

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5569 of 2019

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Bhola Ram Steel Pvt. Ltd., a Private Limited Company incorporated under the Companies Act 1956 having its registered office at Nasriganj P.O. Danapur, P.S. Danapur District-Patna through its authorized signatory, Sunil Kumar Thakur son of Late Shashi Kant Thakur, resident of Mithila Colony, Nasri Ganj Dinapur cum Khagaul P.O. Bataganj P.S. Danapur District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, Danapur Circle, Danapur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3321 of 2019

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M/s Digican Solution a partnership Firm, having its office at DDC Awas, Adampur, P.s.- Adampur, Distt.- Bhagalpur, through one of its Partners, Ram Kishore Singh, aged about 42 years, male, son of Shri Ram Naresh Singh, resident of BICSOMAUN Colony, Ashoka Vihar, Guljarbag, P.S.- Alamganj, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna
2. The Joint Commissioner of State Tax Commercial Taxes Department, Bhagalpur Circle, Bhagalpur
3. The Assistant Commissioner of State Tax Commercial Taxes Department, Bhagalpur Circle, Bhagalpur
4. The Branch Manager IDBI Bank, Kidwaipuri Branch, Patna
5. The Branch Manager State Bank of India, Anandpuri Branch, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6123 of 2019

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M/s Daya Engineering Works Pvt. Ltd. having its registered office at The Safe Legend, 4th Floor, 6-3-1239/B/111, Renuka Enclave, Raj Bhavan Road, Somajiguda Hyderabad-500082, Telangana and branch office at Buniyadganj, Manpur, Gaya-823001, Bihar, through its Deputy General Manager Works, Mr. Rajesh Kumar Singh, aged about 38 years, Gender-Male, Son of Jay Nath Singh, R/o Railway Yard, Buniyadganj, Manpur, District- Gaya, Bihar



... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Commercial Taxes, Bihar, Patna, Vikas Bhawan, Bailey Road, Patna
2. The Joint Commissioner of State Tax Gaya Circle, Kachari Road, Gaya
3. The Deputy Commissioner of Commercial Taxes Gaya Circle, Kachari Road, Gaya
4. The Assistant Commissioner Commercial Taxes (Appeal) Gaya Circle, Kachari Road, Gaya
5. The Additional Commissioner Commercial Taxes (Appeal) Magadh Division

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5569 of 2019)

For the Petitioner/s : Mr. D.V. Pathy, Adv.
Mr. Manju Jha, Adv.
Mr. Sadashiv Tiwari, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC 11
(In Civil Writ Jurisdiction Case No. 3321 of 2019)

For the Petitioner/s : Mr. Suraj Samdarshi, Adv.
Mr. Avinash Shekhar, Adv.
Mr. Vishal Vikram Rana, Adv.
Mr. Rajan Prakash, Adv.
Mr. Vijay Shankar Tiwari, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC11
(In Civil Writ Jurisdiction Case No. 6123 of 2019)

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Adv.
Mr. Aditi Hansaria, Adv.
Mr. Deepika Sharma, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 03-04-2019

In each of the three writ petitions the petitioners have questioned the notice issued by the Assessing authority in purported exercise of powers vested under Section 47 of the Bihar Value Added Tax Act, 2005 (herein after referred to as 'the



Act') in directing the Bank concerned to remit the amount mentioned in the notice in the Government treasury.

To be specific, the petitioner in C.W.J.C. No.5569 of 2019 prays for quashing one such notice dated 28.2.2019 directing the Branch Manager, Central Bank of India, Danapur, to remit a sum of Rs. 94,29,798/-, a copy of which is impugned at Annexure-3 to the writ petition. The petitioner in C.W.J.C. No. 3321 of 2019 has similarly questioned the notice bearing Memo No.1610 dated 11.02.2019 directing the Branch Manager, IDBI Bank to remit the amount of Rs. 25,22,345.38 by way of VAT and amount of Rs. 23,750/- towards Central Sales Tax which is impugned at Annexure-5 to the writ petition. The petitioner in C.W.J.C. No. 6123 of 2019 prays for quashing of the notice bearing No. 998 dated 12.03.2019 directing the State Bank of India, Main Branch, Gaya to remit an amount of Rs. 48,75,717/- being the cumulative demand towards Central Sales Tax for the financial year 2014-15 and 2013-14 which notice is impugned at Annexure-1 to the writ petition.

