

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 11961 of 2020 (O&M)
Date of Decision: 09.09.2020

UFV INDIA GLOBAL EDUCATION

...Petitioner

VS.

UNION OF INDIA AND OTHERS

....Respondents

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
 HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. B.L. Narasimha, Advocate
 and Mr. Amrinder Singh, Advocate,
 for the petitioner.

Mr. Tajender Joshi, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 29.07.2020, provisionally attaching the bank account, maintained by the petitioner with respondent No. 3, letter dated 29.07.2020 issued by respondent No. 2 intimating the petitioner about the impugned attachment and order dated 06.08.2020 passed by respondent No. 2 rejecting the objections filed by the petitioner. The petitioner has also prayed for the issuance of a writ in the nature of *mandamus* to direct respondents to release the the bank account of the petitioner which has been povisionally attached.

In brief, the petitioner is carrying out the academic programs in India of the University of Fraser Valley, Canada (hereinafter referred to as “the UFV, Canada). The academic programs are being carried out in

collaboration with Goswami Ganesh Dutta Sanatan Dharma College and Panjab University. The degrees awarded by the UFV, Canada are recognized by the Panjab University. It is averred that on 27.07.2020, the officials of the Directorate General of Goods and Services Tax Intelligence, Chandigarh Zonal Unit (hereinafter referred to as “DGGSTI”) visited the premises of the petitioner and recorded the statements of its Associate Director(s). A panchnama was prepared on the said date which shows that the authorized persons of the petitioner cooperated with DGGSTI and provided access to all the required documents. On 30.07.2020, the Officer of the DGGSTI sent an *e-mail* to the petitioner that its bank account has been provisionally attached under Section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the Act”). The objection was filed on 30.07.2020 under Rule 159 (5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the Rules”) against the provisional attachment of the bank account and it was submitted that it had to make the urgent payments, therefore, account may be released from the attachment. The petitioners were afforded opportunity of personal hearing. On 06.08.2020, respondent No. 2 passed the order of partly releasing the Bank Account for payments under the Amnesty Scheme but rejected the prayer to release the provisional attachment holding that the petitioner does not have any property other than the Bank Account from where the Government revenue can be protected.

Counsel for the petitioner has submitted that the order of provisional attachment has been passed under Section 83 of the Act on account of launching of the proceedings under Section 67 of the Act. It is

further submitted that the proceedings under Section 67 have already been over and no proceedings either under Section 63 or 74 have been initiated so far, therefore, the attachment order passed under Section 83 has become redundant.

On the other hand, counsel for the respondents has vehemently argued that the proceedings initiated under Section 83 of the Act has been initiated because the proceedings under Section 67 have been launched which shall culminate into the proceedings under Section 63 or 74 of the Act.

We have heard counsel for the parties and perused the record with their able assistance.

In order to appreciate the rival contentions, it would be relevant to refer to Section 83 of the Act which is reproduced as under:-

“Section 83.
Provisional attachment to protect revenue in certain
cases –

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”

The case of the respondents is that the proceedings under Section 83 of the Act have been initiated after the proceedings under

Section 67 of the Act were launched. Section 67 of the Act is reproduced as a ready reference:-

“Section 67.
Power of inspection, search and seizure.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may

be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

***Provided** that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.*

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and

shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.”

However, counsel for the respondents has argued that the attachment order shall subsist till the culmination of the proceedings into Sections 63 or 74 of the Act. Sections 63 and 74 of the Act are reproduced as under:-

“Section 63
Assessment of unregistered persons -

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

***Provided** that no such assessment order shall be passed without giving the person an opportunity of being heard.”*

“Section 74

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-

misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or

input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.— *For the purposes of section 73 and this section,—*

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.— *For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

Counsel for the petitioner has relied upon a decision of the Gujarat High Court in the case of Kushal Ltd. Vs. Union of India; 2019-VIL-619-GUJ. The relevant paragraphs of the said judgment are reproduced as under:-

“14. On a plain reading of section 83 of the GST Acts, it is clear that a sine qua non for exercise of powers thereunder is that proceedings should be pending under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of the GST Acts. In the present case, the proceedings under section 67 of the GST Acts are no longer pending and pursuant to the search, proceedings under any of the other sections mentioned in section 83 have not been initiated. Under the circumstances, on the date when the orders of provisional attachment came to be made, the basic requirement for exercise of powers under section 83 of the GST Acts was not satisfied. The provisional attachment of the bank accounts of the petitioners under section 83 of the GST Acts is, therefore, not in Consonance with the provisions thereof and cannot be sustained.

16. As discussed hereinabove, in the absence of pendency of any proceedings under Sections 62, 63, 64, 67, 73 or 74 of the GST Acts, the orders of provisional attachment of the bank accounts of the petitioners under Section 83 of the GST Acts are without authority of law and are rendered unsustainable.”

As a matter of fact, the Account No. 50100096314449 of the petitioner maintained with the HDFC Bank in its branch situated at S.C.O. No. 88, Sector 32-D, Chandigarh, bearing IFSC – HDFC0001379, was attached by the impugned order dated 29.07.2020 while exercising powers under Section 83 of the Act on the ground that the proceedings have been launched under Section 67 of the Act. It is also an admitted fact that the proceedings under Section 67 have already been over and no proceedings under any other provisions much less under Section 63 or 74 have been initiated so far. In such circumstances, the question, would arise as what is

the import of Section 83 of the Act for the purpose of issuing the order of provisional attachment of the bank account of the petitioner.

The bare reading of Section 83 of the Act would show that the Commissioner has to form an opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to provisionally attach either the property or the bank account belonging to the taxable person by passing an order in writing but this exercise can be made by the Commissioner when any proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 is pending. The Legislature has cautiously used the word “or” for each and every Section of the Act for the purpose of giving powers to the Commissioner to initiate proceedings to provisionally attach the property or the bank account of the taxable person but it is not provided anywhere that the property or the bank account can remain attached under the order passed under Section 83 of the Act if the proceedings initiated under Section 67 is culminated into the proceedings under Section 63 or Section 74 i.e. Assessment of unregistered persons and Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

In our considered opinion, the effect of Section 83 of the Act shall come to an end as soon as the proceedings pending in any of the aforesaid Sections i.e. 63 or 64 or 67 or 73 or 74 are over because pendency of the proceedings is the *sine qua non* and in case the Commissioner still feel or is of the opinion that it is necessary so to do in the interest of protecting the Government revenue, it still can pass an order in writing to attach any

property or even the bank account of the taxable person if the proceedings are initiated in any of the aforesaid provisions and are pending but for the provisions in which the proceedings have earlier been initiated and are over.

Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the impugned orders passed by the respondents are patently illegal specially when the proceedings initiated under Section 67 of the Act has already been over and hence, the impugned orders Annexures P-1 to P-3 are hereby set aside with a direction to the respondents to release the aforesaid bank account of the petitioners forthwith which has been provisionally attached vide order dated 29.07.2020 (Annexure P-1), on the receipt of certified copy of this order.

[RAKESH KUMAR JAIN]
JUDGE

September 9, 2020
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[ASHOK KUMAR VERMA]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No