

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16931 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE DR.JUSTICE A. P. THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
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

M/S PATRAN STEEL ROLLING MILL**Versus****ASSISTANT COMMISSIONER OF STATE TAX, UNIT 2****Appearance:****MR D K TRIVEDI(5283) for the PETITIONER****MR UTKARSH SHARMA, ASSTT. GOVT. PLEADER for the RESPONDENTS****CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE DR.JUSTICE A. P. THAKER****Date : 20/12/2018****ORAL JUDGMENT****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks the following substantive reliefs:

“[C] Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ directing the respondent authorities to immediately remove attachment of bank accounts of (1) Axis Bank, Bhavnagar, viz., Nos. (a) C/C A/c No.917030053366001, (b) CURRENT A/c No.917020055857122 and (c) Savings A/c No.200010100069386 of Mr. Manish Bansal, (2) IndusInd Bank, Bhavnagar, viz., (a) Savings A/c No.159825708079 of Mr. Manish Bansal, and (b) Term Deposit A/c No.300723646746 and (3) State Bank of India, Bhavnagar, viz., (a) 31638538591 and (b) 31595134117, and that is how, the said bank accounts may immediately be defreezed;

[D] Your Lordships may be pleased to direct the respondent authorities to immediately remove attachment of goods being attached vide Form GST INC – 02 (Order of seizure) dated 12/10/2018 (the date of order is wrongly typed as 12/11/2018) being annexed at Annexure ‘C’ above. The said order of seizure may kindly be quashed and set aside;”

2. The petitioner is engaged in the business of manufacturing and supplying of various iron and steel products, viz., TMT bars, etc. and is paying goods and service

tax in respect of the goods manufactured and supplied by it from the registered factory premises. On 11.10.2018, the first respondent – Assistant Commissioner of State Tax, Unit-2 visited the factory premises of the petitioner company. During the course of such visit, he carried out comparison of the physical stocks of raw material and finished goods with recorded the quantity of the same and found that there was a stock difference, inasmuch as physical goods valued at Rs.51,73,633/- were found in excess in the factory premises when compared to the recorded quantity. It appears that the first respondent also carried out investigation at the end of a transporter, according to whom, the petitioner had supplied and received goods without payment of tax and therefore, the tax was payable. It is the case of the petitioner that under pressure, threat and duress, the first respondent obtained a statement of the proprietor of the petitioner firm and further pressurized the petitioner to deposit Rs.17,00,000/-. The respondents also claimed that a total of Rs.55,37,237/- was payable by the petitioner and obtained post-dated cheques of the differential amount from the petitioner under pressure, threat and duress. Subsequently, by an affidavit dated 26.10.2018, the proprietor of the petitioner firm retracted the statement recorded by the first respondent.

2.1 By an order of seizure dated 12.10.2018 issued in Form GST INS-02, the first respondent attached the goods which according to him were found in excess on the factory premises of the petitioner. It is the case of the petitioner that the respondent worked out the amount payable by the petitioner at Rs.55,37,237/- and thereafter, on 22.10.2018, the following accounts of the petitioner viz.: Axis Bank Ltd., Bhavnagar, C/C

A/c No.917030053366001, Current A/c No.917020055857122 and Savings A/c No.200010100069386 of Manish Bansal as well as M/s. IndusInd Bank, Bhavnagar A/c No.159825708079 of Manish Bansal and Term Deposit A/c No.300723646746 as well as State Bank of India, Waghawadi Road Branch, Bhavnagar A/c No.31595134117 and 31638538591 came to be attached by the first respondent. The petitioner requested the respondent authorities to release its bank accounts; however, to no avail. It is the case of the petitioner that on account of seizure of its goods as well as attachment of the bank accounts, the petitioner is not in a position to carry on its day to day business and make payment of statutory dues like GST, income tax, local taxes, etc. It is in these circumstances, that the petitioner has approached this court seeking the reliefs noted above.

3. Mr. D. K. Trivedi, learned advocate for the petitioner submitted that the provisional attachment in this case has been made under section 83 of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as “the GGST Act”). It was submitted that sub-section (1) of section 83 of the GGST Act provides that 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. It was submitted that in this case, no proceedings are pending under any of the sections mentioned in sub-section (1) of section 83 of the GGST Act and hence, the

orders of provisional attachment are bad in law.

3.1 It was submitted that the respondents have calculated the tax liability of the petitioner by making an addition of 100% of the goods and have, accordingly, computed twice as big a figure than warranted even if the calculation taken by the respondents is otherwise taken to be true. It was submitted that when the petitioner had already paid Rs.17,00,000/- on the date when the search came to be conducted, there was no reason for the respondents to believe that the petitioner would not pay its tax dues after proper assessment is carried out and, hence, there was no warrant for passing the order of attachment. It was submitted that even if the case of the respondents is taken at face value, at best, the tax liability of the petitioner would come to Rs.13,84,000/- and therefore, the amount of Rs.17,00,000/- deposited by the petitioner should be sufficient to protect the interests of the revenue. It was, accordingly, urged that therefore, the attachment of the bank accounts is required to be removed and the goods seized by the respondents are required to be released.

