

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12270 of 2024

**Lakshman Saraf
Versus**

**The Senior Intelligence Officer, Director General
of GST Intelligence Kolkata Zonal Unit & Ors.**

For the petitioner : Mr. Pranit Bag
Mrs. Rita Mukherjee
Mr. Ghanshyam Jha
Mr. Rowsan Kumar Jha

For the DGGI : Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja

For Union of India : Mr. R. N. Bag
Ms. Rini Bhattacharyya

For the respondent no.9 : Mr. Sayak Ranjan Ganguly
Mr. Srijani Ghosh
Ms. Indrani Majumdar

Heard on : 8th July, 2024

Judgment on : **8th July, 2024.**

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition has been filed, inter alia, challenging seven provisional orders of attachment issued under Section 83 of the Central Goods and Service Tax Act, 2017 (hereinafter referred

to as the “said Act”). These orders include, three several orders dated 3rd February, 2023, two orders dated 10th February, 2023 and two several orders dated 9th February, 2024.

3. Mr. Bag, learned advocate, representing the petitioner by drawing attention of this Court to the said provisional orders of attachment, dated 3rd February, 2023 and 10th February, 2023 submits that the aforesaid orders of attachment though, could have been issued by invoking the provisions of the said Act, however, in terms of the provisions contained in Section 83 of the said Act, the same could not have continued beyond a period of one year from the date of issue of such order as the same ceases to have effect after expiry of the period of one year from the date when such order was issued. According to him, admittedly, in this case, the above five orders of attachment which were issued on 3rd February, 2023 and 10th February, 2023 have ceased to have effect, on the expiry of the period of one year from the date of issuance of such orders. It is submitted, that from the aforesaid orders of attachment it would transpire that in connection with a purported investigation initiated by the respondents that the aforesaid provisional orders of attachment had been issued, on the premise that the petitioner is in control of certain separate entities, despite the fact that the petitioner has no connection with such entities.
4. In support of his aforesaid contention that the provisional orders of attachment cannot be continued beyond the period of one year, he

has placed reliance on an unreported judgment delivered by the Hon'ble High Court at New Delhi in the case of **M/s. VKS Industries v. Commissioner, Central Excise and CGST** in **WP(C) 257 of 2023** on 13th February, 2023. It is submitted that the provisional orders of attachment issued under Section 83 of the said Act is akin to an attachment order passed under Order XXXVIII Rule 5 of the Code of Civil Procedure and the principles of Order XXXVIII Rule 5 of the Code of Civil Procedure 1908 squarely applies in respect of the orders of attachment passed under Section 83 of the said Act. Admittedly, there being no determination of liability by initiating any proceeding against the petitioner, such orders of attachment are otherwise bad in law. Simply because the respondents have reasons to believe that the petitioner is the operator/controller of the legal entities identified in the order of attachment the same cannot clothe the respondents with the power to issue provisional orders of attachment by invoking the provisions of Section 83 of the said Act.

5. By placing reliance on two separate judgments delivered by the Hon'ble High Court of Gujarat in the case of **Valerius Industries v. Union of India**, reported in **(2019) SCC OnLine Guj 6866** and the case of **Meenakshi Trendz v. State of Gujarat** reported in **(2020)122 taxmann.com236 (Gujarat)**, it is submitted that the Hon'ble Division Bench of the High Court of Gujarat while considering the scope and ambit of exercise of power under Section 83 of the

said Act has specifically identified the circumstances when such power can be exercised. Since, in the instant case, no proceeding has been initiated by the respondents under the provisions of the said Act, during the currency of the provisional orders of attachment dated 3rd February, 2023 and 10th February, 2023, the provisional orders of attachment are otherwise bad in law and should be set aside. It has also been submitted that the facts of the case do not justify issuance of provisional orders of attachment. In any event under no circumstance can a provisional order of attachment be extended beyond one year. In support of his aforesaid contentions, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Radha Kurshan Industries v. State of Himachal Pradesh and Ors.***, reported in **(2021) 6 SCC 771**.

6. He has also placed reliance on the Guidelines issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing dated 23rd February, 2021 to demonstrate that the provisional attachment of property under Section 83 of the said Act, can only be made in terms of paragraphs 3.2.4 and 3.2.5 of the said Guidelines and the order of attachment shall automatically cease to have effect after expiry of period of one year.
7. By further placing reliance on paragraph 3.6 of the said Guidelines, he submits that without resorting to an investigation, the

department cannot be permitted to continue with the provisional order of attachment. The present stand of the respondents, in continuing with the orders of attachment, by issuing fresh orders, without taking any steps for investigation would go to demonstrate that the aforesaid exercise of the jurisdiction by the respondents is in colourable exercise of power. In the facts, as stated hereinabove, he submits that the orders of attachment should be quashed.

