



sg

1/11

13. wp3742-23-.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3742 OF 2023

Bharat Parihar

... Petitioner

Vs.

State of Maharashtra Thr. PP

Office And Ors.

... Respondents

WITH

WRIT PETITION NO.3744 OF 2023

Kishan Lal Bunkar

... Petitioner

Vs.

State of Maharashtra Thr. PP Office And Ors.

... Respondents

WITH

WRIT PETITION NO.3905 OF 2023

Sunbright Designers Pvt. Ltd.

... Petitioner

Vs.

State of Maharashtra And Ors.

... Respondents

.....

Mr. Brijesh Pathak, for the Petitioners.

Ms. Shruti D. Vyas, 'B' Panel Counsel, for the Respondent State.

.....

CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

RESERVED ON : 19th JUNE 2023

PRONOUNCED ON : 30th JUNE 2023

Judgment (Per Jitendra Jain, J.) :

This petition challenges provisional attachment of bank account of the Petitioner with Yes Bank, Mumbai, under Section 83 of the CGST Act, 2017 and further communication dated 19th April 2023, whereby the provisional attachment made on 21st April 2022 is retained under Section 83 of the CGST Act. The petition is filed after the objections of the Petitioner to provisional attachment were disposed of under Rule 159(5) of the CGST Rules by the Respondents.

2. We have heard learned Counsel for the Petitioner and learned Counsel for the Respondents.

3. At the outset, the Respondents have raised a preliminary ground that the order disposing off objections under Rule 159(5) of CGST Rules attaching the bank account provisionally is an appealable order and, therefore, this Court should not entertain the petition. The Respondents have relied on Section 107 of the Act in support of the contention that the same is an appealable order. On the other hand, the Petitioner relied upon the decision of the Supreme Court in the case of *Radha Krishan Industries vs. State of Himachal Pradesh*¹, wherein an identical submission was made before the Supreme Court and the Supreme Court in paragraphs 63 to 66 have held that order disposing the objections to provisional attachment of bank account is

¹ (2021) 6 Supreme Court Cases 771.

not an appealable order and the only remedy that is available is in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution of India. The Respondents cannot take a position contrary to the decision of the Supreme Court. Thus, the objection as to alternative remedy being no more *res integra* and concluded by the decision of the Supreme Court in the case of *Radha Krishan Industries* (supra), the present writ petition needs to be entertained. We now propose to deal with the provisions relating to attachment under Section 83 of the CGST Act.

4. Section 83 of the CGST Act reads as under:-

“(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).”

5. Section 83(2) provides that provisional attachment made under sub-section (1) of Section 83 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). In the instant case, the provisional attachment order was made on 21st April 2022 and period of one year from the said date

expired on 21st April 2023. Therefore, in our view, the provisional attachment order dated 21st April 2022 ceases to have effect by operation of law and cannot continue to operate after 21st April 2023. In the case of *Guru Nanak Motor House vs. Union of India*², this Court, after examining the provisions of Section 83, has taken a similar view wherein it was held that after the expiry of period of one year, the provisional attachment ceases to exist.

6. In so far as continuation of the provisional attachment by the Respondent's letter dated 19th April 2023 is concerned, it is submitted by learned Counsel for the Respondents that the said letter is only a communication to the bankers with a copy marked to the Petitioner. Learned Counsel for the Respondents stated that a copy of fresh order is passed, which is noted on the order sheet a copy of which is annexed to the reply of the Respondents. It is the contention of the Respondents as a fresh order is passed provisionally attaching the Petitioner's bank account, hence, the provisional attachment of the Petitioner's account as informed in the communication dated 19th April 2023, is valid. Learned Counsel for the Respondents has relied on the decision of the Gujarat High Court in the case of *Shrimati Priti Amrutlal Gandhi vs. State of Gujarat*³ in support of her contention that since the fresh attachment order is passed, the same is valid.

2 2021-TIOL-2017-HC-Mum-GST

3 2011 SCC OnLine Guj 1869.

7. We have perused the said order sheet referred to by the Respondents. The order sheet records the date of the noting as 21st April 2022, wherein after narrating the facts it is stated that same is submitted for necessary orders under Section 83 of the MGST Act. It further states that “we may consider taking action of provisional attachment under Section 83 in respect of this bank account and, thereafter, the Joint Commissioner (Investigation) has opined that this bank account is required to be attached. The said order sheet is dated 21st April 2022 and formed the basis for issue of first provisional attachment on 21st April 2022 and which, as observed above, has ceased to expire by operation of sub-section (2) of Section 83.

8. Thus, we do not find any fresh order having being passed by the Respondents to attach the bank account on 19th April 2023. In any view of the matter, mere notings in the file of the concerned Officer cannot constitute an order without a formal order as the law may mandate being passed and most importantly such order being communicated to the affected person, whose bank account is attached. The Respondents have not shown that such order was passed and served on the Petitioner much less prior to the provisional attachment order ceasing to operate by virtue of the provisions of Section 83(2) and/or the communication dated on 19th April 2023. In any case, the Respondents have also not disputed that letter of 19th April 2023 is only a communication to the bank, to retain provisional attachment of

the account. Thus, it can never be a fresh order under Section 83(1) provisionally attaching the Petitioner's bank account. In these circumstances, it is clear that after 21st April 2023 there is no provisional attachment of the Petitioner's bank account, looked from any angle.

