

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 10780 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

SMITA AND SONS COAL PRIVATE LIMITED
Versus
STATE OF GUJARAT

Appearance:
VIJAY H PATEL(7361) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1
MR SIDDHARTH RAMI, ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 2

CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 01/02/2023

ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner challenges the order of provisional attachment of the Bank under section 83 of the Gujarat Goods and Services Tax Act, 2017 ('the Act')

hereinafter) issued on 18.05.2022 issued in FORM No.GST DRC-22 by the respondent No.2 attaching the Bank account of the petitioner on the ground of the violation of provisions of law.

2. Brief facts leading to the present petition are as follow:

2.1 The petitioner is a private limited company engaged in the business of trading in coal. It is also having valid registration number under the Act.

2.2 The respondent No.2 is an officer under the provision of section 3 of the Act entrusted with the assessment and recovery of GST under various provisions of the Act.

2.3 The petitioner is regular in filing its

return under the Act both annually and periodically.

2.4 During the period between 2018-19, the petitioner company had purchased Iron and Steel Waste Scrap from M/s.Arsh Enterprise, which has having valid GST registration at the time of purchase of goods. The goods worth Rs.37,31,420/- had been purchased where the value of goods was of Rs.31,53,746/- and the GST was Rs.5,67,674/-. The goods purchased from M/s.Arsh Enterprise also had been sold by the petitioner to various other purchasers and the sale proceeds were received in his Bank account. The GST registration of M/s.Arsh Enterprise had been cancelled on 31.10.2020.

2.5 On 04.01.2022 summons under section 70 of the Act was issued to the petitioner where he was called upon by the respondent No.2 to remain present for recording of statement and production of sales and purchase registers. The summons is silent regarding specific subject matter about the inquiry. The Director of the petitioner was unable to attend on specific date, the request of adjournment was made on 11.01.2022.

2.6 A detailed letter was addressed to the respondent No.2 as no new date was given on 11.02.2022 submitting all documents. The petitioner again served with a letter from respondent No.2 being the letter dated 10.03.2022 calling upon the petitioner to

submit details of freehold immovable property, property card, index copy, etc. The respondent failed to indicate any live link with the document sought as well as with the inquiry which the summons under section 70 of the Act was issued.

2.7 It is averred by the petitioner that respondent No.2 had taken extreme coercive steps, whereby his entire business came to a grinding halt by attaching the Bank account without any pending proceedings. With communication on 18.05.2022, FORM GST DRC-22 was issued on the Bank under section 83 of the Act.

2.8 On 21.05.2022, request was made by the petitioner to the respondent No.2 to release the Bank account, however, till

date the Bank account is not released and hence, this petition with the following prayers:

“7...

(A) YOUR LORDSHIPS may be pleased to admit and allow this petition.

(B) YOUR LORDSHIPS may kindly be pleased to issue a writ of mandamus or an appropriate writ, orders directions and thereby be pleased to quash and set aside the order of provisional attachment of the petitioner's current account bearing A/C No.01592000001920 with Kotak Mahindra Bank Limited, Maninagar Branch, Ahmedabad dated 18.05.2022 passed by the respondent No.2;

(C) Pending hearing and final disposal of the present petition, Your Lordships may kindly be pleased to issue an appropriate writ, orders, directions and thereby be pleased to stay the operation and implementation of the orders dated 18.05.2022;

(D) Ex-parte ad interim relief in terms of para 7(C) may kindly be granted;

(E) To grant any other such relief in the nature of case may require.”

3. The emphasis on the part of the petitioner is that the recourse to the powers of section 83 of the Act could be only in exception circumstances. As a last resort, the Bank account be attached and hence, the present petition.

4. On issuance of the notice, appearance has been filed and affidavit-in-reply has also been brought on the record.

4.1 According to the respondent, the petitioner had purchased the goods from M/s.Arsh Enterprise as per its returns filed for the year 2018-19 and 2019-20. Directorate General of Goods and Service Tax Intelligence, Surat Zonal Unit, had

gathered the intelligence that M/s.Arsh Enterprise having its place of business at Surat was involved in wrongfully availed and utilizing the Input Tax Credit without any actual receipt or supply of goods. Hence, the search was conducted at the office premises of M/s.Arsh Enterprise and relevant documents were seized. The panchnama was also recorded on 09.04.2019.

