

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7687 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

CONCEPTIAL TRADE
 Versus
 STATE OF GUJARAT

Appearance:

NAMAN H KINKHABWALA(8831) for the Petitioner(s) No. 1
 for the Respondent(s) No. 1
 KRUTIK PARIKH, AGP for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 19/10/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

In the facts and circumstances of the case and having regard to the request and consent of the

learned advocates for the respective parties, the petition is taken up for final consideration.

1.1. Rule returnable forthwith. Learned advocate Mr. Krutik Parikh waives service of Rule on behalf of respondent - State and its authorities.

1.2 Heard learned advocate Mr. Naman Kinkhabwala for the petitioner and learned AGP for the respondents.

2. What the petitioner has prayed in this Special Civil Application filed under Article 226 of the Constitution is to set aside attachment notice dated 06.01.2022 issued by the Assistant Commissioner of State Tax, Unit 16, Ahmedabad. The said notice came to be issued under Section 83 of the Central Goods and Services Tax Act, 2017 (CGST Act).

2.1 Further prayed is to direct the respondents and their officers to de-freeze bank account no. 10077040495 in IDFC First Bank, Kandivli (West), Mumbai, standing in the name of the petitioner.

2.2 Also prayed is to set aside the summons dated 21.02.2022 issued under section 70(1) of the CGST Act.

3. The petitioner, engaged in the business of trading of products such as garments, footwear, leather accessories, amongst is located at Mumbai and carries out the business from the address shown. It was stated that the petitioner does not have any commercial presence in the State of Gujarat and is

not registered under the Gujarat State Tax laws.

3.1 It is the case of the petitioner that the petitioner wanted to purchase certain goods from one M/s. Raja Traders situated at Ahmedabad and for that purpose the petitioner paid advance amount of approximately Rs. 20 lakhs. The petitioner has further contended that the goods were never supplied nor advance amount paid to M/s. Raja Traders was returned.

3.2 Respondent no.3, Assistant Commissioner of Sales Tax, Unit-16, Ahmedabad issued the provisional attachment order dated 6.01.2022 in Form GST DRC-22 under section 83 of the CGST Act and Gujarat Goods and Service Tax Act, 2017(For short "GGST Act")read with Rule 159(1) of the Goods and Service Tax Rules, 2017 addressed to the Branch Manager, IDFC First Bank, Kandivali (West) branch wherein Account No.10077040495 of the petitioner was ordered to be attached. It is contended in the said notice that M/s. Raja Traders and its syndicate availed GST refund fraudulently and that there was no transaction of sale or purchase with the petitioner though an amount was transferred by M/s. Raja Traders in the bank account of the petitioner with an intention to defraud the Government revenue.

3.3 It appears that the contention of the petitioner that amount was paid by the petitioner to M/s. Raja Traders for purchase of goods are contrary to the

facts recorded in the impugned order dated 6.01.2022 issued under section 83 of the CGST Act.

3.4 Be that as it may, the petitioner came to know about the impugned order dated 06.01.2022 when the petitioner was informed about the same by the bank. M/s. Raja Traders situated at Ahmedabad is registered under the CGST Act and proceedings have been initiated under section 67(2) of the CGST Act to determine the tax or any other amount due from it.

3.5 It appears that information has been received by the respondent authority that the GST number was used for bogus billing activity without actual movement of goods as well as to generate and transfer the amount in violation of the provisions of CGST Act and the petitioner was found to be a part of the syndicate who claimed and availed GST refund fraudulently without any business transaction like sale/purchase by transferring the amount in the bank account.

3.6 The respondent no.3 thereafter issued summons dated 21.01.2022 under section 70(1) of the CGST and GGST Act on the same grounds mentioned in the provisional attachment order dated 06.01.2022 upon the petitioner to appear in person on 28.1.2022 before respondent no.3.

4. Learned advocate for the petitioner submitted that as the petitioner operates from Mumbai, Maharashtra, the notice is without jurisdiction. He

then proceeded to rely on section 83 of the Act to submit that the original attachment thereunder was permitted provided proceedings under either of the sections 62, 63, 64, 67 or sections 73 and 74 were pending.

4.1 Learned advocate relied on decision of this Court in **Pranit Desai vs. Additional Director General, DGGI [2019 (30) GSTL 396(Guj.)]** to submit that for provisional attachment, there must be some material on record, to indicate that the assessment officer had formed an opinion on such basis. Another decision in **Valerius Industries v. Union of India [2019 (30) GSTL 15 (Guj)]** of this Court was pressed into service highlighting conclusions in paragraph 52 of the judgment to reiterate the similar principle.