8. Mr. Banerjee, learned advocate representing the respondent DGGI, on the other hand submits that in course of a search and seizure operation, the names of the entities, whose names are appearing in the provisional orders of attachment dated 10th February, 2023, had surfaced and in course of investigation since, it has come to the light that the petitioner is in control of all the aforesaid entities the respondents to protect the interest of the revenue had issued the aforesaid provisional orders of attachment.
9. Mr. Banerjee, by placing before this Court, photo copies of a series of postal envelopes, submits that despite taking steps, the department could not cause service of show cause notices under Section 74 of the said Act, on the petitioner until the time mentioned hereinafter. From the endorsement made by the postal authorities, on the envelopes as would appear from the copies thereof, it would transpire that the postal envelopes had been returned with endorsement, “the addressee could not be located”.

10. Mr. Banerjee submits that ultimately, the department could serve all the show cause notices on the petitioner on the basis of proceeding initiated under Section 74 of the said Act.
11. It is still further submitted that a search and seizure was also conducted at the petitioner's place of business and at his residence and such fact would corroborate from the Panchnama, appearing at page 112 of the writ petition. It is submitted that by reasons of the petitioner avoiding service of show cause notices, the respondents had been compelled to issue fresh provisional orders of attachment under Section 83 of the said Act. According to him, admittedly in this case, the petitioner did not file any objection to the provisional orders of attachment, issued under Section 83 of the said Act. No attempt was made by the petitioner to get the attachment orders withdrawn. In any event, since, fresh provisional attachment orders have been issued under Section 83 of the said Act, the petitioner has an alternative remedy. The petitioner has not exhausted such alternative remedy by filing an objection in terms of Rule 159(5) of the CGST Rules, 2017 (hereinafter referred to as the said Rules) and as such, this Hon'ble Court may be pleased to reject the present writ petition. In support of his aforesaid contention he has placed reliance on a judgment delivered by the Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of ***Magna Wires Pvt. Ltd. v. Union of India***, reported in **2021 (51) G.S.T.L. 5 (P&H)**. He has also placed reliance on a judgment delivered by a

coordinate Bench of this Court in the case of ***Amazonite Steel Pvt. Ltd. v. Union of India***, reported in **2020 (36) G.S.T.L. 184 (Cal)**, on the question whether there is any embargo in issuing fresh provisional order of attachment under Section 83 of the said Act.

12. Having regard to the above, it is submitted that no case for interference having been made out, the writ petition deserves to be dismissed.
13. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, the provisional orders of attachment had been issued under Section 83 of the said Act. It may be noted, that once, a provisional order of attachment has been issued under Section 83 of the said Act, the statute itself considering the drastic nature of the order confers a right on the person whose property is attached to file an objection under Rule 159(5) of the said Rules. The guidelines for provisional order of attachment of property under Section 83 of the said Act, dated 23rd February, 2021 disclosed by the petitioner also recognize right of the person whose property has been attached to file an objection. Once, an objection is filed, it is for the Commissioner to consider whether or not such order of attachment is required to be continued or not. Admittedly, in this case, no such objection has been filed. The petitioner, however, questions the order of attachment on the ground that in terms of Section 83(2) of the said Act, the order of

attachment cannot be permitted to continue and shall cease to have effect, after one year from the date of the order.

14. Mr. Bag, learned advocate representing the petitioner also questions the manner in which the orders of attachment had been issued. Inasmuch as, according to him, the respondents without determining the liability on the petitioner cannot be permitted to issue the orders of attachment. He further submits that in the instant case, no proceeding under the said Act for determination of liability has been initiated during the currency of the original provisional orders of attachment dated 3rd February, 2023 and 10th February, 2023, issued under Section 83 of the said Act.
15. With regard to the aforesaid contentions, it may be noticed that the respondents had taken steps for issuance of show cause notice under Section 74 of the said Act by forwarding the same to the registered address of the petitioner by registered post. From the postal endorsement, as appearing on the copies of the envelope as placed before this Court, it would transpire that such show cause notices were forwarded to the petitioner during the currency of the provisional orders of attachment dated 3rd February, 2023 and 10th February, 2023, and the endorsement records that the same could not be served since, the addressee could not be located.
16. Subsequently, however, as has been acknowledged by Mr. Bag, learned advocate representing the petitioner, on instruction, that subsequent to filing of the writ petition, the petitioner has been

served with copies of the show cause notices. The aforesaid matter therefor appears to be little peculiar.

17. Although, Mr. Bag, by placing reliance on the judgment delivered by the Hon'ble High Court of Gujarat in the case of **Valerius Industries** (supra) and **Meenakshi Trendz** (supra) has attempted to identify the circumstances under which the orders of attachment could be issued and has attempted to claim that the present case does not fall within the exception provided in the said judgment for the respondents either to pass or continue with the orders of attachment, I may, however, notice that in the instant case, it is the petitioner who at the first instance did not come forward to file any objection in terms of Rule 159(5) of the said Rules. From the copies of the envelopes bearing postal endorsement, it would appear that the petitioner could not be located. Interestingly, the petitioner for one entire year from the date of issuance of the provisional attachment orders dated 3rd February, 2023 and 10th February, 2023, chose not to apply in terms of Rule 159(5) of the said Rules. Had the petitioner applied, the petitioner could have raised all objections before the respondents and the respondents could have, in such case, not got an opportunity to claim that the petitioner was avoiding service of notice, which prompted them to issue fresh provisional orders of attachment.

