CNR No : HCBM010324232019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8075 OF 2019

High Ground Enterprises Ltd.,
Having its office at
2, Om Heera Panna Mall,
2nd Floor, Oshiwara,
Andheri (West), Mumbai-400 053. … Petitioner.

V/s.

1. Union of India
(Through the Secretary,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Aaykar
Bhavan Annexe, 2nd Floor,
New Marine Lines, Mumbai- 20.

2. Office of the Directorate General of GST
Intelligence, Mumbai Zonal Unit,
NTC House, 3rd Floor,
15, N.M. Road, Ballard Estate,
Mumbai- 400 001. … Respondents.

Dr.Sujay Kantawala with Mr.Sujeet Sahoo and Ms.Poorva Patil i/b. Brijesh Pathak for the Petitioner.

Mr.Pradeep S. Jetly with Mr.Jitendra B. Mishra for the Respondents.

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CORAM : M.S. SANKLECHA AND
NITIN JAMDAR, JJ.

DATE : 14 August 2019.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Taken up for final disposal.

2. The Petitioner has sought to question the refusal by the Officers of the Director-General of GST Intelligence, Mumbai to supply documents to the Petitioner seized by the officers. The Petitioner has also sought a direction to the Respondents to hand over copies of the documents seized.

3. The Petitioner- High Ground Enterprises Limited is a company listed on the Bombay Stock Exchange and National Stock Exchange of India. The Petitioner has over 10,000 shareholders. An intelligence input was received from the Director-General of GST Intelligence, Calcutta regarding transactions allegedly in connection with fraudulent affirmation and utilization of input tax credit by various firms on the strength of invoices allegedly issued by non-existing entities. An inquiry was initiated by the Respondent- GST Intelligence, Mumbai against the Petitioner. A search was conducted

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on 9 January 2019 and 10 January 2019 and records and documents were seized as enumerated in Panchanama dated 9/10 January 2019. During the investigation, summons were issued to the Petitioner on 9 January, 11 January and 21 January 2019. Initially, the Petitioner did not appear, however, subsequently appeared pursuant to the summons. The Petitioner on 2 February 2019 requested to hand over the documents seized under the Panachanma. The documents were not handed over.

4. The Petitioner, in the meanwhile, received notices from the Bombay Stock Exchange and the National Stock Exchange in connection with the non-submission of financial results. The Statutory Auditor also requested the Petitioner to supply the necessary documents. As per Regulation 33 of the SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015 (Regulations of 2015), every listed company must submit quarterly, half-yearly and yearly financial results with the Stock Exchange within 45 days from the end of the quarter and 60 days in case of the financial results for the March-end quarter.

5. The Bombay Stock Exchange issued a notice to the Petitioner imposing a penalty of Rs.1,06,200/- payable till 17 June 2019 and thereafter Rs.5,000/- per day. Since the documents were not given to the Petitioner and the Petitioner is facing coercive action from the Stock Exchange, the Petitioner has filed the present petition

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seeking direction to the respondent authorities to hand over the copies of the documents seized.

6. The petition came up on the board on 1 August 2019, and it was adjourned at the request of the Respondents. The Respondents through Hrishikesh Utpat, Deputy Director, Group D from the office of Directorate General of Goods and Service Tax Intelligence, Mumbai has filed two affidavits, one tendered in the Court today and the other dated 31 July 2019.

7. We have heard Dr.Sujay Kantawala for the Petitioner and Mr.Pradeep Jetly for the Respondents.

8. The Petitioner has clarified it in the oral arguments that the Petitioner seeks copies of the documents seized by the respondent-authorities and not the originals thereof. According to the Petitioner, even if the copies of the documents are given at this stage, it will suffice the purpose of the Petitioner for making statutory compliance as per Regulations of 2015. The Petitioner submits that grave prejudice is caused to the Petitioner because the documents were not available to the Petitioner, and such position cannot continue. The Respondents through the affidavit and oral arguments contended that it is open to the Chartered Accountant of the Petitioner to take inspection of the record. It is contended that handing over documents at this stage will gravely prejudice the investigation.

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According to the Respondents, that the investigation is at the sensitive stage and considering the complexity, it would be prejudicial to the investigation, if the copies are given to the Petitioner. The stand taken on the affidavit is that the Petitioner is likely to manipulate the documents and alert its associates and stall the progress of the investigation.

9. The power of the authorities to carry out an investigation, search and seizer is conferred under the provisions of the Central Goods and Services Act, 2017. The Chapter-XIV deals with inspection, search, seizure and arrest. Power of inspection, search and seizure is provided in section 67. Section 68 of the Act deals with the inspection of goods in movement. Section 69 confers the power of arrest on the authorities. The Officer under the Act is empowered to issue summons to give evidence and produce documents, and as provided in section 71 of the Act, the Officer under the Act as specified would have access to any place of business to carry out inspection, audit and survey. The parts of Section 67 of the Act material for the present petition are reproduced as under:

> *"67. Power of inspection, search and seizure.- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—*
>
> *(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this*

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Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided *that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

Provided further *that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.*

(3) The documents, books or things referred to in

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sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) ….. …..
(7) ….. …..
(8) ….. …..
(9) ….. …..
(10) ….. …..
(11) ….. …..
(12) ….. …..

