

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

W.P.No.44235 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Vineeth Chadda, learned counsel for the petitioner; Mr. G.Praveen Kumar, learned Deputy Solicitor General of India for respondent No.1; and Ms. Sapna Reddy, learned counsel representing Mr. B.Narsimha Sarma, learned counsel for respondents No.2 and 3.

2. On 09.12.2022, we had passed the following order:

Challenge made in this writ petition is to the provisional attachment of bank account of the petitioner on 02.12.2019 and again on 08.12.2021 under Section 83 of the Central Goods and Services Tax Act, 2017.

Learned counsel for the petitioner submits that by lapse of time, both the provisional attachment orders are no longer valid as on today.

Mr. Sarma prays for time either to obtain instructions or to file affidavit.

List on 22.12.2022 high on board.

3. Learned counsel for respondents No.2 and 3 submits on the basis of written instructions that investigations are ongoing against the petitioner under Section 67 of the Central Goods and Services Tax Act, 2017 (briefly 'the CGST Act' hereinafter). It was for that reason that the bank account of the petitioner was provisionally attached. If the attachment is lifted, there is a possibility of petitioner withdrawing the amount deposited in the said bank account which may cause prejudice to the interest of the respondents. In this connection, she submits that respondents would like to file an affidavit.

4. However, learned counsel for the petitioner submits that Additional Director General in the Directorate General of GST Intelligence, Hyderabad Zonal Unit had provisionally attached the bank account of the petitioner maintained with the ICICI bank under Section 83 of the CGST Act on 02.12.2019. Thereafter, fresh order was passed by the Principal Additional Director General on 08.12.2021 provisionally attaching the bank account of the petitioner maintained with the Corporation Bank.

5. Learned counsel for the petitioner has referred to sub-section (2) of Section 83 of the CGST Act and submits that provisional attachment cannot be continued beyond a period of one year. In this connection, he has submitted a compilation of judgments of different High Courts supporting the statutory mandate engrafted in Section 83(2) of the CGST Act.

6. From the material papers, we find that on 02.12.2019, Additional Director General in the Directorate General of GST Intelligence, Hyderabad Zonal Unit had written to the Regional Officer of ICICI Bank limited, Hyderabad stating that petitioner is a registered taxable person under the CGST Act; proceedings were launched against the petitioner under Sections 67(2) and 74 of the CGST Act; and Directorate General of GST Intelligence had information that petitioner had current account in ICICI Bank bearing account No.017705009507. In order to protect the interest of revenue and in exercise of the power conferred by Section 83 of the CGST Act, Additional Director General provisionally attached the aforesaid bank account clarifying that

no debit would be allowed to be made from the said account or from any other account operated by the petitioner without prior permission of the Directorate General of GST Intelligence. Almost two years thereafter, similar provisional attachment was ordered by the Principal Additional Director General in respect of account No.176001601000233 of the petitioner maintained with the Corporation Bank in Hyderabad.

7. Section 83 of the CGST Act provides for provisional attachment to protect revenue in certain cases. Section 83 is extracted hereunder:

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).

8. From the above we find that as per sub-section (1) of Section 83 of the CGST Act, where during the pendency of any proceedings under Sections 62, 63, 64, 67, 73 or 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to do so, 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. Sub-section (2) thereof provides that 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).

9. Attachment of bank account of a taxable person is a serious measure which has the effect of not only adversely affecting property rights of such person but is also an intrusion into his privacy. The power being drastic, it has to be exercised by a high authority like the Commissioner. However, the condition

precedent for exercise of such power is that proceedings under Sections 62, 63, 64, 67, 73 or 74 should be pending against the taxable person. Further, the Commissioner must also form an opinion that to protect the interest of government revenue, it is necessary to provisionally attach any property of the taxable person including the bank account. If these two conditions are fulfilled, Commissioner may pass an order provisionally attaching any property of the taxable person including bank account by making an order in writing. However, being a coercive provision legislature has ensured that duration of provisional attachment does not exceed a period of one year.

10. By its very nature, provisional attachment cannot be for an indefinite period. Dictionary meaning of provisional is ‘arranged or existing for the present, possible to be changed later’; Black’s Law Dictionary, eighth edition, has defined it as ‘temporary’ or ‘conditional’. The two words ‘provisional’ and ‘attachment’ read in conjunction can only mean a ‘temporary attachment’.

11. Therefore, to ensure that the valuable right of a taxable person is not infringed for an indefinite period, legislature itself has provided for a definite time line in sub-section (2) of Section 83 of the CGST Act mandating that a provisional attachment order would have a life span of only one year from the date of the order made under sub-section (1). After expiry of a period of one year, such provisional attachment would cease to have effect.

12. Having regard to the legislative mandate, it is evident that both the provisional attachment orders dated 02.12.2019 and 08.12.2021 have spent their force. Such provisional attachment orders cannot therefore be allowed to continue beyond the period prescribed under the statute.

13. We however make it clear that we have not expressed any opinion on the pending proceedings against the petitioner under Sections 67(2) and 74 of the CGST Act.

14. Consequently, provisional attachment orders dated 02.12.2019 and 08.12.2021 passed by respondent No.2 are hereby set aside and quashed.

15. Since we have quashed the provisional attachment orders, respondent No.2 shall communicate the same to all the bankers of the petitioner.

16. Writ Petition is accordingly allowed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 22.12.2022
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