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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2386 OF 2018

Impact Solution … Petitioner
V/s.
Union of India and 4 Ors. … Respondents

Ms. Deepali Kamble, for the Petitioner.
Mr. Pradeep S. Jetly, with Mr. J.B. Mishra, for the Respondents.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATE: 30TH OCTOBER, 2018.

PC:-

1. On 23rd October, 2018, we passed the following order:-

> "1. On 5th October, 2018, we passed the following order:-
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> > 1. This Petition under Article 226 of the Constitution of India challenges the recovery proceedings leading to attachment of the Petitioner's Bank Account in ICICI Bank and immovable property both at Thane. Those proceedings were initiated by the Respondents No. 2 to 4 consequent to the order dated 1st November 2017 passed by the Respondent No. 3-Additional Commissioner of CGST & Central Tax under the Central Excise Act, 1944 (for short "***the Act***").
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> > 2. It is the Petitioner's case that the order in original dated 1st November 2017 passed by the Additional Commissioner CGST & Central Tax - Respondent No. 3 was served upon the Petitioner only on 7th May 2018. On receipt of the order, the Petitioner had filed an Appeal to the Commissioner (Appeals) along with the necessary pre-deposit of 7 1/2 percent of the Central Excise dues in terms of Section 35F of the Act. This deposit would, according to the Petitioner, warrant a

complete stay of the recovery proceedings for the balance duties payable consequent to the order dated 1st November 2017. In support reliance is placed upon Circular issued by the CBDT.

3. On the other hand, it is the case of the Revenue that the attachment of the bank account and immovable property, all took place before the Petitioner had filed its Appeal to the Commissioner (Appeals)-Respondent No. 6 herein along with the 7 1/2 percent of the dues in terms of Section 35F of the Act. It is submitted by the Revenue that as the attachment of the bank account and the properties took place only after the order in original dated 1st November 2017 was served upon the Petitioner and after awaiting for the expiry of statutory period available to file an Appeal from the order dated 1st November 2017 before the Commissioner (Appeals). Thus, the Circular of the CBIC would not apply as the prohibition therein is to commence recovery proceedings only after the Appeal is filed and deposit is made in terms of Section 35F of the Act.

4. In the above view, the question of interpretation of the CBIC Circular dated 16th September 2014 and 10 March 2017 and its application would all depend upon the date of the service of the order dated 1st November 2017 upon the Petitioner. The recovery proceedings before service of the order dated 1st November 2017 and the expiry of statutory period to file an Appeal would be bad. However, this is a factual issue and would be decided by the Respondent No. 6 – Commissioner (Appeals).

5. In the above circumstances, it would be best to await the decision of the Commissioner (Appeals) who has fixed the hearing of the Petitioner's Appeal on 16th October 2018, as he is not available in the next week being on leave. We are of the view that since the Petitioner's bank accounts have been attached, causing immense prejudice to the Petitioner, the Respondent

No. 6 – Commissioner (Appeals) would decide the Petitioner's Appeal as expeditiously as possible and preferably on or before 22nd October 2018. The Petitioner states that he would attend the hearing on 16th October 2018 and not take any adjournments to enable an early decision on the Appeal filed by him.

6. The Petition to be on board on 23rd October 2018.

2. The order dated 22 October 2018 of the Commissioner (A) – Respondent No.6 on the Petitioner's Appeal was handed over to the Petitioner's counsel Ms. Kamble in Court.

3. On perusal of the order Ms. Kamble submits that the Petitioner would file Appeal from the Order of the Commissioner (A) to the Tribunal. However, in the meantime, in view of the decision of the Kerala High Court in the case of ***Sherin Hi Fabs Vs. Assistant Commissioner of Service Tax, Cochin***[1]***,*** she submits the attachment of the bank account and immovable property be vacated. This as the issue of whether or not the Appeal was filed within time before Commissioner (A) would be the subject matter of consideration before the Tribunal. She handed over a copy of the aforesaid decision to the Respondents also.

4. In the above view, it would be appropriate for the Petitioner to file his Appeal to the Tribunal from the order of the Commissioner (A) dated 22nd October, 2018, which was handed over to the Petitioner in Court today. Thereafter the Petitioner may bring to the notice of the Respondents, the order of the Kerala High Court in the case of ***Sherin Hi Fabs (Supra)*** and seek vacation of the attachments. We trust appropriate view would be taken by the Respondents on the basis of the decision of the Kerala High Court in the case of ***Sherin Hi Fabs (Supra).***

1 2017 (48) S.T.R. 126 (Ker.)

> 5. In the meantime, we adjourn this Petition to 30th October, 2018 at the request of the Petitioner."

2. Today, Ms. Kamble, the learned counsel appearing in support of the Petition states that an Appeal has been filed on 24 October, 2018 from the order dated 22nd October, 2018 passed by the Commissioner (Appeals) to the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). Consequent there to the Petitioner has also addressed a communication to the Respondent Nos. 2, 3 and 4 i.e. the Commissioner, Additional Commissioner and Deputy Commissioner of Central Excise seeking a vacation of the attachment of the bank account and residential flat.

3. Mr. Jetly, the learned counsel appearing for the Revenue states that the bank account which have been attached by the Respondents have been vacated by letter dated 29th October, 2018 addressed to the Manager, I.C.I.C.I. A copy of the same is tendered across the bar and the same is taken on record and marked 'A' for identification. So far as the attachment of the residential house is concerned, Mr. Jetly states that the same may continue till the final disposal of the Appeal as a security for the amounts due to the Revenue.

4. Ms. Kamble, the learned counsel appearing for the Petitioner submits that the attachment of the residential house be lifted / vacated. This would enable the Petitioner to raise loans on the basis of the immovable property – residential flat in his possession. On instructions she states that the Respondents could be secured by the Petitioner giving an undertaking not to sell and / or otherwise deal with the property till the final disposal of the Appeal by the Tribunal.

5. In the present facts, we find that the Assistant Commissioner by an order 1st November, 2017 had confirmed a duty demand of Rs. 88 lakhs. According to the Respondents as no Appeal had been filed by the Petitioner within the stipulated time, they proceeded to attach bank accounts as well as residential flat of the Petitioner. According to the Petitioner the original order dated 1 November 2017 was received only in May 2018 and appeal was filed immediately thereafter. In Appeal, by an order dated 22nd October, 2018, the Commissioner (Appeals) has come to a finding that the Appeal filed by the Petitioner is time barred and dismissed the Appeal.

6. Thus today there is an amount of Rs.88 lakhs due and payable by the Petitioner to the Revenue and the same needs to

be secured. Therefore, we do not interfere with the order of the Respondents attaching the Petitioner's residential flat till such time as the Tribunal takes a final view on the Appeal filed by the Petitioner. However, the attachment of the bank account in these facts is not justified, particularly in view of the decision of the Kerala High Court in the case of ***Sherin Hi Fabs (Supra). The*** Respondents have already vacated attachment of the bank accounts.

7. Thus no further directions on the above account is called for. We also find that the attachment of the residential flat is not to be interfered with at this stage.

8. However, the Respondents will not adopt coercive proceedings to recover the dues by seeking to sell residential flat till the final disposal of the appeal by the Tribunal.

9. In the above view, the Petition is disposed of without disturbing the attachment of the residential flat till the final disposal of the appeal by the Tribunal.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**