

Court No. - 5

AFR

Case :- WRIT TAX No. - 608 of 2020

Petitioner :- M/S R.J. Exim And Another

Respondent :- The Principal Commissioner Central Goods And Service Tax And 3 Others

Counsel for Petitioner :- Vikrant Rana

Counsel for Respondent :- B.K.Singh Raghuvanshi

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard learned counsel for the petitioners and Sri B.K.Singh. Raghuvanshi, learned counsel for the respondents.

2. This writ petition has been filed praying to quash the impugned orders dated 22.07.2020 and 05.02.2020 passed by the respondent no.2 in exercise of powers conferred under Section 83 of the Central Goods and Services Tax Act, 2017. Petitioners have further prayed to issue a direction to the respondents concerned to release forthwith the provisional attachment of the current and saving bank account (Nos.) 306001010028200 and 3060020140796 respectively relating to PAN No.AAMPJ7368L in Union Bank of India, and also to release the FDR dated 24.10.2019 of Rs. 25 Lacs issued in the name of Principal Commissioner, CGST, Meerut in favour of the petitioners.

3. Learned counsel for the petitioners submits that as only show cause notice under Section 70 of the Central Goods and Services Tax Act, 2017 has been issued, the attachment under Section 83 of CGST Act can not be made. Consequently, the impugned orders of provisional attachment are bad and it is liable to be quashed.

4. We have carefully considered the submissions of the learned counsel for the parties.

5. From the record, we find that order dated 22.07.2020 was issued by the proper officer to the petitioners, informing GST DRC-01A under Section 74(5) of the Act, requiring the petitioners to deposit the ascertained amount of Rs. 69,67,729/- + interest @ 24%+ penalty @ 15% or to submit objection under Section 74(1) of the Act. An opportunity was also given by fresh notice so that petitioners may file an objection against the above ascertainment by 14.08.2020 in Part B of this Form.

6. Learned counsel for the petitioners has stated that petitioners have not submitted any objection against the ascertainment dated 22.07.2020 issued by the proper officer, which was followed by the impugned provisional attachment order dated 22.07.2020 issued by the Assistant Commissioner, Central Goods and Service Tax Division-I, Meerut.

7. Aggrieved against the aforesaid provisional attachment, petitioners have filed the present writ petition.

8. From the record, it appears that petitioner No.1, M/s R.J. Exim purchased Readymade Garments worth Rs. 06,50,32,128/-involving IGST Rs.69,67,729/- from the supplier M/s Unimax Overseas, WZ-98, Lamba Complex Jwala Heri, Paschim Vihar, Delhi West. The aforesaid purchase was shown through six invoices, which were mentioned in the intimation of the proper officer dated 22.07.2020. Petitioners took credit of the aforesaid IGST amount of Rs. 69,67,729/-. On verification the aforesaid, M/s Unimax Overseas, WZ-98, Lamba Complex Jwala Heri, Paschim Vihar, Delhi West was found non existent.

9. For the purposes of controversy involved in the present writ petition, the provisions of Sections 74(5), Section 83, Rules 142 (1A) and Rule 159(5) of the CGST Act, 2017 relevant which are reproduced below:-

“Section 74 - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

74 (5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Section 83 - Provisional attachment to protect revenue in certain cases

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Rule 142 (1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

(2A) Where the person referred to in sub-rule(1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**.

Rule 159 (5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC-23.**"

10. From the perusal of Section 74(5) of the Act, it is evident that a person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax and interest under Section 50 and penalty @ 15% of such tax on the basis of own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The intimation dated 22.07.2020 issued by the proper officer to the petitioners is referable to Section 74(5) of the Act and Rule 142(1A) of the Rules. The proper officer afforded opportunity to the petitioners to file an objection, but the petitioners have not filed any objection.

11. The impugned Provisional attachment order has been issued by the competent authority under Section 83 of the Act for the purpose of protecting interest of the Government revenue. Against the order of Provisional attachment under Section 83(1) of the Act, the petitioners have

an opportunity to file an objection under sub-Rule 5 of Rule 159 of the Rules. It has been admitted before us by learned counsel for the petitioners that the petitioners have not filed any objection against the impugned provisional attachment dated 22.07.2020. Therefore, the impugned orders cannot be said to suffer from any manifest error of law.

12. Learned counsel for the petitioners has relied upon a judgment of ***Punjab & Haryana High Court dated 20.12.2019 in CWP No. 31382 of 2019 (O&M) (Bindal Smelting Pvt. Ltd. Through its Director Versus Additional Director General, Directorate General of GST Intelligence)*** . Relevant para 10 of the judgment is reproduced below:-

*“10. Applying the above quoted provisions of CGST Act, 2017 and taking cue from afore-cited judgments of Gujarat High Court, which has noticed consistent judicial pronouncement and Bombay High Court, we find that in the present case **attached account is Over Cash Credit account** and Petitioner had debit balance of Rs.6.42 Crore, thus question arises that whether continuation of attachment would protect interest of revenue or not. The Petitioner is running unit and more than 100 families are dependent upon Petitioner. **Till date no proceedings under Section 74 of CGST Act are pending** which would start as soon as show cause notice is issued. The Respondent has seized record of the Petitioner who has further supplied various documents as well put personal appearance through Directors and employees.*