4.2 The show cause notice was issued for the purpose of cancellation of registration of M/s.Arsh Enterprise on 16.10.2020 on the ground that M/s.Arsh Enterprise had obtained the registration by means of fraud, willful mis-statement and by suppression of facts. The proprietor of M/s.Arsh Enterprise was required to remain

personally present before the authority and he did remain present.

4.3 It is the say of the respondent that 40 business entities as per the report of intelligence had passed on Input Tax Credit amounting to Rs.6.03 Crore (rounded off) during the period from April 2018 to June 2019 to M/s.Arsh Enterprise and most of these entities were bogus. On verification, it was noticed that M/s.Arsh Enterprise had wrongly availed and utilized the Input Tax Credit amounting to Rs.6,03,77,363/-.

4.4 M/s.Arsh Enterprise being the supplier of goods to the petitioner and since it was found to have availed the Input Tax Credit wrongly without any actual supply of goods and the registration also has been

cancelled by means of fraud and by willful misstatement. The respondent authority issued a summons under section 70(1) of the Act intimating the proprietor of petitioner firm to give a statement on 04.01.2022 and produce the sale and purchase registers along with purchase invoices from effective date of GST registration.

4.5 M/s.Arsh Enterprise did not possess any godown/warehouse to restore the goods. The proprietor of the firm remained present and gave a statement on 23.02.2022 that he was not ready to pay any amount of tax along with interest and penalty arising out of the tax activities with M/s.Arsh Enterprise.

4.6 On 10.03.2022, a communication was

issued upon the proprietor of the petitioner firm to give the details regarding the freeholds property of the firm and to attach the same under section 83 of the Act in order to protect the Government Revenue. Thus, neither the Director of the company nor the company had any freehold property in India. The respondent was compelled to issue a communication to the Bank.

4.7 These are the circumstances, which have been specified for the purpose of taking recourse to the extreme step of attaching the Bank account.

5. This Court has heard the learned advocate, Mr.Vijay Patel appearing for the petitioner, who has made a serious

grievance of the provisional attachment of the Bank account having been made in the month of May 2022 without taking any legal recourse as required under the law. He has also relied heavily on the Circular No.CBEC-20/16/05/2021-GST/359 so also the provisions of the Act to urge before this Court that the FORM DRC-01A had been issued by the respondent only on 18.01.2023, there was nothing pending for the authority concerned to take recourse to the provisional attachment. He has also brought to the notice of this Court that there had been a genuine purchase from M/s.Arsh Enterprise and its GST registration was also in tacked when the purchase had been made. Relying heavily on the decision of the ***Arya Metacast Pvt. Ltd. vs. State of***

Gujarat, Special Civil Application No.2787 of 2022 he has urged this Court to quash the order/communication, whereby the provisional attachment of the Bank account is made.

6. *Per contra*, the learned AGP, has vehemently submitted that for protecting the revenue's interest the steps have been taken. More particularly, realizing that the dealing of the present petitioner was with M/s.Arsh Enterprise where about 40 suppliers in whose connection the verification was conducted by the senior intelligence officer. The process revealed that the supplier listed in the communication dated 23.06.2022 have passed on the Input Tax Credit amounting to

Rs.6.03 Crore to M/s.Arch Enterprise. They were found to be bogus/fake firms. M/s.Arsh Enterprise since had wrongly availed and utilized the Input Tax Credit amounting to Rs.6.03 Crore on the strength of the invoice issued from supplier, further investigation was necessary. The preliminary verification in respect of the supplier had necessitate the action on the part of the respondent authority. More particularly, when the petitioner had been called and neither the director nor the company had any immovable property at his credit. He admits that FORM DRC-01A has been issued after about six to seven months' period. The officer concerned is also conscious of the Circular No.CBEC-20/16/05/2021-GST/359.

7. Having thus heard the learned advocates on both the sides and having also perused the material on the record, it clearly appears that there had been a cancellation of registration of M/s.Arsh Enterprise. M/s.Arsh Enterprise is found to be receiving bogus bills and invoices without actual supply of goods. It did not have the godown/warehouse to store the goods. The officer was, therefore, of the *prima facie* opinion that the company was involved in availing and utilizing the Input Tax Credit without there being any actual supply of goods from the supplier. The petitioner company since did not have any freehold property and there was nothing, it could have offered pursuant to the summons issued

by the respondent authorities, it had chosen to provisionally attache the Bank account for protecting the interest of revenue.