4.3 On the basis of the decision of **Patran Steel Rolling Mill v. Assistant Commissioner of State Tax, Unit-2[2019 (20) GSTL 732 (Guj)]**, it was submitted that the powers under section 83 should not be used in a manner which may have irreversible detrimental effect on the business of the assessee. It was next submitted that this Court in **Jai Ambey Filament Pvt. Ltd. vs. Union of India [2021(44) GSTL 41 (Guj)]** held that the subjective satisfaction needed for exercise of powers under section 83 should not be based on imaginary grounds but there must be available credible opinion that attachment was necessary.

4.4. On the other hand, the learned advocate for the respondent relied on the affidavit-in-reply filed on behalf of respondent no.3, to contend inter alia that it came to the knowledge of the respondent authority that certain persons had created bogus companies and firms in the name of their relatives and they appointed themselves as directors and fraud was practised in respect of refund amount of Rs. 29 crores. Various companies were referred which according to the respondents were engaged in such fraud and availing the credit and that they were not carrying out any business activities.

4.5 Learned advocate for the respondent stated that the search operation of M/s. Raja Traders was carried out on 28.12.2021 to 31.12.2021, various irregularities and illegal activities were highlighted including that no books of accounts were found at the registered office of M/s. Raja Traders and that the proprietor thereof was not known to anybody. It was contended that the registration of M/s. Raja Traders was cancelled. It was then stated that the bank account of said M/s. Raja Traders revealed that it had received an amount of Rs.19,95,000/- from one Profusion Traders Pvt. Ltd. on 22.12.2011 at its Indusind Bank Account and Rs. 20,00,000/- was transferred on the same day in the IDFC Bank account of the petitioner. Such facts were banked upon to issue notice under section 83 and take action of freezing the bank account of the

petitioner.

5. Now, section 83 of the Gujarat Goods and Services Tax Act, 2017 may be reproduced,

"(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)."

5.1 The power is available under the aforesaid section to provisionally attach the property including the bank account which can be exercised by the competent authority to protect the interest of the Government revenue as could be seen from the plain reading of the section. The section could be operated during the pendency of the proceedings under sections 62, 63, 64, 67, 73 or 74 of the Act. Section 62 deals with the assessment in cases where returns were not filed whereas sections 63 and 64 are in relation to assessment of unregistered persons and assessment in special cases respectively. Section 67 deals with the search and seizure whereas sections 73 and 74 provides for show-cause notice for recovery of

the dues. If any of the proceedings in the aforesaid sections are pending, the power under section 83 of the Act may be exercised.

5.2 In **Radha Krishan Industries vs. State of HP [(2021) 6 SCC 771]**, the Supreme Court observed "..."

"It is evident from the facts noted above that the order of provisional attachment was passed before the proceedings against the appellant were initiated under Section 74 of the Act. Section 83 of the Act requires that there must be pendency of proceedings under the relevant provisions mentioned above against the taxable person whose property is sought to be attached. We are unable to accept the contention of the respondent that merely because proceedings were pending/concluded against another taxable entity, that is GM Powertech, the powers of Sections 83 could also be attracted against the appellant. This interpretation would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively. Given that there were no pending proceedings against the appellant, the mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act."

(para 72)

5.3 While the aforesaid decision is prior to 01.01.2022 when section 83 was amended, the amendment in section does not bring out any change to the requirement that there must be proceedings pending and that the powers under section 83(1) could be invoked only during the pendency of certain

proceedings.

5.4 Section 83 as amended from 01.01.2022 reads as under,

"(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 (1A) of section 122, in such manner as may be prescribed."

5.5 In other words, the ratio of the decision that there must be pendency of proceedings, applies to the post amended section also. It says that after initiation of any proceedings in Chapter XII, Chapter XIV and Chapter XV, the Commissioner may in order to protect the interest of the Government revenue, provisionally attach the property.

5.6 The pendency of the proceedings is therefore *sine qua non* for exercise of powers of provisional attachment. While earlier section 83 could be invoked only during pendency of certain proceedings, now it can be invoked "after initiating proceedings under the Chapters mentioned therein". The fundamental requirement remains valid that there must be proceeding pending before the section could be invoked and provisional attachment could be acted upon.

6. The impugned notice was issued on 06.01.2022. There is no gainsaying that no proceedings were pending. The summons under section 70(1) of the CGST Act and GGST Act came to be issued only on 21.01.2022. The very invocation of powers and issuance of order dated 06.01.2022 was therefore in absence of any proceedings initiated. The powers under section 83 could not have been exercised. The impugned order stands illegal when it seeks to provisionally attach the bank account of the petitioner. It is only on this ground that the impugned Order is liable to be set aside.

6.1 As a result, the petition succeeds in part. The attachment order dated 6.1.2022 issued by the respondent no.3 is set aside. The respondent authorities may continue to proceed further pursuant to the summons dated 21.01.2022 and are at liberty to consider imposing the provisional attachment under section 83 of the CGST Act in accordance with law.

7. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

BIJOY B. PILLAI