It is following the notice issued by the Assessing Authority concerned that is the Joint Commissioner, State Taxes, Danapur Circle, the Assistant Commissioner, State Taxes Bhagalpur Circle and the Joint Commissioner State Taxes, Gaya



Circle respectively, the respective Cash Credit Account of the three petitioners herein has been attached and as a consequence the petitioners who are business houses cannot operate these accounts to discharge their financial obligations.

The pleadings on record confirm that in each of the cases the assessment proceedings was carried out for the period in question, orders passed, admitted tax amount deposited and for the disputed tax amount, a statutory appeal as provided under 'the Act' is preferred by the petitioner(s) after depositing the statutory fee of 20% of the disputed amount and which are pending consideration for disposal before the statutory authority. Now even before these appeals are disposed that the respective Assessing authorities, in purported exercise of powers so vested under 'the Act' engineered the special process of recovery and taking a short route provided under the provisions of Section 47 of 'the Act' that they have attached the Cash Credit Account of the petitioners but then the object which is sought to be achieved by the Department i.e of collection of revenue in the closing period of the financial year failed because, no money lies in a Cash Credit Account of any account holder.

It is bearing note of such futile exercise and on hearing Mr. D.V. Pathy, Mr. Suraj Samdarshi and Mr. Nikhil



Kumar Agrawal, learned counsel for the respective petitioners in this batch of writ petitions and Mr. Vikash Kumar S.C.11 on behalf of the State that this Court framed two issues which *prima-facie* fell for consideration while recording the order dated 28.3.2019 and which runs as under:

"(a). Whether where an assessee has taken recourse to statutory remedy of appeal to question assessment/re-assessment orders by depositing statutory amount mandated under the Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and rules framed thereunder, any attempt by the statutory authorities by taking recourse of the provisions of Section 47 of 'the Act' is an attempt to overreach the statutory provisions and make the appellate remedy redundant; and/or

(b). Whether even if the statutory authority is within his jurisdiction to take recourse to the action under Section 47 of 'the Act', he can attach a Cash Credit Account of the assessee."

It is allowing the parties to file their respective affidavits that the matters have been heard and when learned counsel for the petitioners have argued at length in criticism of the purported action by the Assessing authorities in the Commercial Taxes Department in resorting to the special mode of recovery provided under Section 47 of 'the Act' even when statutory appeals/proceedings on the disputed amount of tax, was pending disposal.

Learned counsel in reference to several judicial pronouncements of different courts which we shall be dealing



hereinafter, have submitted that it is by passing the normal course of recovery provided under Section 39 of 'the Act' and even while the statutory appeals were pending for final adjudication that a special mode of recovery has been resorted to by the assessing authority and in the process they have attached Cash Credit Account of the petitioners which is beyond the scope of the proceeding under Section 47 of 'the Act' because of two reasons namely:

(i) No money lies in the said account rather it is a facility provided by the bank for obtaining credit/loan from the bank concerned; and

(ii) The statutory appeals/proceedings questioning the disputed amount was yet pending final adjudication.

Mr. Suraj Samdarshi, learned counsel appearing on behalf of the petitioner-M/s. Digican Solution has submitted that the said petitioner maintains two accounts of which a Cash Credit Account was maintained with the IDBI and Current Account was maintained with the State Bank of India, Anandpuri Branch, Patna. He submits that on notice so issued to the two banks, each of the two accounts has been attached by the IDBI and the State Bank of India respectively bringing the business to a stand still. He submits that consequent upon such



notice, the money lying in the current account maintained with the State Bank of India has been transmitted to the Joint Commissioner, Bhagalpur Circle.

The arguments advanced by learned counsel for the petitioners have been contested by Mr. Vikash Kumar, S.C.11 who submits that attachment of the Cash Credit Account is due to the fault of the petitioners themselves because it is the disclosure of such account by these petitioners to the Department that action has been initiated for attachment of such accounts. According to Mr. Vikash Kumar, learned S.C.11, a pendency of an appeal may not *ipso facto* preclude the Assessing authority in recovering the disputed amount unless the assesseees are able to obtain any interim order from the appellate authority which is not the case herein. He further submits that the information whether the details of the accounts possessed by the assesseees is in the nature of a current account, a Savings Bank Account or a Cash Credit Account, are not available with the department and thus it is on the basis of information so available as supplied on records of the department by the assesseees that such proceedings are initiated. According to learned State counsel the assesseees cannot blame the department for any such attachment and the fault lies with



them.