8. Undoubtedly, the powers exercise under section 83 of the Act are serious and harsh in nature. This Court in Special Civil Application No.2787 of 2022 in case of **Arya Metacast (supra)** had an occasion to deal with the very issue of attachment under section 83 of the Act of the Bank account. The Court also had an occasion to consider the Circular issued by the CBES to hold that sparingly the powers of section 83 of provisional attachment needs to be taken recourse of. It should not use as a tool to harass the assessee nor should it

be used in any manner that it may have irresistible detrimental effect on the business of the assessee.

8.1 The summary of findings recorded by the this Court reads as under:

"8. We have carefully gone through the records as well as have also examined the documents and the judgments relied upon by the learned counsel for the writ applicants. Before we decide the aspect of the exercise of powers by the respondent authority, while passing the impugned order, it would be appropriate at this stage to look into the instructions issued by the Central Board of Indirect Taxes and Customs vide dated 23.02.2021.

"CBEC-20/16/05-2021-GST/359

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

*GST Policy Wing ******

New Delhi Dated 23 rd February , 2021

*To, The Principal Chief Commissioners/
Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Director (Generals/Director Generals (All)*

Madam / Sir,

Subject: Guidelines for provisional attachment of property under section 83 of the CGST Act, 2017-Reg.

1. I am directed to refer to the section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). This section provides for provisional attachment of property for the purpose of protecting the interest of revenue during the pendency of any proceeding under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of the Act.

2. Doubts have been raised by the field formations on various issues pertaining to provisional attachment of property under the provisions of section 83 of the Act read with rule 159 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"). Besides, in a number of cases, Hon'ble Courts have also made observations on the modalities of implementation of provisions of section 83 of

the Act by the tax officers. In view of the same, the following guidelines are hereby issued with respect to the exercise of power under section 83 of the Act.

3.1 Grounds for provisional attachment of property

3.1.1 Section 83 of the Act is reproduced hereunder.

"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).

3.1.2 Perusal of the above provision of the law suggests that the followings grounds must exist for resorting to provisional attachment of property under the provisions of section 83 of the Act.

(i) There must be pendency of a proceeding against a taxable person under the sections mentioned in section 83 of the Act;

(ii) The Commissioner must have formed the opinion that provisional attachment of the property belonging to the taxable person is necessary for the purpose of protecting the interest of the Government revenue. 3.1.3 For forming an opinion under section 83, it is important that Commissioner must exercise due diligence and duly consider as well as carefully examine all the facts of the case, including the nature of offence, amount of revenue involved, established nature of business and extent of investment in capital assets and reasons to believe that the taxable person, against whom the proceedings referred in section 83 are pending, may dispose of or remove the property, if not attached provisionally

3.1.4 The basis, on which, Commissioner has formed such opinion, should be duly recorded on file.

3.1.5 It is reiterated that the power of provisional attachment must not be exercised in a routine/mechanical manner and careful examination of all the facts of the case is important to determine whether the case(s) is fit for exercising power under section 83. The collective evidence, based on the proceedings/ enquiry conducted in the case, must indicate that prima-facie a case has been made out against the taxpayer, before going ahead with any provisional attachment. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost

circumspection and with maximum care and caution.

3.2 Procedure for provisional attachment of property

3.2.1 In case, the Commissioner forms an opinion to attach any property, including bank account. of the taxable person in terms of section 83, he should duly record on file the basis, on which he has formed such an opinion. He should, thereafter, pass an order in FORM GST DRG-22 with proper Document Identification Number (DIN) mentioning therein the details of property being attached.

3.2.2 A copy of the order of attachment should be sent to the concerned Revenue Authority or Transport Authority or Bank or the relevant Authority to place encumbrance on the said movable or immovable property. The property, thus attached, shall be removed only on the written instructions from the Commissioner.

3.2.3 A copy of such attachment order shall be provided to the said taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within the time period prescribed under rule 159 of the CGST Rules. If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard to the person filing the objection. After considering the facts presented by the person in his written objection as well as during the personal hearing, if any, the Commissioner

should form a reasoned view whether the property is still required to be continued to be attached or not, and pass an order in writing to this effect. In case, the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC-23.

3.2.4 Even in cases where objection is not filed within the time prescribed under Rule 159(5) of CGST Rules, the Commissioner may take the grounds mentioned in the said objection/representation on record and pass a reasoned order. Where the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC-23.

3.2.5 Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order of attachment.