4. On the other hand, Mr. Utkarsh Sharma, learned Assistant Government Pleader, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the respondents. A perusal of the averments made in the affidavit-in-reply shows that the respondents have mainly relied upon the admissions made by the petitioner on the day of the search, despite the fact that the statement was subsequently retracted by the proprietor of the petitioner firm.

5. A perusal of the computation of tax as made by the first

respondent reveals that while assessing the tax liability as well as penalty, he has added 100% to the stock found during the course of search. Evidently therefore, the amount of 37,25,016/- sought to be recovered on the tax and penalty payable on the dues of stock is twice the amount of goods actually found. An amount of Rs.18,00,000/- has been computed on the basis of statement of the transporter by adding 100% of the quantity stated by him. Thus, an inflated amount of Rs.55,37,237/- has been computed towards the tax liability.

6. From the facts as emerging on record, it appears that the tax liability of the petitioner in terms of the goods seized as well as the transporter's statement, the same would not exceed Rs.13,00,000/-. The petitioner has already deposited a sum of Rs.17,00,000/- with the respondent. Insofar as the amount assessed towards the penalty is concerned, in the absence of any proceedings having been undertaken under the provisions of the GGST Act as well as any penalty having been imposed, in the opinion of this court, the respondent authorities were not justified in resorting to such a drastic coercive measure of attachment of the bank accounts and seizure of goods, which results in bringing the business of the petitioner to a grinding halt.

7. Sub-section (1) of section 83 of the GGST Act provides that where 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. On a plain reading of the said provision,

it is evident that before resorting to such drastic action, the Commissioner is required to form an opinion that it is necessary to do so to protect the interest of the revenue. For the purpose of arriving at such an opinion, the Commissioner should first form an opinion that the petitioner would not be in a position to pay the tax dues after the assessment proceedings are over. In the facts of the present case, the petitioner firm is a going business and the petitioner has readily deposited a sum of Rs.17,00,00/- which covers more than the tax liability that may be assessed. It is not the case of the respondents that the petitioner is a fly by night operator or that it does not have the means to pay the dues that might to assessed at the end of assessment proceedings, which at present have not even been commenced. There is nothing to show that the respondents would not be in a position to recover any amount that the petitioner may ultimately be held liable to pay. In these circumstances, without recording any such satisfaction, the respondent could not have formed the opinion that it was necessary to resort to provisional attachment to protect the interest of the Government revenue. The impugned order of attachment, therefore, cannot be sustained. It is clarified that the fact that the petitioner has deposited a sum of Rs.17,00,000/- during the course of the search proceedings shall not be construed as an admission of such dues on the part of the petitioner.

8. Before parting, the court deems it fit to caution the concerned authorities that while exercising powers under section 83 of The GGST Act, the authorities should try to balance the interest of the Government revenue as well as a dealer to ensure that while the interest of the revenue is

safeguarded, the dealer is also in a position to continue with his business, because it is only if the dealer continues with the business that he would generate more revenue. The authorities should keep in mind that bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue. Therefore, while taking action under section 83 or 67(2) of the GGST Act, the concerned authorities should take care to ensure that equities are maintained and while securing the interest of the revenue, they should attempt to see that the dealer is in a position to continue with the business. This court does not intend to lay down any absolute proposition that in no case drastic action should be taken, but that the respondents should consider the background and history of the dealer as well as his financial position to ascertain as to whether or not he would otherwise be in a position to pay the dues that may be assessed upon the culmination of any assessment proceedings that may be initiated. If the dealer is a fly by night operator or a habitual offender or does not have sufficient means to pay the dues that may arise upon assessment, such action may be justified. Such drastic powers under section 83 of the Act should not be exercised as a matter of course, but only after due application of mind to the relevant factors.

9. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order of attachment dated 22.10.2018, attaching the bank accounts of the petitioner, viz., (1) Axis Bank, Bhavnagar, viz., Nos. (a) C/C A/c No.917030053366001, (b) CURRENT A/c No.917020055857122 and (c) Savings A/c No.200010100069386 of Mr. Manish Bansal, (2) IndusInd Bank, Bhavnagar, viz., (a) Savings A/c

No.159825708079 of Mr. Manish Bansal, and (b) Term Deposit A/c No.300723646746 and (3) State Bank of India, Bhavnagar, viz., (a) 31638538591 and (b) 31595134117, is hereby quashed and set aside. The impugned seizure order dated 12.11.2018 made under rule 139(2) of the Gujarat Goods and Services Tax Act, 2017 (Annexure "C" to the petition) is also hereby quashed and set aside. The respondents are directed to forthwith release the above mentioned bank accounts as well as the seized goods of the petitioner.

10. Rule is made absolute accordingly, with no order as to costs.

Direct Service is permitted.

(HARSHA DEVANI, J)

B.U. PARMAR

(A. P. THAKER, J)

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THE HIGH COURT
OF GUJARAT

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