According to Mr. Vikash Kumar, since these petitioners were not coming forward to discharge their obligation of depositing the tax assessed that the respondent-department had no other option but resort to special mode of recovery.

Pleadings on record show that though attachment notices have been put to challenge in these writ petitions but except for the petitioner in C.W.J.C. No.3321 of 2019 (M/s. Digican Solution), none of the other petitioners have impleaded their bank as a party respondent. However, in so far as the petitioner in C.W.J.C. No.3321 of 2019 is concerned, the Industrial Development Bank of India (IDBI) and the State Bank of India, Anandpuri Branch, Patna have been arraigned as a party and are represented through their respective counsel Mr. Shivendra Kumar Roy and Dr. Anand Kumar respectively.

Mr. Roy, learned counsel of the IDBI has in reference to the statement present at paragraph 12 of the counter affidavit submitted that a Cash Credit Account is actually a loan account and has no deposit which can be transferred to the Commercial Taxes Department. He submits that on receiving the notice from the Commercial Taxes Department, the bank has frozen



withdrawal from the Cash Credit Account however, deposits towards the credit already obtained by the account holder has been permitted.

The counter affidavit filed on behalf of the State Bank of India as espoused through their counsel, suggests that the money lying in the Commercial Taxes Department in the Current Account of the petitioner has been transferred while process has been undertaken by the bank to transfer the money lying in the fixed deposits of the Bank.

We have heard learned counsel for the parties and we have perused the records.

Of the two issues that we have noted at the outset and reproduced hereinabove, in the nature of the contest so put up, we are persuaded to keep the issue regarding a resort to the provisions of Section 47 of the 'the Act' to overreach a statutory recourse available to an aggrieved assessee, open for discussion in an appropriate matter and would concentrate on the issue whether or not, while taking recourse to the special mode of recovery provided under Section 47 of 'the Act', the respondent department through their Assessing authority can attach the Cash Credit Account of an assessee.

Section 39 of 'the Act' provides for payment and recovery



of tax and sub section 2 obliges the dealer or the person concerned to deposit his taxes in three modes i.e (i) in advance; or (ii) the tax due in accordance with returns; or (iii) the tax as assessed by the authorities, after deducting any sum, if already paid.

Section 39(4) enables the prescribed authority under 'the Act' to levy interest on short deposit or a benefit wrongly claimed.

Section 39(5) of 'the Act' enables the prescribed authority to levy, penalty on the failure of the dealer to pay the tax assessed, interest levied or both or any part thereof, which order is to be passed after opportunity of hearing to the dealer.

Section 39(6) of 'the Act' is the all important provision found relevant for the issue in consideration because it enables the prescribed authority to initiate proceedings for recovery of any tax which remains unpaid under Section 2 or interest which remains pending under Sub section (4) and penalty proposed under Sub section (5), as arrears of land revenue and Section 46 of 'the Act' enables the prescribed authority to exercise the same powers as vested in a Certificate Officer under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 for recovery of the tax, interest and penalty as the case may be.



The scheme of recovery of tax provided under Section 39 of 'the Act' is a normal course available to a prescribed authority for recovery of tax, interest and penalty which remains unpaid by the dealer. In addition to the normal course of recovery, the legislature has vested the prescribed authority with powers to resort to special mode of recovery of tax and other liabilities under Section 47 of 'the Act' in which case, a notice is issued to any person from whom any money is due or may become due to be paid to the dealer and/ or to any other person who holds or may hold any money for or on account of the dealer to pay into the Government treasury, the amount mentioned in the notice within the time specified in the notice.

We are persuaded to reproduce the relevant extract of Section 47(1) of 'the Act' for ready reference.

"47. Special mode of recovery of tax and other liabilities under this Act.−

(1) Notwithstanding anything contained in section 39 or any law or contract to the contrary, the prescribed authority may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the said authority) direct−

- (a) any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served under section 39; or
- (b) any person who holds or may subsequently hold any money for or on



account of such dealer,
to pay into Government treasury, in the manner specified in the notice issued under this sub-section, either forthwith or upon the money becoming due or being held, or within the time specified in the notice (not being before the money becomes due or it is held) so much of the money as is sufficient to pay the amount of tax due from the dealer, together with interest and penalty, if any, under this Act or the whole of the money when it is equal to or less than that amount."