3.2.6 If the provisionally attached property is of perishable/hazardous nature, then such property shall be released to the taxable person by issuing order in FORM GST DRC-23, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, and submits proof of payment. In case the taxable person fails to pay the said amount, then the said property of perishable/hazardous nature may be disposed of and the

amount recovered from such disposal of property shall be adjustable against the tax, interest, penalty, fee or any other amount payable by the taxable person. Further, the sale proceeds thus obtained must be deposited in the nearest Government Treasury or branch of any nationalised bank in fixed deposit and the receipt thereof must be retained for record, so that the same can be adjusted against the amount determined to be recoverable from the said taxable person.

3.3 Cases fit for provisional attachment of property

3.3.1 As mentioned above, the remedy of attachment being, by its very nature, extraordinary. needs to be resorted to with utmost circumspection and with maximum care and caution. It normally should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where wrongful input tax credit is availed or utilized or wrongfully passed on. While the specific facts of the case need to be examined in detail before forming an opinion in the matter, the following are some of type of cases, where provisional attachment can be considered to be resorted to, subject to specific facts of the case:

Where taxable person has:

a. supplied any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made there under, with an intention to evade tax; or

b. issued any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made there under; or

c. availed input tax credit using the invoice or bill referred to in clause (b) or fraudulently availed input tax credit without any invoice or bill, or

d. collected any amount as tax but has failed to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; or

e. fraudulently obtained refund; or

f. passed on input tax credit fraudulently to the recipients but has not paid the commensurate tax,

3.3.2 The above list is illustrative only and not exhaustive. The Commissioner, may examine the specific facts of the case and take a reasoned view in the matter.

3.4 Types of property that can be attached

3.4.1 It should be ensured that the value of property attached provisionally is not excessive. The provisional attachment of property shall be to the extent it is required to protect the interest of revenue, that is to say, the value of attached property should be as near as possible to the estimated amount of pending revenue against such person,

3.4.2 More than one property may be attached in case value of one property is not sufficient to cover the estimated amount of pending revenue against such person. Further, different properties of the taxpayer can be attached at different points of time subject to the conditions specified in section 83 of the Act.

3.4.3 It may be noted that the provisional attachment can be made only of the property belonging to the taxable person, against whom the proceedings mentioned under section 83 of the Act are pending.

3.4.4 Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.

3.4.5 As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production or finished goods should not normally be attached by the Department.

3.4.6 In cases where the movable property, including bank account, belonging to taxable person has been attached, such movable property may be released if taxable person offers, in lieu of movable property, any other immovable property which is sufficient to protect the interests of revenue. Such immovable property should be of value not less than the tax

amount in dispute. It should also be free from any subsisting charge, liens, mortgages or encumbrances, property tax fully paid up to date and not involved in any legal dispute. The taxable person must produce the original title deeds and other necessary information relating to the property, for the satisfaction of the concerned officer.

3.5 Attachment Period

3.5.1 Every provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the provisional attachment order.

3.5.2 Besides, the provisional attachment order shall also cease to have effect if an order in FORM GST DRC-23 for release of such property is made by the Commissioner.

3.6 Investigation and Adjudication

As the provisional attachment of property is resorted to protect the interests of the revenue and may also affect the working capital of the taxable person, it may be endeavored that in all such cases, the investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc. arising upon adjudication can be recovered from the said taxable person and the purpose of attachment is achieved.

3.7 Share in property

Where the property to be provisionally attached consists of the share or interest of the concerned taxable person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

3.8 Property exempt from attachment

All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment.

4. It may be noted that an amendment to section 83 has been proposed in Finance Bill 2021. However, such proposed amendment shall come into effect only from a date to be notified in future. The present guidelines, which are based on the existing provisions of section 83 of the Act, shall stand modified according to the amended provisions of section 83, once the said amendment comes into effect.

5. Difficulty, if any, in the implementation of the above guidelines may please be brought to the notice of the Board.

Sd/-

(Sanjay Mangal) Commissioner (GST)

