THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WP.No.18575 of 2020

O R D E R:

Heard counsel for the petitioner and Sri B.Narsimha Sharma, Senior Counsel for Central Taxes appearing for respondents 1 to 4.

2. Petitioners are aggrieved by the continuation of provisional attachment vide order C.No.HQAE/V/227/2019-HYD-GST-AE dt.07.06.2019 passed by the 2nd respondent attaching the petitioner's company's current bank account bearing No.008010200005632 with the 5th respondent-Bank, even after expiry of the mandatory period of one year prescribed under Sub-Section(2) of Section 83 of the CGST Act, 2017(for short 'the Act').

3. Counsel for the petitioners contends that continuation of such attachment is wholly illegal, arbitrary and violates Articles 14, 19(1)(g), 21, 265 and 300A of the Constitution of India.

4. Counsel for the petitioners has placed reliance on the decision of the Karnataka High Court in **M/s A.P. Steels and Sri Sanjay Kumar Mishra v. Additional Director General, DGCI, Bangalore Zonal Unit, Bengaluru**[1] wherein the Karnataka High Court had held that provisional attachment of a bank account of a party cannot continue beyond a period of

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[1] 2020(8) TMI 329 (in WP.No.8586 of 2020 on 27.07.2020)

one year prescribed under sub-Section(2) of Section 83 of the Act and it directed the respondents to defreeze the petitioner's bank account within a certain period of time fixed therein.

5. Similar view has been expressed by the Gujarat High Court in **Namaskar Enterprise v. Commissioner of Goods and Service Tax**[2].

6. Sri B.Narasimha Sharma, Senior Counsel for Central Taxes does not dispute the above legal position that provisional attachment of a bank account would cease to have affect after expiry of a period of one year from the date of the order made under sub-Section (1) of Section 83 of the Act. He however contends that the matter is at show-cause notice stage, that there is money in the above referred bank account of the petitioner, and that this Court should make an observation that it is open to the respondents to issue a fresh provisional order of attachment under Section 83 of the Act.

7. We are of the opinion that the issue in the Writ Petition relates to a provisional attachment order dt.07.06.2019 issued by the 2nd respondent and its continuing existence after 06.06.2020, i.e., after the expiry of one year from 07.06.2019, contrary to sub-Section(2) of Section 83 of the Act. The fact that the said attachment cannot continue in view of the sunset clause in sub-Section(2) of Section 83 of the Act beyond a period of one year from 07.06.2019, is not in dispute.

[2] 2020(8) TMI 333(in R/Spl. Civil Application No.18105 of 2019 on 07.08.2020)

8. Therefore, the impugned provisional attachment order dt.07.06.2019 issued by the 2nd respondent cannot continue after 06.06.2020 in view of sub-Section(2) of Section 83 of CGST Act, 2017, and any such continuation would be violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and would be wholly without jurisdiction.

9. Accordingly, the Writ Petition is allowed directing the 5th respondent to allow the petitioner to operate its current account bearing No.008010200005632 forthwith. No order as to costs.

10. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

20th October, 2020.

Note: Issue CC in two days.

B/o(gra)