IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION {L} NO.2139 OF 2016

Cavim Properties Private Limited
& Anr. .... Petitioners
Vs.
The Union of India & Ors. .... Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi i/by M/s. PDS Legal for the Petitioners.
Mr. Swapnil Bangur with Mr. Vipul A. Bajpayee for the Respondents.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 08, 2016

P.C:

Heard both sides.

2. In the view that we have taken, we refuse to grant any adjournment to Mr. Bangur, appearing on behalf of the respondents. Mr. Bangur wants an adjournment to check as to whether the statements made post the Attachment Order in a letter dated 19-7-2016, copy of which is at Annexure-V, page 82,

are accurate or whether something more is due and payable.

3. The petitioners are aggrieved by an Attachment Order bearing No.1/2016 directing attachment of three immoveable properties. The Attachment Order is dated 7-7-2016. The petitioners are aggrieved and dissatisfied with the fact that the Attachment Order itself mentions that they were required to pay service tax dues being the Government dues under Section 87 of the Finance Act, 1994. This notice itself mentions that the differential amount of service tax of Rs.31,25,815/- is duly paid. Figures are disclosed and these, according to the petitioners, are the voluntary disclosures made pursuant to a scheme. The dues have been cleared to the extent of Rs.3,10,57,111/-. Now the dispute is whether the petitioners have cleared the entire sum of Rs.3,41,82,926/- or anything is balance.

4. In pursuance of this impugned notice at Annexure-A, page 39, the petitioners pointed out on 19-7-2016 (Annexure-V) that the dues demanded towards service tax of Rs.31,25,815/-,

interest on the same amount and interest on Rs.3,10,57,111/- though not payable, in order to have the attachment lifted, by letters of the same date, they have informed the Department that they intend to pay the monies under protest.

5. Thereafter, they have confirmed that by two challans that the amounts mentioned in para 2 of this letter have been paid. There is a calculation sheet.

6. We do not approve of the conduct of the respondents in the peculiar facts of continuing with the attachment, though the petitioners have paid substantial sums by a voluntary disclosure of the dues and secondly, under protest.

7. The Judgments of this Court, time and again, lay down the principle that if dues are disputed and the claims of the Revenue are not admitted, its remedy lies elsewhere. It cannot by a coercive process or coercive means force the assessees to part with monies which the assessees state are not due and payable. Here the assessees have stated on oath before

this Court that no amount as is now sought to be claimed is due and payable.

8. It is not as if the Revenue is remediless in as much as it can take the route of adjudication by issuing a show cause notice, giving a party like the petitioners opportunity to place its version and thereafter pass an order assigning reasons. That order, for its legality and validity, can always be tested by a higher forum.

9. In the above circumstances, we allow the writ petition. We quash and set aside the impugned attachment. There will be no order as to costs.

10. Needless to clarify that, if there is any attachment and ongoing with regard to the bank accounts mentioned more particularly in prayer clause (a) of the petition, that also cannot continue in the light of the principles of law referred above.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C. DHARMADHIKARI, J.)