9. On bare reading of the contents of the aforesaid instructions, we find that the respondent no.2, inspite of

repeated reminder by this Court in various decisions has once again overlooked the aforesaid guidelines issued by the Central Board of Indirect Taxes and Customs dated 23.02.2021, which otherwise in clear terms provides the guidelines to be adhered while exercising powers conferred upon the respondent authority under Section 83 of the GST Act. We may guardedly put the respondent authorities a word of caution to note that such instructions were issued by the CBITC in wake of the observations made by the Courts as regards modalities of implementation of provisions of section 83 of the act by the Tax officers. This Court in the case of Valerius Industries Vs. Union of India , reported in [2019] 70 GSTR 147 (Guj) has held that power of provisional attachment under section 83 of the act should be exercised by the authority only if there is reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should therefore be exercised with extreme care and caution. The Court held that power under section 83 of the act should not be used as a tool to harass the assessee nor should it be used in as manner which may have irreversible detrimental effect on the business of the assessee. However, we may once again remind the respondent authorities what has been instructed, more particularly, in form of Clause 3.4.3 to 3.4.5, which reads as under:

“3.4.3 It may be noted that the provisional attachment

can be made only of the property belonging to the taxable person, against whom the proceedings mentioned under section 83 of the Act are pending.

3.4.4 Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.

3.4.5 As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production or finished goods should not normally be attached by the Department.”

10. Apart from the aforesaid guidelines, the above stated decision in the case of Valerius Industries (supra), has been recognized in the recent pronouncement of the Supreme Court in the case of Radhe Krishan Industries vs. state of H.P. reported in (2021) 6 SCC 771 and has in detail has dealt with similar provision on statute book of Himachal Pradesh Goods and Service Tax act, 2017. The Supreme Court set aside the judgment passed by the Himachal Pradesh High Court and the orders of provisional attachment passed by the Joint commissioner. The Supreme Court held that, the power to order a provisional attachment of the property of the taxable

person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. The summary of findings recorded by the Supreme Court reads as under :

- The Hon'ble HP High Court has erred in dismissing the writ petition on the ground that it was not maintainable;*
- The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;*
- The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.*
- The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment; The formation of an*

opinion by the Commissioner under Section 83(1) of the HPGST Act must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue;

- In the facts of the present case, there was a clear nonapplication of mind by the Respondent to the provisions of Section 83 of the HPGST Act, rendering the provisional attachment illegal;*
- Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards: a. An entitlement to submit objections on the ground that the property was or is not liable to attachment; and b. An opportunity of being heard;*
- There has been a breach of the mandatory requirement of Rule 159(5) of the HPGST Rules and the Respondent was clearly misconceived in law in coming into conclusion that the Respondent had a discretion on whether or not to grant an opportunity of being heard;*
- The Respondent is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;*
- The Appellant having filed an appeal against the order under Section 74(9) of the HPGST Act, the provisions of Sections 107(6) and Section 107(7) of the HPGST Act will come into operation in regard to the payment of*

the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.

11. In the facts of the case, undisputedly, the respondent no.2 has not only provisionally attached the stock of goods lying at the factory premise of the writ applicants, at the same time, the respondent No.2 has also provisionally attached the demat account and current account of the writ applicants. These are the valuable assets of the writ applicants, more particularly, raw material and the finished goods are valuables which are otherwise necessary for running of the business of the applicants. Even operating the demat account and current account are essentially required for the routine business of the writ applicants. Time and again, this Court as well as even the instructions issued by the higher authority of the respondents, has directed the proper officer to ensure that their action of the provisional attachment should not hamper normal business activities of the taxable person. Even thereafter this Court vide judgment dated 27.01.2022 passed in Special Civil Application No.188 of 2022 in the case of M/s. Utkarsh Ispat LLP Vs. State of Gujarat had an occasion to deal with the similar facts whereby the respondent authorities have provisionally attached goods, stock and receivables and also bank accounts. This Court did not approve the provisional attachment of the goods, stock and receivables, more

particularly, when the entire stock and receivables have been pledged and a floating charge has been created in favour of the Kalupur Commercial Bank Limited for the purpose of availing the cash credit facility with the provisional attachment of the goods, stock and receivables the entire business will come to a standstill.

12. For the aforesaid reasons, present writ application succeeds in part. We hereby quash and set aside the order of the provisional attachment dated 27.11.2021 qua the stock of goods, two demat accounts as well as current account of the writ applicants is concerned. So far the prayer of the writ applicants with regard to release of electronic items including Mobile Phone, laptop and other documents seized during the search proceedings are concerned, same is also directed to be released forthwith on condition that the writ applicants shall file an undertaking before the respondent no.2 thereby declaring that the aforesaid goods electronic items including mobile phone, laptop and other seized documents shall be retained in its original form and shall not be disposed of pending the investigation, if any. At the same time, we permit the respondent authorities to secure the original data by availing necessary certificate under Section 65B of the Information and Technology Act. With the aforesaid, the petition stands disposed of accordingly.”

