorrect/incomplete and the details revealed in the registration forms are also false. As entry barrier is very low, and there is a lack of a proper system of scrutiny and verification of registration data, fraudsters are able to commit frauds with impunity. The respondents claim that the supplier M/S. Navaraj Trading Company is a dummy firm created only for committing the fraud.

Upon hearing the submissions made on behalf of the parties, it appears that though there was an allegation of non existence of the supplier Company leading to non-deposit of the input tax credit but later on 30.12.2023, that is prior to issuing of the show cause notice on 31.12.2023 the supplier Company already deposited the input tax.

Assuming there was an intention to evade tax on the part of the supplier, but later on by way of payment of tax, the allegation of intention to evade tax falls flat.

The supplier Company appears to have been registered by the registered authority in Assam. Had there been any deficiency on the part of the supplier Company in production of relevant documents, registration ought not to have been issued. After registration has been issued and tax paid by the supplier Company, the allegation made against the supplier Company does not stand. The petitioner being no way connected with any of the allegations that has

been levelled against the supplier Company, cannot be made liable to pay penalty as has been assessed.

In view of the above, the order of detention and the subsequent order imposing penalty are liable to be set aside and quashed. The same are, accordingly, set aside and quashed.

The respondent no.1 is directed to forthwith take steps to release the vehicle and the goods in favour of the petitioner at the earliest, but positively within a period of 48 hours from the date of production of the server copy of this order duly downloaded from the official website of the High Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)