The object and intention of legislature to endow Commissioner with power of attachment under [Section 83](#) is very clear. It is drastic and far-reaching power which must be used sparingly and only on substantive weighty grounds and reasons. The power should be exercised only to protect interest of revenue and not to ruin business of any taxable person. Primarily [Section 83](#) permits to attach property. Property means an asset which may be movable, immovable, tangible, intangible or in the form of some instrument. Cash in hand as well bank account is property, in the form of liquidity which is better than immovable property and directly affects working in the form of working capital of a dealer. A dealer may be having 15 of 17 CWP No.31382 of 2019(O&M) #16# cash in hand or in account in the form of fixed deposit or saving account. The mandate of [Section 83](#) in our considered opinion is to attach amount lying in an account in the form of FDR or saving and it cannot be intention or purport of [Section 83](#) to attach an account having debit balance. No purpose leaving aside securing interest of revenue is going to be achieved except closure of business which cannot be permitted unless and until running of business itself is prohibited by law. The contention of Respondent that they have power to attach bank account irrespective of nature of account cannot be countenanced.

We are of the opinion that Respondent can attach an account only if there is some balance in the form of FDR or savings. The power of attachment of bank account cannot be exercised as per whims and

caprices of the Authority. The Commissioner is bound to ensure that by attachment of property or bank account, interest of revenue is going to be protected. In case a property is mortgaged with bank and value of property is less than outstanding dues of bank, provisional attachment is meaningless and action remains only on paper. In the absence of record showing that interest of revenue is protected by attaching property or bank account, action deserves to be declared as taken without application of mind and formation of opinion on the basis of cogent material. Thus, attachment of current account having debit balance does not protect interest of revenue, instead merely ruins the business of a dealer. Such an action of attachment of "over cash credit" account for the sake of recovery of confirmed demand, may in some peculiar case, may be still permitted but not at the stage of pending investigation”.

13. In the aforesaid judgment, it is mentioned that the OCC account utilizing credit limit to the tune of Rs. 6.42 Crore was attached and there was debit balance of Rs. 6.42 Crore. On these facts it was held in para 10 of judgment that mandate of section 83 is to attach amount lying in an account in the form of FDR or saving and it cannot be intention or purport of Section 83 to attach an account having debit balance. In the present set of facts, the saving bank account of the petitioners being account Nos. 30600101002800 and 3060020140796 relating to PAN No.AAMPJ7368L in Union Bank of India have been attached. Thus, the aforesaid judgment relied by learned counsel for the petitioners has no bearing on facts of the present case.

14. The judgment dated 17.01.2020 of ***Bombay High Court in Writ Petition No. 3145 of 2019 (Kaish Impex Private Limited through its Director Vs. The Union of India, through the Secretary, Department of Legal Affairs, Ministry of Law & Judge and others)*** relied by the learned counsel for the petitioners, also does not support the case of the petitioners. Relevant para 12 of the aforesaid judgment is reproduced below:-

“Para 12. *The judgment order dated 22 October, 2019 proceeds on the assertion that proceedings have been launched against the petitioner under Section 67 and 70 of the Act. As far as section 67, i.e. search is concerned, it is an uncontroverted position that no proceedings have been initiated against the petitioner under section 67 of the Act. On the date of provisional attachment of the bank account, only a summon under of the Act was issued to the petitioner. Section 70 is not mentioned in Section 83 of the Act. No proceedings were pending against the petitioner under section 62, 63, 64,73 and 74 of the Act.*

Thus the petitioner contends that power under section 83 could not have been invoked against the petitioner”.

15. Perusal of the aforesaid judgment in the case of Kaish Impex Pvt. Ltd. (Supra) shows that provisional attachment order was issued on the ground that proceedings under Sections 67 and Section 70 of the Act have been launched but in fact, it was found that no proceeding was initiated under Section 83 of the Act and only summon was issued for provisional attachment of the bank account. On these facts, provisional attachment was held to be bad. The facts of the present case are entirely different.

16. *The judgment dated 17.12.2019 of Gujarat High Court at Ahmedabad in R/Special Civil Application No. 19533 of 2019 (Kushal Ltd. Versus Union of India)* relied by the learned counsel for the petitioners, also does not support the case of the petitioners. Relevant para 14 of the aforesaid judgment is reproduced below:-

“Para 14. On a plain reading of section 83 of the GST Acts, it is clear that a sine qua non for exercise of powers thereunder is that proceedings should be pending under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of the GST Acts. In the present case, the proceedings under section 67 of the GST Acts are no longer pending and pursuant to the search, proceedings under any of the other sections mentioned in Section 83 have not been initiated. Under the circumstances, on the date when the orders of provisional attachment came to be made, the basic requirement for exercise of powers under section 83 of the GST Acts was not satisfied. The provisional attachment of the bank accounts of the petitioners under section 83 of the GST acts is, therefore, not in consonance with the provisions thereof and cannot be sustained.”

17. In the aforesaid judgment in the case of Kaushal Ltd. (Supra), it was held that no proceeding under Section 67 of the Act was pending and, therefore, provisional attachment was held to be bad. In the present case, facts are entirely different.

18. In Judgment dated 09.09.2020 of *Punjab and Haryana High Court at Chandigarh in CWP No. 11961 of 2020 (O&M)* , Court as a matter of fact had found that on the date of Provisional attachment order under Section 83 of the Act, proceedings under Section 67 of the Act were over. On these

facts, the Court found the attachment order to be bad. Thus, this judgment is also distinguishable on facts of the present case.

19. For all the reasons stated above, we do not find any merits in this writ petition. Consequently, the writ petition fails and is hereby **dismissed**.

Order Date :- 24.11.2020

T.S.