IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 1151 OF 2019

Ramchandra A. Patankar & Another .. Petitioners.
v/s.
The Union of India & Others .. Respondents.

Mr. Bharat Raichandani i/b. UBR Legal, for the Petitioners.
Mr. Pradeep S. Jetly with Mr. J. B. Mishra, for the Respondent Nos. 1 to 3.

CORAM: M.S.SANKLECHA &
NITIN JAMDAR, JJ.
DATE : 25th SEPTEMBER, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges the recovery notice dated 5th April, 2018 issued by Respondent No.2- the Assistant Commissioner of CGST and the consequent attachment of the Petitioners' six bank accounts in Allahabad Bank, Kolhapur. This attachment of the Petitioners' bank account is for dues payable by M/s. Sampark Marketing and Advertising Solutions Pvt. Ltd., (M/s. Sampark) under the Finance Act, 1944 (the Act). This as communicated by the letter dated 21st May, 2018 of the Allahabad Bank, Kolhapur to the Petitioner. The Petitioner Nos. 1 & 2 are directors of M/s. Sampark. At the hearing, Mr. Raichandani, restricted the challenge only to the attachment of the Petitioners' bank accounts as listed in the letter dated 21st May, 2018 of the Allahabad Bank, Kolhapur to the Petitioner.

2 Undisputed facts leading to this Petition, are as under:-

(a) On 25th April, 2018,M/s. Sampark received the order dated 14th

October, 2011 passed by Respondent No.2- Assistant Commissioner of Service Tax, confirming an amount of Rs.25.95 lakhs from M/s. Sampark;

(b) On receipt of the order dated 14th October, 2011 on 25th April, 2018, the Petitioner filed an Appeal to the Commissioner (Appeals) on 16th May, 2018. At the time of filing of its Appeal to Commissioner (Appeal), M/s. Sampark had made a deposit in terms of Section 35F of Central Excise Act, 1944 (C.Ex. Act) read with Section 83 of the Act i.e.7.50% of the demand confirmed by the Assistant Commissioner of Service Tax for the purpose of the appeal being entertained;

(c) The above deposit resulted in a stay of the recovery of the balance amount confirmed by the order dated 14th October, 2011 of the Assistant Commissioner of Service Tax. This, in view of the CBDT Circular Nos. 984 dated 16th September, 2014 and 1653 dated 10th March, 2017. In spite of the above, on 21st May, 2018, the Petitioners received the impugned communicate from Allahabad Bank, Kolhapur. The impugned communication attached the Petitioners' bank account for the recovery of the dues payable by M/s. Sampark in view of order dated 14th October, 2011;

(d) By an order dated 18th January, 2019, the Commissioner (Appeals) dismissed the Appeal dated 25th April, 2018 of M/s. Sampark from the order dated 14th October, 2011. Being aggrieved, the Petitioner filed an appeal to the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The Petitioner also paid/ deposited the 10% of the confirmed demand, in terms of Section 35F of the C. Ex. Act read with Section 83 of the Act. The above fact was brought on record by the Petitioners by filing an Additional Affidavit, as this event had taken place after filing of this Petition;

(e) The Petitioners have consequent to M/s. Sampark filing an appeal to Commissioner (Appeals), and depositing the amounts as required under Section 35F of the C. Ex. Act read with Section 83 of the Act, specifically approached the Respondents to direct vacation of the attachment of its Bank Account in M/s. Allahabad Bank, Kolhapur. However, to no avail. This, even after the Petitioner pointing out that its residential flat has been attached by order dated 11th April, 2018 and the same could continue till the appeal of M/s. Sampark, are finally disposed of under the Act, as a security for its dues. Thus, the filing of this Petition.

3 From the above undisputed facts, it is clear that the attachment of the Petitioners' Bank Account in M/s. Allahabad Bank, Kolhapur, is consequent to demand confirmed by order dated 14th October, 2011 in the case of M/s. Sampark. The above order dated 14th October, 2011 was confirmed by the Commissioner (Appeals) by order dated 18th January, 2019. However, M/s. Sampark has filed a further appeal to the Tribunal and also deposited 10% of the demand in appeal in terms of Section 35F of C. Ex. Act read with Section 83 of the Act. The CBDT Circular Nos. 984 dated 16th September. 2014 and 1053 dated 10th March, 2017, clearly provide that where a penalty has been deposited 7.5% or 10% as required in terms of Section 35F of C. Ex. Act read with Section 83 of the Act, in respect of an Appeal before the Commissioner (Appeals) or the Tribunal, then the Revenue would not adopt any coercive proceedings. In the present case, it is undisputed that M/s. Sampark (by whom the dues are payable), have deposited 10% of the outstanding demanded

under Section 35F of C. Ex. Act in respect of its pending appeal before the Tribunal from the order of Commissioner (Appeals). The above CBDT Circulars, which are binding upon the authorities, prohibit the authorities under the Act from adopting coercive proceedings where such deposits have been made and appeal is awaiting disposal. In view of the above, the continuance of the attachment of the Petitioners' Bank Accounts in Allahabad Bank, Kolhapur is in the face of the above binding CBDT Circulars. Therefore, is bad in law. Thus, this attachment of the Petitioners' Bank Accounts in M/s. Allahabad Bank, Kolhapur, need to be lifted/ vacated. It should also be borne in mind, that the Petitioners' residential flat has been attached to secuere the dues of M/s. Sampark. The Petitioners state that the attachment can continue till the disposal of M/s. Sampark's appeal before the Tribunal.

4 In the above view, we declare that the attachment of the Petitioners' bank account in M/s. Allahabad Bank, Kolhapur by Respondent No.2, as communicated to the Petitioner by letter dated 21st May, 2018 is bad in law. Therefore, the Respondent, particularly the Assistant Commissioner of Service Tax- Respondent No.2 would vacate the attachment made of the Petitioners' Bank Account in M/s. Allahabad Bank, Kolhapur, and inform the Bank forthwith.

5 Accordingly, **Writ Petition disposed of** in the above terms.

(NITIN JAMDAR,J.) **(M.S.SANKLECHA,J.)**