9. The decision of the Gujarat High Court relied upon by the Respondents may not assist the revenue as much as in that case a fresh order was passed for provisional attachment. In the instant case, as observed, there is no fresh order in question after 21st April 2023 attaching the bank account.

10. In the light of the above discussion, it is held that the communication dated 21st April 2022 (Exhibit "B" to the petition) provisionally attaching the Petitioner's bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. The extension of the provisional attachment by communication dated 19th April 2023 (Exhibit "G-1" to the petition) is hereby quashed and set aside. Parties, including the bank, to act on authenticated copy of this order.

11. The writ petition stands allowed in the aforesaid terms. No order as to costs.

Writ Petition No.3744 of 2023

Heard learned Counsel for the Petitioner and learned Counsel for the Respondents.

2. The issue raised in this petition is identical to the issue raised in Writ Petition No.3742 of 2023.

3. For the reasons stated in our judgment in Writ Petition No.3742 of 2023, it is held that the communication dated 21st April 2022 (Exhibit “B” to the petition) provisionally attaching the Petitioner’s bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. The extension of the provisional attachment by communication dated 19th April 2023 (Exhibit “G-1” to the petition) is hereby quashed and set aside. Parties, including the bank, to act on authenticated copy of this order.

Writ Petition No.3905 of 2023

This petition challenges the provisional attachment communication dated 21st April 2022 and 19th April 2023. Learned Counsel for the Petitioner submitted that the Respondents do not have the jurisdiction to pass the provisional attachment order, since the Petitioner is in Chennai and the bank account, in respect of which the

provisional attachment order is communicated, is also in Chennai. Therefore, it is submitted that the Respondents do not have the jurisdiction to pass the impugned order.

2. Section 83 of the GST Act, 2017 is reproduced hereunder:

83. Provisional attachment to protect revenue in certain cases. -

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 or any person specified in sub-section (1-A) of section 122, 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)."

3. Sub-section (1) of Section 83 empowers the Commissioner for the purpose of protecting the interest of the revenue to provisionally attach any property, including bank account belonging to the taxable person or "*any person*" specified in Section 122(1-A) in such manner as may be prescribed.

4. The two persons referred to in Section 83(1) are (i) taxable person or (ii) any person specified in Section 122(1-A) of the Act. Therefore, in second limb the phrase "any person" would include non-taxable person.

5. Section 122(1-A) provides that any person, who retains the benefit of a transaction covered under clauses (i)(ii)(vii) or (ix) of sub-section (1) and, at whose instance such transaction is conducted shall be liable to a penalty of a sum equivalent to the tax evaded or input tax credit availed of or passed on. In our view, thus the powers conferred under Section 83(1) of the Act can be exercised in respect of a person, who may not be within the territorial jurisdiction of the Maharashtra GST Authorities. The allegation against the Petitioner is that he is the beneficiary of the GST refund claimed fraudulently. The Petitioner has also failed to comply with the summons under Section 70 of the GST Act. The Petitioner has not produced any document before the authorities in support of its written submission that the amount received is on account of the sale of crypto currency. In these facts and on a true and proper construction of Section 83(1) r/w Section 122(1-A), it cannot be said that the authorities do not have the jurisdiction over a person situated in other State. If the contention as canvassed by the Petitioner is accepted then it would lead to a situation where a person who stays outside the State and who is a beneficiary/part of any transaction involving tax evasion or violation of the Act would have total immunity in as much as in such a situation, such person would never be examined nor any proceedings could be taken by the State in which the transaction is executed and the State in which he is located would also not take any action since the transaction has not happened in the State where he is located. In our view, such an

interpretation cannot be accepted. Furthermore, Section 122(1-A), refers to “any person”, who has retained benefit of a transaction and in whose presence transaction is conducted. It does not contemplate of a situation where the person should be located within the State in which the transaction is carried out. Therefore, in our view, the Respondents have the jurisdiction to resort to the provisions of Section 83 of the Act with respect to the Petitioner located in Chennai.

6. In so far as the jurisdiction of the Commissioner to exercise powers under Section 83 is concerned, we may observe that the provisions of Section 83, which are to be read with Section 122(1-A), would be required to be read in the context of the legislation itself namely the CGST Act. As Section 1(2) would mandate, the CGST Act is operational throughout the country. This would have relevance in construing the jurisdiction of the Commissioner who has been defined under Section 2(24) of the CGST Act, for the purposes of Section 83(2) of the Act. A cumulative reading of the provisions of Section 83(1) read with Section 122(1-A) of the Act makes it manifest that the Commissioner for the purposes of exercising power under Section 83 read with Section 122(1-A) of the CGST Act, would have a power to take action against “any person” as Section 122(1-A) mandates, even if such a person is outside his jurisdiction. There cannot be any other reading of the legislative scheme flowing through a conjoint reading of Section 83(2) read with Section 122(1-A) and Section 2(24) of the

Act, moreover, a contrary reading of the said provisions would defeat the legislative intention.

7. However, as it is held that the communication dated 21st April 2022 (Exhibit “C” to the petition), provisionally attaching the Petitioner’s bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. The extension of the provisional attachment by communication dated 19th April 2023 (Exhibit “H-1” to the petition) is hereby quashed and set aside. Parties, including the bank, to act on authenticated copy of this order.

(JITENDRA JAIN, J.)

(G.S. KULKARNI, J.)