

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM :

The Honourable Mr. Justice T.S.SIVAGNANAM
and
The Honourable Ms. Justice R.N.MANJULA

W.A.No.984 of 2021
and
C.M.P.No.6103 of 2021

1. The Senior Intelligence Officer,
Directorate General of Goods &
Service Tax Intelligence,
Chennai Zonal Unit, 5th & 8th Floors,
Tower II, BSNL Building,
No.16, Greams Road,
Chennai - 600 006.
2. The Principal Additional Director General,
Directorate General of Goods &
Service Tax Intelligence,
Chennai Zonal Unit, 5th & 8th Floors,
Tower II, BSNL Building,
No.16, Greams Road,
Chennai - 600 006.Appellants/Respondents 1 & 2

Vs

1. M/s. KPN Travels India Ltd.,
Represented by its Directorate
K.P.N. Raajesh, No.23B, Rajaji Street,
Salem - 636 004. ...Respondent/Petitioner
2. The Assistant Commissioner of SGST,
Alagapuram Circle,
Pithcards Road, Adaikala Nagar,
Hasthampatti, Salem - 636 007.

...Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to
set aside the impugned order dated 10.03.2021 passed in
W.P.No.2723 of 2021 and W.M.P.No.3055 of 2021.

Prayer in W.P.No.2723/2021 and W.M.P.No.3055 of 2021:

- i) calling for the records of the case relating to the impugned
summon dated 27.01.2021 vide CBIC - DIN - 2021DSS2000000FED3
issued by the first Respondent and to quash the same.

ii) an order of interim stay of all further proceedings pursuant to summon dated 27.01.2021 vide CBIC - DIN - 2021DSS2000000FED3 issued by the first Respondent pending disposal of the W.P.No.2723/2021.

For Appellants : Mr.V.Sundareswaran
For Respondents: Mr.Nirmal Aditya for R1

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.V.Sundareswaran, learned counsel for the appellants and Mr.Nirmal Aditya, learned counsel for the first respondent.

2. This writ appeal by the Directorate General of Goods and Service Tax Intelligence is directed against an order passed by the learned Single Bench dated 10.03.2021 in W.P.No.2723 of 2021 and W.M.P.No.3055 of 2021. The order reads as follows:

"Mr.Sundareswaran, learned Senior Panel Counsel who has entered appearance for R2 & R3, has filed counter in the matter. In the meanwhile, learned counsel for the petitioner would point out that despite order of this Court dated 08.02.2021, keeping the impugned summons in abeyance, 11 bank accounts of the petitioner that had been attached pursuant to issuance of impugned summons, continue to be under attachment, despite the authority being informed of the order passed by this Court.

2. Mr.Sundareswaran, states that the order was understood to mean that no fresh action would be taken pursuant to the summons impugned.

3. This is misconceived, as the bank attachments are consequent upon the impugned summons and by virtue of the summons being kept in abeyance, the attachments will have to stand lifted as well. This is particularly since, the summons has itself been challenged on the ground of lack of jurisdiction, as noted by me in paragraphs 3 & 4 of order dated 08.02.2021. There is a specific direction to the Assessing Authority to lift the attachments of the bank accounts.

4. Let a copy of the counter be served upon the learned counsel for the petitioner to enable him to file a rejoinder, if he so desires.

5. List this matter on 24.03.2021 along with W.P.No.4922 of 2020 and etc. batch."

3. The respondent filed the said writ petition for an issuance of Writ of Certiorari to quash the summons dated 27.01.2021 issued by the first appellant. The challenge to the said summons was mainly on the ground that the first respondent has no jurisdiction to initiate proceedings under the CGST/SGST Act, the impugned summons is without authority of law. There were other grounds raised in the writ petition. The petitioner sought for an interim stay of recovery of all further proceedings pursuant to the impugned summons in W.M.P.No.3055 of 2021.

4. At the time when the writ petition was entertained, the learned Writ Court, by order dated 08.02.2021, issued notice to the appellants herein, who were impleaded as respondents 1 and 2 in the writ petition, notice was accepted by the learned Special Government Pleader for the third respondent in the writ petition, the second respondent before us, and directed the impugned summons issued by the first appellant to be kept in abeyance till the next date of hearing. The operative portion of the interim order reads as follows:

"2. Notice to R1 & R2 through Court as well as privately, returnable 10.03.2021. Private notice on panel counsel for R1 and R2 is also permitted. Proof of service be placed on file by then.

3. The provisions of Section 6 of the Central Goods and Services Tax Act, 2017 provide for the authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances to ensure that there is no overlap in the assumption of jurisdiction by the officers in respect of the same subject matter for the same period.

4. In the present case, notices have been issued by the Assistant Commissioner of SGST/R3 on 17.12.2020 and reply furnished by the petitioner on 29.12.2020. Thus proceedings have been initiated by the State/ R2. The impugned summon issued by the Central authority/R1, is kept in abeyance till the next date of hearing.