The Legislative intent reflecting from the language used in Section 47 of 'the Act' providing for a special mode of recovery leaves no room for confusion that it is only where any money of the dealer is due to be paid by any person or any person holds money for or on account of such dealer which includes banks or other financial institutions, the prescribed authority shall direct such person or the banking company to remit the money which they are either to pay to the dealer or hold on behalf of the dealer, in the Government Treasury within the period specified in the notice. In other words, there has to be a physical existence of money either at the hands of the person who is due to pay the same to the dealer or in the hands of the bank etc. which is held for or on account of the dealer.

The discussions above would confirm that the legislature has provided two recourse open for the prescribed authority, which can be resorted to for the purpose of recovery



of tax, interest or penalty and while Section 39 provides for a normal course of recovery of tax, interest and penalty, Section 47 is an exception to such normal course and is to be exercised where it becomes imperative for the prescribed authority to take recourse to the special mode of recovery. Though the statutory provisions underlying Section 47 does not give any indication as to the circumstances in which it has to be resorted to but taking note of the scheme underlying Section 39 of 'the Act', we are persuaded to record that it is only where a recovery under Section 39 has become remote possibility and there is no other course open for the prescribed authority that the extreme measure provided under Section 47 can be adopted for recovery of the tax, interest and penalty. A special measure needs special circumstances for taking recourse to and is not to be resorted to, in a routine manner as has been done in the present set of cases. We say so because in the present set of cases assessment order has been passed, the assesseees have deposited the admitted amount of tax and have moved under the statute to appeal against the disputed amount of tax after depositing the statutory fee which is 20% of the disputed amount and it is while the appeals are pending for final adjudication that the prescribed authority bypassing the normal recourse available under Section



39 of 'the Act', has resorted to the special mode of recovery provided under Section 47 of 'the Act' and the reasons are not given for such extreme action.

In our considered opinion, where the legislature provides for a scheme of recovery of tax, interest and penalty under Section 39 of 'the Act' and alongside vests the prescribed authority a power to resort to a special mode of recovery in the manner provided under Section 47 of 'the Act' then unless there are reasons available with the prescribed authority for resorting to a special mode of recovery under Section 47 of 'the Act', it cannot be resorted to in a routine manner merely because it conveniences a speedy recovery during the closure stages of a financial year.

The creatures under a statute are bound by the statutory prescriptions and in case a statute while providing for the normal course of recovery, also lays down the provision for special mode of recovery, then in our opinion, unless, there are reasons reserved with the prescribed authority for resorting to the special mode of recovery, it has not to be resorted to in a routine manner.

Having discussed the legislative intent of a special mode of recovery under Section 47 of 'the Act', we now turn to



the futility of the exercise, in so far as the present set of cases, are concerned.

Acting in purported exercise under Section 47 of 'the Act', a prescribed authority is well within its power to direct a person from whom any money is due to be paid to the dealer or any other person who holds money for or on account of dealer which can be a bank or any other financial institution, to pay into the Government treasury the amount so due or so held by them within the time prescribed. The law is very clear and as we have observed above it is only such of the money which is due or held by a person or bank as the case may be, which can be remitted into the Government treasury.

In so far as the present set of cases are concerned, the notice is in the nature of a 'garnishee order' directing the bank to remit the amount mentioned in the notice in the Government treasury. Now while the prescribed authority while issuing the notice has not bothered to satisfy itself as to whether the order so issued is executable, the Bank on the other hand instead of responding to the prescribed authority in the manner provided under Section 47 (5) of 'the Act' by informing the prescribed authority that there was no money held by them on behalf of the dealer in a Cash Credit Account which was in the



nature of the loan account, have instead proceeded to attach the Cash Credit Account of the petitioner itself in a mechanical obedience to the directives. Here we would accept that the fault does not lie with the prescribed authority because as Mr. Vikash Kumar learned State counsel has submitted, the prescribed authority has no information as to the nature of account held by the Bank whose details have been provided by the dealer. In such circumstances and even if a 'garnishee order' was received by the respective banks in the form of notice under Section 47 of 'the Act', it did not preclude the banks to inform the prescribed authority as to the nature of account held by the dealer in tune with the statutory prescriptions underlying Section 47(5) which runs under:

"5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the authority which issued the notice that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the dealer or be held for or on account of the dealer, nothing contained in this section shall be deemed to require such person to pay into the Government Treasury any such money or part thereof, as the case may be."