18. I may note here, that although, a lot of stress has been laid by the petitioner to, inter alia, contend that the orders of attachment

cannot be continued for more than a year, in this case, I find that fresh provisional orders of attachment has been issued. The respondents have prima facie been able to explain the circumstances under which such provisional orders of attachment had been necessitated, inasmuch as, the notices under Section 74 of the said Act, could not be served on the petitioner. At this stage it cannot be ruled out that the petitioner was avoiding service of notice. The petitioner cannot be permitted to take advantage of its own wrong and cannot be permitted to avoid service of show cause notices on one hand and on the other to hold out that the provisional order of attachment cannot continue for a period, in excess of one year or that no fresh order of attachment can be issued or that the entire proceeding stands vitiated on such ground. The judgment cited by Mr. Bag, delivered by the Hon'ble High Court of Gujarat in **Valerius Industries** (supra) and **Meenakshi Trendz** (supra) are not applicable to the facts of the case. The Division Bench of the Gujarat High Court in the case of **Meenakshi Trendz** (supra) had in fact concurred with the conclusion drawn by the Division Bench of the Gujarat High Court in the case of **Valerius Industries** (supra). The relevant paragraph being paragraph 14 of the above judgment is extracted hereinbelow:

“14. A Coordinate Bench of this Court, to which one of us J.B. Pardiwala, J. was a party, had the occasion to discuss section 83 of the Act in the case of Valerius Industries v. Union of India [2019] 109 taxmann.com 218 (Guj.), wherein this Court drew the following conclusion:

- “(1)The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.*
- (2) The power conferred upon the authority under section 83 of the Act for provisional attachment could be termed as a very drastic and far reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.*
- (3) The power of provisional attachment under section 83 of the Act should be exercised by the authority only if there is a 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.*
- (4) The power under section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.*
- (5) The power under section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.*
- (6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The*

provisional attachment under section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under section 83 of the Act for provisional attachment should take into consideration two things: (i) whether it is a revenue neutral situation (ii) the statement of "output liability or input credit". Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under section 83 of the Act for the purpose of provisional attachment.””

19. From the aforesaid, although, the order of provisional attachment appears to be drastic, there is no embargo on exercise of power. The present case does not suggest that the petitioner has in anyway been harassed or any of the rights of the petitioner, as enshrined in the constitutional provisions has been infringed, especially when the petitioner did not apply for release of the property, by filing an objection in terms of the Rule 159(5) of the said Rules.

20. The judgment delivered by the Hon'ble Supreme Court in **Radha Krishna Industries** (supra) also does not support the petitioner's case. In the said judgment in paragraph 75, the Hon'ble Supreme Court has been, inter alia, pleased to observe as follows:-

“75. Moreover, an order of provisional attachment was issued by the Joint Commissioner which was withdrawn on 30-1-2019, after considering the representations made by the petitioner. On the very ground, without any material change in circumstances, another order of provisional attachment came to

be issued by another joint Commissioner. Therefore, it was the contention of the petitioner before the High Court that the subsequent order of provisional attachment is in substance and effect an order reviewing the earlier order withdrawing the order of provisional attachment which was not permissible and therefore the subsequent order of provisional attachment is without jurisdiction. The High Court has not considered this aspect. Both the earlier and the subsequent orders of provisional attachment are on the same grounds. Therefore, unless there was a change in the circumstances, it was not open for the Joint Commissioner to pass another order of provisional attachment, after the earlier order of provisional attachment was withdrawn after considering the representations made by the petitioner. This is an additional ground to set aside the subsequent order of provisional attachment.”

21. In the factual context as narrated hereinabove, it cannot be said that there is no material for change in circumstance, which permitted the respondents to issue subsequent provisional orders of attachment. For the self-same reasons the judgment delivered by the Hon'ble High Court of Delhi in the case of **M/s. VKS Industries** (supra) does not assist the petitioner.
22. As would appear from the above, the fact that the petitioner had avoided service of notice cannot be ruled out at this stage. Prima facie there appears to be sufficient material for the respondents to pass fresh provisional orders of attachment to protect the interest of revenue. Even after the fresh orders of attachment dated 9th February, 2024 under Section 83 of the said Act had been passed, no steps had been taken by the petitioner to object to the

continuance of such orders in the manner provided for in the statute. At this stage when the inquiry to determine liability under Section 74 of the said Act is in progress, and having regard to facts noted above it cannot be said that there was no material for formation of opinion for issuing order of provisional attachment.

23. In the facts noted above, since the petitioner did not approach the respondents by way of an application in terms of Rule 159(5) of the said Rules, and there appears to be no explanation by the petitioner for not approaching the respondents, I am of the view, that the petitioner, at this stage, is not entitled to invoke the extraordinary writ jurisdiction of this Court.
24. The writ petition fails and is accordingly dismissed.
25. There shall be no order as to costs.
26. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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