**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**WRIT PETITION NO. 3355 of 2019**

Elenya India Trading Pvt. Ltd. and anr. ….Petitioners
versus
Office of the Prinicipal Commissioner of Central Tax
and Central Excise and ors. ….Respondents

and
**WRIT PETITION NO. 3356 of 2019**

Faxon India Trading Pvt.Ltd. and anr. ….Petitioners
versus
Office of the Prinicipal Commissioner of Central Tax
and Central Excise and ors. ….Respondents

Dr. Sujay Kantawala i/b. Mr. Taraq Sayed, advocate for the petitioners.
Mr. J. B. Mishra, advocate for respondent Nos. 1 and 2.
Mrs. Aruna S. Pai, APP for the State.

**CORAM : RANJIT MORE &**
**N. J. JAMADAR, JJ.**

**DATE : 30th SEPTEMBER, 2019.**

**P. C. :**

1. Heard Dr. Kantawala, learned counsel for the petitioners and Mr. Mishra, learned counsel for respondent Nos. 1 and 2.

2. By these petitions filed under Article 226 and 227 of the Constitution of India, the petitioners are seeking direction to the respondents to de-freeze/withdraw restrictions placed on operations of their accounts in Union Bank of India and Axis Bank. Learned counsel for the petitioners submitted that the Office of the Additional Commissioner,

CGST and Central Excise, Mumbai Central has provisionally attached the petitioners' bank accounts in Union Bank of India and Axis Bank by passing orders under Section 83 of CGST Act, 2017.

3. Dr. Kantawala, learned counsel for the petitioners, invited our attention to the provisions of Section 83 of the said Act and Rule 159(1) of CGST Rules 2017 and made following submissions :

i) The orders provisionally attaching the petitioners bank accounts are passed by the Additional Commissioner and not the Commissioner as contemplated under Section 83 of the CGST Act, 2017.

ii) There are no reasons in support of the said orders.

iii) Because of the said orders, the refund from the Custom Department cannot be credited in the petitioners bank accounts.

iv) No post-decisional hearing was given to the petitioners.

4. Mr. Mishra, learned counsel for respondent Nos.1 and 2 submitted that orders under Section 83 of the CGST Act, 2017, only direct that no debit shall be made from the bank account of the petitioners and, therefore, refund from the Custom Department can be credited in the petitioners' said bank accounts. He also submitted that the said orders are issued in FORM GST DRC-22 as required under Rule 159 of the CGST Rules. Regarding post-decisional hearing, he submitted

that the petitioners can raise objection and the same can be decided by the appropriate authority.

5. In the light of above, Dr. Kantawala, learned counsel for the petitioners, seeks leave to withdraw the petitions with liberty to file objection in terms of clause (5) of Rule 159 of CGST Rules, 2017. Leave with liberty as prayed for, is granted. The petitions are disposed off as withdrawn.

6. In the event, the petitioners makes such an objection under Rule 159(5) of the said Rules, respondent No.1 shall decide the same after giving an opportunity of hearing to the petitioner as expeditiously as possible and in accordance with the CGST Rules, 2017.

**[N. J. JAMADAR, J.]** **[RANJIT MORE, J.]**