



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5183 OF 2025

M/s. Shubh Corporation

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

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Mr. Brijesh Pathak, Advocates for the Petitioner

***Ms. S.D. Vyas, Addl. G.P. a/w Ms. S.R. Crasto, AGP for the
Respondent – State***

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: MAY 7, 2025

P. C.

1. Rule. The Respondent waives service. Rule is made returnable forthwith and heard finally with the consent of parties.

2. The above Writ Petition is filed seeking to quash and set aside the impugned order dated 27th January 2025 issued by the 2nd Respondent. By the impugned order, the Bank Account No. 40280285699 held with the 3rd Respondent (State Bank of India), B.N. Agarwal Market, Vile Parle (East),

Mumbai was attached under Section 83 of the Maharashtra Goods and Services Tax Act, 2017 (for short '**MGST Act**').

3. The brief facts to adjudicate the issue in the present Writ Petition are that the Petitioner is a partnership firm carrying on business in Mumbai and also at Raigad. Respondent No.1 is the State of Maharashtra and Respondent No.2 is the Joint Commissioner of State Tax, exercising powers and functions under the provisions of the MGST Act and the Rules framed thereunder. It is Respondent No.2 who has passed the impugned order. Respondent No.3 is the State Bank of India, with whom the Petitioner has a Bank Account and which has been attached by Respondent No.2 under Section 83 of the MGST Act.

4. The business carried on by the Petitioner is of procuring and exporting of heavy machineries such as JCB and Excavators. According to the Petitioner, it is not carrying out or conducting any activities of trading in the local market and the Petitioner is also a registered assessee with the GST Authorities. It is the case of the Petitioner that the Officers of Respondent No.2 / the State Tax Department visited the place of business of the Petitioner on 16th October 2024 and conducted search of the office premises exercising powers under Section 67 of the MGST Act. A simultaneous search

was also carried out at the additional place of business at Shedung, Raigad. During the search, the Officers also found two Backhoe Loaders (JCB). According to the Petitioner, its representatives co-operated and tendered all relevant documents and records in respect of the Purchase and Sales Invoices for the period 2020-21 to 2023-24 and the search was conducted on 18th October 2024 at 6:00 p.m. It is the case of the Petitioner that thereafter its representatives also co-operated with the Investigating Agency and tendered documents from to time. According to the Petitioner, after November 2024, no summons were issued requiring the presence of any of the representatives of the Petitioner and no further correspondence was exchanged between the State Authorities and the Petitioner. According to the Petitioner, suddenly on 27th January 2025 and without any basis of whatsoever nature, Respondent No.2 issued a Communication dated 27th January 2025 in Form GST-DRC-22 to Respondent No.3 directing Provisional Attachment of the Bank Account of the Petitioner. According to the Petitioner, this was on the basis that proceedings have been launched against the Petitioner under Section 67 of the MGST Act to determine the tax or any other amount due from the Petitioner. On learning of this attachment, the Petitioner, vide its letter dated 3rd February 2024, made a representation to Respondent No.2 appraising him of the investigation carried out and also the co-operation extended by the Petitioner. The Petitioner, therefore, requested Respondent

No.2 to furnish the reasons to believe and the material upon which the 2nd Respondent derived its opinion that the attachment of the Bank Account was necessary for protecting the interest of the Government Revenue. According to the Petitioner, these reasons have never been furnished to the Petitioner till date and, in fact, even after the search and seizure carried out under Section 67, no Show-cause-Notice has also been issued to the Petitioner. It is in this back drop that the Petitioner has filed the present Writ Petition seeking lifting of the attachment.

5. We have heard learned Counsel for the parties. We have also perused the papers and proceedings and the above Writ Petition. The facts stated by us are really undisputed. Hence, we are not repeating the same. Section 83 of the MGST Act gives a power to the Commissioner to provisionally attach any property, including any 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. Sub-section (2) of Section 83 stipulates that every such provisional attachment shall cease to have effect after a period of one year from the date of the order made under sub-section (1) of Section 83 of the MGST Act. For the sake of convenience, Section 83 is reproduced hereunder:-

Provisional attachment to protect revenue in certain cases

“83. [(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 an order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) 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).”

6. On a bare reading of Section 83(1) it is clear that 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 an order in writing, provisionally attach any property, including a Bank Account of the taxable person. The power provided under Section 83 has to be exercised in the manner provided therein. The power to cause attachment of a Bank Account is drastic in nature, inasmuch as, it could in certain situations, bring the business of the taxable person to a grinding halt. It is, therefore, more important that the Authority wielding such powers is required to act with circumspection and misuse of the said powers is required to be avoided at all times. The statute provides that before levying any

attachment, the Authority should be satisfied that the Government Revenue is required to be protected and that he has reason to believe that if the attachment is not levied, there is likelihood that the Revenue cannot be recovered.

7. In the facts of the present case, we find the impugned order refers to the proceedings initiated under Section 67 as the basis for causing the Provisional Attachment. This is undisputed. Admittedly, the proceedings under Section 67 stood concluded on 18th October 2024 and there is no determination of any tax amount, or even calling upon the Petitioner to show-cause as to why any tax amount ought not to be recovered from him. No proceedings for raising a demand on the Petitioner have been filed till date. This apart, before the attachment is levied, the Commissioner has to form an opinion that for the purpose of protecting the interest of Government Revenue, it is necessary to attach any property, including the Bank Account of the taxable person. This opinion has to be based on material, and cannot be on the basis of assumptions and presumptions of the Commissioner. The impugned order dated 27th January 2025 does not set out any material which form the basis of the opinion for attaching the Bank Account of the Petitioner. We are mindful of the fact that the impugned order is in a format namely, Form GST-DRC-22. Even if that be the case, least that would be

required is that the reasons for forming that opinion along with the material ought to have been furnished to the Petitioner when called upon by his letter dated 3rd February 2025. Till date, no material which led the Commissioner to believe that the attachment is necessary to secure the interest of the Revenue has been communicated to the Petitioner. In the view that we take, we are supported by the decision of the Hon'ble Supreme Court in the case of ***Radha Krishan Industries Vs. State of Himachal Pradesh & Ors. (2021) 6 SCC 771.***

8. In these facts and circumstances, we are of the view that the impugned order is unsustainable and would have to be set aside. Accordingly, the above Petition succeeds and the impugned order dated 22nd January 2025 is hereby quashed and set aside. Consequently, the Petitioner is permitted to operate its Bank Account No. 40280285699 with the 3rd Respondent - SBI.

9. It is needless to clarify that we have not opined on the merits of any claim that the Department may have against the Petitioner for recovery of tax and which shall be decided on its own merits and in accordance with law. We further clarify that this order shall not, in any way, preclude the

Department from issuing a Show-cause-Notice to the Petitioner for recovery of any tax that may be due and payable by the Petitioner to the Department.

10. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]