IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 2583 OF 2021

M/s. Jaychem Enterprise Pvt. Ltd. .. Petitioner
Vs.
Additional Director General,
Nagpur Zonal Unit & Ors. .. Respondents

Mr. P. D. Jain for the Petitioner.
Mr. B. V. Samant, AGP for the Respondents-State.
Mr. Jitendra B. Shah for Respondent No.3.

CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.
DATE : 8th JULY, 2021.

P. C. :

1. Proceedings against the petitioner under Section 67 of the Central Goods and Services Tax Act, 2017 are pending. During the pendency of such proceedings, the Additional Director General, DGGI, Nagpur Zonal Unit by an order dated 18th June, 2021, recorded in Form GST DRC-22, has attached a bank account maintained by the petitioner in DBS Bank, Andheri (E), Mumbai. Such order of attachment is the subject matter of challenge in this writ petition.

2. Section 83 of the Central GST Act permits provisional attachment to protect revenue in certain cases. Such power has to be exercised in the manner laid down in sub-rule (1) of Rule 159 of the Central GST Rules (hereafter "the said Rules", for short). However, sub-rule (5) of Rule 159 provides as follows:

> *(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may,*

> *after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23.*

3. This writ petition has been presented by the petitioner without taking recourse to Rule 159(5) of the said Rules. Objection to the maintainability of this writ petition has been raised by the learned counsel for the respondents by referring to such provision.

4. Mr. Jain, learned counsel for the petitioner has contended that the attachment order passed by the Additional Director General is without jurisdiction, since a cash credit account cannot be attached. Reliance has been placed by him on the Division Bench decisions of the Gujarat High Court in **M/s. Formative Tex Fab Vs. State of Gujarat & Ors.** (R/Special Civil Application No. 14059 of 2020) and the Punjab & Haryana High Court at Chandigarh in **Bindal Smelting Pvt. Ltd. Vs. Additional Director General, Directorate General of GST Intelligence** [CWP No. 31382 of 2019 (O&M)] to support such a contention. He has, accordingly, prayed for quashing of the impugned order.

5. On perusal of the decision in **Bindal Smelting Pvt. Ltd.** (supra), it appears that the Court considered the grievance raised before it only after recourse to Rule 159(5) of the said Rules had been taken by the petitioner and an order passed on the objection that was raised. The Court examined the order passed by the relevant authority and bearing in mind the facts as well as the legal position, proceeded to pass an appropriate order.

6. It is clear that sub-rule (5) of Rule 159 of the said Rules provides a remedy if any particular order of attachment under sub-

rule (1) leaves a party, subject to tax, aggrieved. We are of the opinion that such a remedy, as made available by the said Rules, is not an ineffective remedy but on the contrary, if sufficient case is set up, substantial relief can be granted to the objector. It is for the petitioner to satisfy the Additional Director General that for the reasons urged, the property ought to be released from attachment by making an appropriate order in Form GST DRC-23. The position as to whether the impugned order, in fact, seeks to protect the interest of the revenue or is otherwise, including the balance in the current account as submitted by the petitioner, would require a factual examination and determination. Thus, it is all the more necessary that the petitioner exhausts the remedy provided by sub-rule (5) of Rule 159 of the said Rules. Should the Additional Director General refuse to release the property from attachment, a reasoned order is required to be passed and such order could be subjected to a challenge before the appropriate forum in accordance with law.

7. Since the petitioner has not taken to recourse to sub-rule (5) of Rule 159 of the said Rules, we decline interference at this stage. However, we grant the petitioner a week's time to approach the Additional Director General under the said provision and if such an approach is made, a reasoned order shall be passed after extending an opportunity of hearing.

8. All contentions on the merits of the rival claims are kept open.

9. The writ petition stands disposed of accordingly. No costs.

[G. S. KULKARNI, J.] **[CHIEF JUSTICE]**