Thus, a Proper Officer not below the rank of Joint Commissioner, if he has a reason to believe that any person liable to pay tax has suppressed any transaction or has claimed input tax credit in excess of

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his entitlement or has engaged in the business of goods which have escaped payment of tax, he may authorize the officer to inspect the places of business of such person. Section 67(2) authorizes the Proper Officer to carry out search and seizure of goods, documents, books or things. The second proviso to section 67(2) states that the documents or books so seized shall be retained by the said officer only for so long as may be necessary for their examination or for inquiry or proceedings under the Act. Section 67(3) provides that the documents, books or things referred to in sub-section (2) which have not been relied upon in support of notice under the Act have to be returned to such person within a period not exceeding thirty days.

10. The scheme of Section 67, more particularly sub-section (5) thereof, suggests that as far as copies of the documents so seized, a person from whose custody such documents have been seized will have right to get the copies thereof. This right is qualified with a contingency where giving such copies will prejudicially affect the investigation. The legislative intent as far as the documents and books which are seized under section 67(2), is clear. The originals of documents or books so seized must be kept by the officer only for a period as may be necessary for an inquiry. Meaning, such documents or books should not be needlessly kept in custody which will otherwise gravely prejudice the person from whose custody the said documents were seized. As can be seen from section 67(5) that if the originals cannot be returned, at least the person is entitled

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to receive copies thereof. The idea is that businesses should not be subjected to needless harassment.

11. There are two facets of the opinion of the Proper Officer as contemplated under section 67(5) of the Act. Firstly, the opinion, which would be a decision, should be reflected in the record. The opinion cannot be a mere *ipsi-dixit* of the Proper Officer. There must be cogent reasons to withhold giving of copies to the person. A mere statement that it will prejudicially affect the investigation would be only chanting the language of the section.

12. With this statutory scheme, we will examine the merits of the stand of the Respondents. The Respondents have stated that according to their intelligence input, there may be some shell companies involved in evasion of tax. Then the Respondents state that if the copies are given, they may be manipulated or fabricated to evade the payment of tax. It is stated that most of the documents that have been seized are photocopies and not the original. Then it is stated that if the copies of the documents are given to the Petitioner, such copies will be used to alert its associates and, lastly which is a contradiction, that soft copies are available with the petitioner.

13. An offer is made by the Respondents that the Chartered Accountant of the Petitioner can visit the office of the Respondents, and there is no need to give such copies. Section 67(5) of the Act creates a right to receive the copies by a person from whose custody

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the documents are seized. The said person need not give justification why he needs the copies of the documents seized. Therefore, the argument that the Petitioner must show a cogent reason why the Petitioner needs copies and only an inspection by the Chartered Accountant will suffice has to be rejected.

14. As regards the tampering of evidence is concerned, it is not explained how, when the originals are with the respondent-authorities, the said documents will be tampered by the Petitioner. Second, if the soft copies are available with the Petitioner, the argument that if the copies are given, now the Petitioner will alert its associates is also not explained.

15. The counsel for the Respondents shown us the noting in in the record by the Proper Officer. We have gone through the Note. The Note states that giving of copies would prevent investigation. This is only a reproduction of the language of the section. Further, the Note is prepared on 7 August 2019, i.e. one month after the present writ petition was filed. Therefore, first, no reasons are given in the said note as to how giving of copies will prejudice the investigation and second, the record is created subsequently.

16. We also note the averment in the affidavit filed by the Respondents wherein it is sought to be suggested that the Petitioner did not co-operate by answering the summons. The counsel for the Petitioner pointed out to us that the Petitioner attended subsequently.

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However, the said fact has not been mentioned in the affidavit of the Respondents. This is not an innocuous mistake. It appears that partial averments are made to give different colour to the adjudication. The authorities ought to place all the material facts before the Court.

17. Last, in the light of the provision of section 67(5) of the Act creating right in the person, the denial of copies must be a reasonable action. The legislative intent is clear that the documents or books seized must not be kept in the custody of the officer for more than the period necessary for its examination and copies thereof need to be given to the person from whose custody the said documents or books are seized. The reasonableness of the action depends on the facts of each case. If the right to get copies of the documents and the power of the authorities to refuse the same has to be balanced, then the balance may shift by the passage of time and continuing withholding of copies can become unreasonable assuming it is justified at the inception. The documents were seized in January 2019, and the petition is being heard in the middle of August 2019. The prejudice to the Petitioner has been demonstrated.

18. In these facts and circumstances, we are of the opinion that refusal by the respondent- authorities to give copies of the documents to the Petitioner which are seized under Panchanama dated 9/10 January 2019 is not justifiable and the Petitioner is entitled to the mandatory direction as prayed for.

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19. In the circumstances, we make the Rule absolute by issuing a mandamus to the respondent- authorities to furnish copies of the documents seized under Panchanama dated 9/10 January 2019 within two weeks. The period of two weeks will commence from the date this order is uploaded on the server of this Court.

20. The writ petition is accordingly disposed of in the above terms.

NITIN JAMDAR, J. M.S. SANKLECHA, J.

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