9.The chronology of events clearly indicate

that the trade activities of M/s.Arsh Enterprise had come under a scanner and not only the serious doubts were raised, but also the inquiry had revealed that it was involved in bogus billing. Out of the 40 suppliers, the verification was conducted in respect of the supplier, the one who had passed on the Input Tax Credit amounting to Rs.6.03 Crore (rounded off) to M/s.Arsh Enterprise were found to be bogus and fake firms. M/s.Arsh Enterprise also has wrongfully availing and utilizing the Input Tax Credit amounting to Rs.6.03 Crore (rounded off).

9.1 Summons came to be issued to the present petitioner in exercise of the powers delegated under section 70(1) of the CGST Act to appear in person for giving

statement and producing the sales and purchase registered and also on 10.03.2022 he was asked to produce the freehold property of the company or of the Directors. On 11.04.2022, the correspondence shows that there had been no freehold property in India or abroad of the company or the Director. The details had been furnished of the Bank. The Manager, Kotak Mahindra Bank had been communicated vide dated 18.05.2022 in FORM GST DRC-21 by provisionally attaching the Bank account under Section 83 of the petitioner.

9.2 Section 83 would be apt to be reproduced at this stage, which provides for the provisional attachment to protect the revenue in certain cases.

“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.”

9.3 The powers are given to the Commissioner, when it is of the opinion that for protecting the interest of the Government Revenue, there is a need for attaching provisionally the property including the Bank account belonging to the taxable person. However, this being a very harsh powers, the recourse is to be made sporadically and consciously for which the detailed guidelines have been issued by the CBEC itself and the same has already been

considered by this Court in case of **Arya Metacast Pvt. Ltd. (supra)**. The Court having noticed that the provisional attachment of the property of taxable person including the Bank account being a pre-purchase step the conditions which are prescribed under the statute for a valid exercise of the power must be strictly fulfilled.

9.4 In the given set of circumstances, it can be thus noticed that the proper officer is always required to ensure that there are no adverse action of the provisional attachment may not hamper normal business activities of the taxable person. Of course, the summons had been issued against the petitioner after getting the inquiry made against M/s.Arsh Enterprise, the procedure that had

been required to be followed as per the Circular and also on issuance of FORM DRC 01A had not been done before the provisional attachment of the Bank account had been made. There is no explanation as to why the FORM DRC-01A has been issued on 18.01.2023 could not have been done if, it was for ascertaining the preliminary details and for protecting the revenue.

9.5 Noticing, however, the gravity of the matter, when there is a direction for attachment of the Bank account, the Court needs to interfere following the decision of ***Arya Metacast Pvt. Ltd. (supra)*** and also various decisions which have been referred to in that decision itself. The guidelines issued by the Circular of CBEC on 23.02.2021 also make it amply clear that

the remedy of attachment being by itself very extra ordinary needs to be resorted to with at most circumspection and maximum care and caution, which in the instant case appear to have been missing and hence, that order needs to be quashed and set aside. At the same time being aware of the inquiry which has been made against M/s.Arsh Enterprise and the purchase having been made by the present petitioner in 2018-19 from M/s.Arsh Enterprise for the goods worth Rs.37,21,420/-.However, striking the balance in wake of the details which have come on record of M/s.Arsh Enterprise it would be apt to release the Bank account by directing the Bank to not permit the petitioner to operate so far as the tax amount of Rs.3,95,568/- for the year 2018-

19 and tax amount of Rs.1,72,104/- for the year 2019-20.

9.6 The request on the part of the learned AGP of calculating the interest and the penalty presently is not being considered as the procedure which has been followed is not what has been prescribed under the law and the Circular both. Nothing prevents the respondent to follow the procedure in accordance with law.

10. This order will not come in the way of respondent authority in carrying out its recourse as provided under the law in relation to this inquiry.

11. The amount of tax amount of Rs.3,95,568/- for the year 2018-19 and tax

amount of Rs.1,72,104/- for the year 2019-20 which the Bank is directed not to part with, let the said amount be parted once there is a direction subject to the crystallization of this liability of the petitioner and subject to the order of the Appellate Authority if any appeal is preferred within the time frame given under the statute. For the remaining amount of penalty and interest, the petitioner shall furnish the bond before the authority concerned.

12. With the above directions, present petition is allowed accordingly.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

M.M.MIRZA