5. List on 10.03.2021. Counter by then with an advance copy served upon the petitioner either electronically or physically."

5. In terms of the directions issued by the learned Writ Court, the first appellant herein has filed their counter affidavit justifying their action and praying for dismissal of the writ petition.

6. In terms of the directions issued earlier, the writ petition was listed on 10.03.2021 and on the said date, the impugned order has been passed.

7. Firstly, we find that the prayer sought for in the writ petition was only to quash the summons and there was no consequential relief sought for in the writ petition and the order of provisional attachment made by the respondent was not put to challenge in the writ petition. Furthermore, there was no specific interim prayer in the writ petition to stay the order of provisional attachment as there was no separate challenge to the order of provisional attachment.

8. To be noted, the petitioner had rightly invoked the remedy available under Sub-Rule (5) of Rule 159 of CGST Rules, 2017, which provides that 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.

9. In fact, on receipt of the request for lifting the attachment, which had been submitted by the first respondent/writ petitioner on 27.01.2021 and also authorizing their Accountant to appear before the first appellant and give statement, the Senior Intelligence Officer issued summons under Section 70 of the CGST Act, 2017, calling upon the first respondent to appear in person on 08.02.2021 at 10.30 AM in his office.

10. The summons, which has been issued under Section 70 of the CGST Act, in our considered view, cannot be construed as a notice affording an opportunity of hearing to the first respondent, in terms of Sub-Rule 5 of Rule 159 of the CGST Rules. The summons is in connection with the investigation initiated against the first respondent. Therefore, the appellant cannot take umbrage under the summons, dated 27.01.2021 to be construed as a notice under Rule 159(5).

11. Mr.Sundareswaran, learned counsel for the appellant would clarify that a separate notice was issued on 02.02.2021 to the first respondent to participate in a personal hearing, but the first respondent informed the Department that they have

filed a writ petition and obtained an order of stay of the summons.

12. In the considered view of this Court, an order of attachment of the first respondent's bank account, which are stated to be 14 in number, should be for the purpose of protecting the interest of the Government Revenue and the Commissioner should be of the opinion, it is for such purposes and he is required to pass an order in writing attaching provisionally any property including bank account. The procedure is in terms of Rule 159 of the CGST Rules. Thus, if the first respondent is able to explain to the satisfaction of the officer that the provisional attachment is not warranted, it goes without saying that the Commissioner can exercise powers and lift the order of provisional attachment or otherwise confirm the provisional attachment. Admittedly, the investigation is yet to be completed and therefore, time is yet to come for issuance of show cause notice for recovery of alleged tax due or for that matter to crystallize the alleged liability.

13. One issue which struck our mind was that the first respondent is a business organisation engaged in operating buses and in logistic services, which is undoubtedly an employee driven industry requiring a large work force. Therefore, the business interest of the first respondent also needs to be taken into consideration while considering as to whether all 14 bank accounts are required to be provisionally attached. In fact, from the chain of events, we find that the first respondent has not extended cooperation in the investigation, which is not appreciable.

14. It is submitted by the learned counsel for the appellants that the impugned order dated 10.03.2021 is yet to be given effect to and it is also submitted that the interest of Revenue would suffer, if the attachments are to be lifted at this stage, especially, when the first respondent is not cooperating in the investigation and therefore, the Court may fix a time frame within which the request for lifting the provisional attachment is decided by the first appellant.

15. Learned counsel for the first respondent would submit that by attaching all 14 bank accounts, the business operations of the first respondent have been absolutely crippled and they are unable to pay salaries, discharge creditors, etc.

16. In the light of the above, we direct that the impugned order dated 10.03.2021 shall remain stayed subject to the following directions:

(a) the authorized representative of the first respondent shall appear before the first respondent at 11.00 AM on 29.03.2021.

(b) an opportunity of personal hearing be granted to the authorized representative.

(c) the first appellant is directed to pass a speaking order within 10 days therefrom.

(d) since the first respondent has pleaded that their business operations are virtually crippled, till final orders are passed on the representation dated 27.01.2021, the first appellant shall consider and pass appropriate interim orders, if found tenable, considering the lifting of the provisional attachment in respect of a few bank accounts to enable the first respondent to carry on its business activities.

17. In the result, the writ appeal is partly allowed subject to the directions issued. No costs. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk

To

1. The Senior Intelligence Officer,
Directorate General of Goods &
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3. The Assistant Commissioner of SGST,
Alagapuram Circle,
Pithcards Road, Adaikala Nagar,
Hasthampatti, Salem - 636 007.

+1 CC to Mr.V.Sundareswaran, Advocate sr 19527
+1 CC to M/s. A & N Care Solicitors sr 19385.
+2 CC to M/s. A & N Care Solicitors sr 20077(31/03/2021)

W.A.No.984 of 2021
and
C.M.P.No.6103 of 2021

RK(CO)
SP(26/03/2021)



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