Here we are persuaded to reproduce one paragraph of the counter affidavit filed on behalf of the IDBI in C.W.J.C. No.3321 of 2019 which would explain the position:

"12. That however, as has been stated earlier, the



account balance is in negative and the total amount which is due towards the Cash Credit Account of the Petitioner is over Rs. 35.00 lacs as on date and hence, the Respondent Bank is unable to transfer any money to the Commercial Taxes Department as the nature of the Cash Credit Account is actually a loan account as stated by the Petitioner in its Writ Petition and hence there are no deposits which can be transferred to the Commercial Taxes Department as claimed in the impugned notice."

Alongside we are also persuaded to reproduce 2 paragraphs of the counter affidavit of the respondent State Bank of India as present in the counter affidavit filed by them in the same writ petition i.e C.W.J.C. No. 3321 of 2019 which would clarify the distinction between a money held in current account and fixed deposits by a dealer in contradistinction to a cash credit facility provided by them. Be it noted that the petitioner Digican Solution maintains a current account and has some fixed deposits with the State Bank of India, Anandpuri Branch, Patna. Paragraphs 7 and 8 of the counter affidavit filed by the State Bank of India runs under:

"7. That it is humbly submitted that the Answering Respondent has debited the account of the petitioner after getting instruction from the Respondent No.-3 vide his letter No. -109 dated 11.02.2019 and transferred a sum of Rs. 50,174/- to the account of the Joint Commissioner, Bhagalpur Circle by way of Demand Draft No. -437700 dated 12.02.2019.

A photocopy of letter
No.-109 dated 11.02.2019
and Demand Draft are
marked an annexed



herewith as Annexure- A

8. That further it is humbly submitted that four Fixed deposit receipts bearing No.34937444962, 35413935903, 37183979773 and 38287018941 have been with hold by the Answering Respondent against the bank grantee amounting Rs.8 lakhs issued in favour of the petitioner by the branch of the Answering Respondent. Further these Fixed deposit will also be seized by the Answering Respondent and same shall be transferred to the Commercial Taxes Department, Govt. of Bihar, Patna, under Section-47 Bihar Vat Act.

A photocopy of note of bank grantee is marked an annexed herewith as Annexure- B"

The position explained by the respective banks as reproduced herein above would confirm the futility in the action of the prescribed authorities put to question in this batch of writ petition because not only they have failed to achieve the objective i.e recovery of tax by resorting to the provisions of Section 47 of 'the Act' by getting the Cash Credit Account of these petitioners attached but it also explains the mechanical obedience by the bank who have illegally attached the Cash Credit Account of the petitioners even when the language of Section 47(5) permits them not to resort to such measures in case, money is not held by them. In such situation where no money was held by the banks, for, or on account of the dealer rather the account was a loan facility made available for the dealer and was in the nature of the loan account, it certainly



could not have been attached and no sooner the respondent department realized this position, they should have recalled the impugned notices rather than to contest the same on a defenceless act.

Chapter 30 of the Tannan's Banker's Manual contains discussions on interference by third parties - injunctions, garnishee or an attachment order etc and while explaining a 'garnishee order' of the kind as issued in purported exercise of jurisdiction by the prescribed authority under Section 47 of 'the Act', it explains that such order is an attachment by a judgment creditor of the money belonging to a judgment debtor in the hands of a third party for example banks.

The materials on record confirm that a Cash Credit Account is a facility provided by banking companies to the business houses and other customers which enables them to obtain credit from the bank to the extent it is permissible in the Cash Credit Account but subject to the stipulations and conditions present for discharging the debt. In other words, if a customer is provided with the Cash Credit Account facility of 20 crores by a bank, he is entitled to issue cheque to his creditors upto an extent of 20 crores which liability on behalf of the dealer would be discharged by the bank but subject to the



conditions that are put up by the bank to such customer while affording such facility. Thus, in plain terms a cash credit facility is a loan account and entitles the customer to issue cheques from that account to his creditors but no physical money is available in such account as misconstrued and misunderstood by the respondent Commercial Taxes Department while attaching the Cash Credit Account of the petitioners.

