M/s Gaurav Electronics Versus Atwal Sunder Marketing Pvt. Ltd.

Present: Sh. A.C. Gupta, Adv. Counsel for the complainant/applicant
Sh. R.K. Sharma, Adv. Counsel for accused/respondent

ORDER:

1. This order of mine shall dispose of an application under Section 31 Cr.P.C. moved by complainant for examination of record keeper of G.S.T Department by summoning him through G.S.T. Commissionerate Jalandhar of Range-I, Phagwara, Division Phagwara along with certified copies of purchase returns filed by M/s Atwal Sunder Pvt. Marketing Limited Goraya having GST registration No.03AAQCA2825C1Z3 purchased by the said company from Gaurav Electronics, Ludhiana having GST registration No.03BXHPG1814R1ZD along with certified copies of input tax credit of GST by M/s Atwal Sunder Marketing Limited Goraya with regard to the purchases made by the said company from M/s Gaurav Electronics, Ludhiana for the year 2018-2019 to 2020-2021, the certified copies of said record along with Certificate under Section 65-B of Indian Evidence Act.

2. In the application it is averred that that the accused had purchased electronics goods from complainant firm against credit during the year 2018-2019, 2019-2020, 2020-2021. The complainant firm is duly registered with the GST Department and its GST No.03BXHPG1814R1ZD and the GST No. of the accused is 03AAQCA2825C1Z3. The complainant has issued the bills to the accused company as per rules to the GST Department at the time of issuing the respective bills during the said financial years. The original bills were handed over to the accused at the time of supply of goods and the copies of same were returned by the complainant. The complainant is filing GST returns regularly during the said financial years to the G.S.T.

Department, Ludhiana and has also deposited GST and SGST on all the bills through which the goods were supplied to the accused during the said financial years. Further averred that accused has also filed purchase returns to the GST Department, Range-I, Phagwara Division at Commissionerate of GST Jalandhar and has also taken Input Tax Credit under GST from GST department by the accused company on account of the GST paid by the complainant on all the purchases made by accused from complainant firm. The accused has denied his liability to pay the balance amount of Rs.1,13,23,181/- to the complainant company. Hence, examination of the official witness/ record keeper of G.S.T Department is necessary and material along with record in order to prove the liability of accused to pay the balance price of the goods purchased by accused from the complainant during the said financial year. With these submissions prayed that present application be allowed in the interest of justice.

3. In reply learned counsel for accused submitted that present application is not maintainable as the complainant while appearing as his own witness has miserably failed to produce the copy of bills and e-way bills during his cross-examination. Since the complainant has failed to produce the said bills and as such, a specific suggestion has been given to the complainant that he will try to forge and fabricate the record in future to give strength to his false and frivolous case as these bills are not in existence till the date of the said cross-examination. As such, it appears that the complainant might have succeeded in forging and fabricating the said record alongwith concerned officials of the GST Department. Further submitted that copies of bills alongwith present application produced by

complainant for leading additional evidence are forged and fabricated documents as none of the bills bears the signatures of any partners of accused company and its director or any its Principal Officer and any other employee of the company. Moreover, the complainant has not mentioned the said record keeper in the list of witness at the time of filing present complaint, hence, he can not be allowed to summon the said witness. Further submitted that present application is neither verified nor supported by any legal affidavit and as such, the same is liable to be rejected on this ground. With these submissions and denying remaining as mentioned in the application prayed to dismiss the application with cost.

4. I have heard the submissions put fourth by learned counsels for both the parties and have perused the judicial record with their able assistance.

5. By way of present application complainant has prayed for granting permission for examination of record keeper of G.S.T Department by summoning him through G.S.T. Commissionerate Jalandhar of Range-I, Phagwara, Division Phagwara along with certified copies of purchase returns filed by M/s Atwal Sunder Pvt. Marketing Limited Goraya having GST registration No.03AAQCA2825C1Z3 purchased by the said company from Gaurav Electronics, Ludhiana having GST registration No.03BXHPG1814R1ZD along with certified copies of input tax credit of GST by M/s Atwal Sunder Marketing Limited Goraya with regard to the purchases made by the said company from M/s Gaurav Electronics, Ludhiana for the year 2018-2019 to 2020-2021, the certified copies of said record along with Certificate under Section 65-B of Indian Evidence Act

It is the case of complainant that accused had purchased electronics goods from the complainant firm against various bills and in order to discharge its legal liability accused issued cheques in question which were returned dishonoured. This Court is of the considered view that examination of Record Keeper of GST Department along with record is necessary for effectually adjudicating the present case. Mere non-mentioning the abovesaid witness in the list of witness cannot cause hindrance in the path of justice. Moreover, present case is still at the stage of complainant evidence and no prejudice will be caused to the accused as accused will have due opportunity to test the veracity of witness.

6. Accordingly in view of aforementioned reasons, application moved by complainant Under Section 311 Cr.P.C stands ***allowed***. Findings herein are for the sole purpose of disposing of the present application and shall not affect the merits of the case.

Pronounced in Open Court:
Dated: 15.05.2024
Ajay Kumar, Stenographer-II

(Simrandeep Singh Sohi), PCS,
Judicial Magistrate Ist Class,
Ludhiana (PB 0550)

M/s Gaurav Electronics Versus Atwal Sunder Marketing Pvt. Ltd.

Present: Shri A.C. Gupta, Adv. counsel for complainant
Accused on bail with counsel Shri R.K. Sharma, Advocate

Ld. Counsel for accused appeared and moved an application seeking exemption from personal appearance of accused. In view of averments mentioned in the application, personal appearance of accused stands exempted for today only. Accused is directed to appear on next date of hearing.

Arguments heard on application under Section 311 Cr.P.C. moved by complainant for examination of record keeper of GST Department along with record. Vide my separate detailed order of even date, abovesaid application stands ***allowed*** and witness be summoned on filing of PF/DM within seven days.

Now, case stands adjourned to 11.06.2024 for evidence of complainant as well as payment of interim compensation.

Dasti summons be given as per rules, if requested.

Pronounced in Open Court:
Dated: 15.05.2024
Ajay Kumar, Stenographer-II

(Simrandeep Singh Sohi), PCS,
Judicial Magistrate Ist Class,
Ludhiana (PB 0550)