Learned counsel for the petitioners have relied upon judgment of the Madras High Court in the case reported in **(1958)33 ITR page 26 (K.M. Adam versus Income Tax Officer)**, the judgment of the Bombay High Court in **Writ Petition No. 4313 of 2008 (M/s Sargam Foods Pvt. Ltd. others versus State of Maharashtra)** and the judgment of Gujarat High Court in **Special Civil Application No. 14497 of 2014 (Kaneria Granito Ltd. versus Assistant Commissioner of Income Tax)** but we are persuaded to reproduce the extract of the judgment rendered in the case of **Kaneria Granito(supra)** which makes reference to each of the judgment so relied upon by learned counsel for the petitioners before recording their view in favour of the dealer and runs under:

"6. In this case, admittedly, all the three bank accounts were in the nature of either the Cash Credit Account or term loan account. In other words, the accounts were opened to enable the assessee to



borrow the money from the bank for the purpose of its business. Any money, therefore, that the bank may make available to the assessee would necessarily be in the nature of a loan or a cash credit facility, in either case, would be in the nature of borrowing by the assessee from the bank. The bank and the assessee, therefore, do not have the debtor-creditor relationship.

7. Somewhat similar situation arose before the learned Single Judge of Madras High Court in case of **K.M.Adam vs. Income Tax Officer, II Additional II Circle, Madra** reported in **33 ITR 26**. The Assessing Officer desired to invoke powers analogous to Section 226(3) of the Act for recovery of the tax dues of the assessee from the overdraft account that the assessee maintained with its bank. In such background, referring to similar provisions contained in Section 46 of the Income Tax Act, 1922, it was observed as under:

“It will be seen that this provision is analogous to an attachment of a debt or what is commonly terms a garnishee summons. The classes of persons to whom such notice could be served are two:

(i) any person from whom money is due or may become due to the assessee; and (2) any person who holds or may subsequently hold money for or on account of the assessee. The question which arises for consideration in the present case is, as to whether a bank, which has afforded overdraft facilities to its customer, holds the amount, specified as that up to which the customer may draw as either “a debtor” of the customer or holds that money on behalf of or on account of the customer.”

8. This decision was followed by the learned Single Judge of Bombay High Court in reported judgement of Calcutta High Court in case of Jugal Kishore Das dated 08.10.2013. In the said case, the Assessing Officer had tried to recover the tax dues of the assessee in exercise of powers under Section 226(3) of the Act by attaching the Cash Credit Account of the assessee. Following the decision of Madras High Court in case of K.M.Adam vs. Income Tax Officer, II Additional II Circle, Madra(supra), it was observed as



under:

“In view of the above, this Court does not find that the action on the part of the respondents in passing the order of attachment of Cash Credit Account would at all be sustainable in view of the ratio laid down in the above noted report; even the meaningful reading of the language employed in Section 226(3) of the said Act does not suggest that the account like the Cash Credit or the Overdraft is capable of being attached as the bank does not become a debtor.”

9. Division Bench of Bombay High Court in case of **M/s. Sargam Foods Pvt. Ltd. vs. State of Maharashtra** in the judgement dated 08.07.2010 also considered the similar issue and set aside the attachment of the petitioner's Cash Credit Account for recovery of the unpaid taxes.

10. Such being the consistent view of various High Courts of the country, we have no hesitation in adopting similar line, also looking to the phraseology used in the statutory provisions contained in sub section (3) of Section 226.

11. In the result, impugned notice of attachment dated 15.09.2014 is set aside. Petition is disposed of accordingly.

For the discussions that we have held hereinabove it becomes only a completion of formality for us to quash the impugned attachment notices issued by the prescribed authority under Section 47 of 'the Act' and accordingly the notice dated 28.2.2019 directing recovery of a sum of Rs. 94,29,798/-, a copy of which is impugned at Annexure-3 to the C.W.J.C. No.5569 of 2019, the notice bearing Memo No.1610 dated 11.02.2019 directing the Branch Manager, IDBI Bank to remit the amount of Rs. 25,22,345.38 by way of VAT and amount of Rs. 23,750/- towards Central Sales Tax which is impugned at Annexure-5 to



C.W.J.C. No. 3321 of 2019 and the notice bearing No. 998 dated 12.03.2019 directing the State Bank of India, Main Branch, Gaya to remit an amount of Rs. 48,75,717/- being the demand towards Central Sales Tax Act for the financial year 2014-15 and 2013-14 which notice is impugned at Annexure-1 to the C.W.J.C. No. 6123 of 2019 are quashed and set aside.

The writ petitions are allowed but with no order as to cost.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	NA

