IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.05.2021

CORAM :

The Hon'ble Mr.Justice C.SARAVANAN

W.P.No.11284 of 2021
and W.M.P.No.11936 of 2021

Sri Marg Human Resources Pvt. Ltd.,
Rep. by its Director,
Mr.M.Asokan,
No.43, Rukmini Nagar,
2nd Street, Poonamallee,
Chennai - 600056. ... Petitioner

Vs.

1.The Principal Additional Director General,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building,
Tower II,
5th and 8th Floor,
Greams Road, Nungambakkam,
Chennai - 600006.

2.The Senior Intelligence Officer,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building,
Tower II,
5th and 8th Floor,
Greams Road, Nungambakkam,
Chennai - 600006. ... Respondents

Writ Petition filed under Section 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of attachment order of the Bank accounts viz 1., ICICI Bank, Poonamallee Branch, Current A/c No.154605000320 2. Axis Bank, Poonamallee Branch, Current A/c No.910020046003744 3. State Bank of India Bank, Sriperumbudur Branch, Current A/c No.31902067483 in F.No.INV/DGGI/CZU/GST/01/2021/9095 dated 12.01.2021, in F.No.INV/DGGI/CZU/GST/01/2021/9099 dated 12.01.2021 and in F.No.INV/DGGI/GST/01/2021/02 dated 28.01.2021 respectively on the file of the first respondent and quash the same.

For Petitioner : Mr.B.Kumar
Senior Counsel
for Mr.A.Ganesh

For Respondents: Mr.Rajnish Pathiyil
Senior Panel Counsel

ORDER
(Heard through Video Conferencing)

This Writ Petition has been filed challenging the attachment orders dated 12.01.2021 and 28.01.2021. These attachment orders have been issued under Section 83 of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as 'CGST Act, 2017'], pursuant to a search and investigation ordered against the petitioner company some time during October, 2020.

2. It is noticed that during the pendency of the investigation, the respondents have already appropriated a sum of Rs.5.68 Crores, which were lying in the accounts of the petitioner company. The Directors of the petitioner company were also arrested and they were released on bail subsequent to bail order dated 19.02.2021 in Crl.O.P.Nos.2175 and 2176 of 2021. This order is a conditional order, which reads as under:-

> "7. Considering the facts and circumstances, considering the period of incarceration suffered by the petitioners, and also considering the submissions of the petitioner regarding the difficulties in mobilising funds, this Court is inclined to permit the petitioners to pay entire tax due in instalments. It is stated that the petitioners already deposited a sum of Rs.2.5 crores, and it is stated that, a sum of Rs.3.23 crores is in the bank deposit, which was freezed by the department. At this stage, the Addl. Director General of G.S.T., who was present in the Court submitted that so far as the amount deposited in the bank instead of defreezing their account, it can be directly transferred to the Government account by the authorities, if the petitioners provide the user ID. and password of the accounts, so that they can transfer the amount directly. Considering the said request, the petitioners are directed to furnish the user I.D. and password of all the three accounts to the concerned authority and the authorities are at liberty to transfer the amount from petitioners' account.
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> 8. Thereafter, the petitioners are directed to pay the remaining amount in four equal instalments. The first instalment should be paid on or before

30.04.2021, the second instalment should be paid on or before 30.06.2021, the third instalment should be paid on or before 30.08.2021, and the fourth instalment should be paid on or before 31.12.2021. If the petitioners have committed any default in payment of anyone of the instalments, it is always open to the department to file necessary application for cancellation of bail.

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional Chief Metropolitan Magistrate, E.O.i, Egmore, Chennai and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioners, on their release from prison, shall report before the respondent police daily at 10.30 a.m. for the period of two weeks and thereafter as and when required for interrogation;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

9. With the above directions, this Criminal Original Petition is ordered.”

3. The case of the petitioner company is that the respondents by the impugned attachment orders have completely strangled the business of the petitioner. It is submitted that petitioner was employing about 15,000 employees with security guards who were deployed in various industrial units in and around Chennai and Karnataka. The allegation against the petitioner company is that the petitioner company had fraudulently availed input tax credit on fictitious invoices to discharge the GST liability. It is estimated that approximately, the fraud committed by the petitioner is for the sum of Rs.21 Crores and investigation is still under progress.

4. Appearing on behalf of the petitioner, Mr.B.Kumar, learned Senior Counsel submits that apart from Rs.5.68 Corres which have been appropriated so far against the projected demand of Rs.21 Crores, the petitioner has agreed to pay another sum of Rs.1 Crore, within a period of one weeks' time. The aforesaid undertaking stands recorded.

5. The learned Senior counsel for the petitioner submits that Section 67 cannot be against the future receivables so as to strangulate the entire business module of the petitioner. It was further submitted that as against the bail order dated 19.02.2021 in Crl.O.P.Nos.2175 and 2176 of 2021, the Directors of the petitioner company have moved to the Hon'ble Supreme Court insofar as the condition, which mandates recovery/payment of entire balance amount in four instalments. It is submitted that the manner in which the entire recovery proceedings is being initiated is contrary to Section 73 and Section 74 of the CGST Act, 2017.

6. Learned Senior Counsel for the petitioner also submits that the accounts will be maintained transparently and therefore, prays for lifting of the impugned attachment orders, pending issuance of show cause notice under Section 73 and determination of tax under Section 74 of the CGST Act, 2017.

7. Defending the order and the steps taken by the respondents, Mr.Rajinish Pathiyil, learned Senior Panel Counsel, submits that the petitioner has indulged in large scale fraud and therefore, the department was compelled to initiate proceedings under Section 67 of the CGST Act, 2017. He submits that under Section 83 of the CGST Act, 2017, the respondents are entitled to order provisional attachment of any assets to protect the interest of the revenue. He further submits that it

is open for the petitioner to move to the appropriate authority under Rule 159 of the CGST Rules, 2017, against the impugned attachment orders. He also submits that the attachment orders merely freezes the power to debit the account and there is no restriction for receiving the amount. He further submits that the Directors of the petitioner company had breached the bail order dated 19.02.2021. It is further submitted that for the last few months, the customers/clients of the petitioner company have directly paid the salaries/wages to the employees including the amount due under the Provident Funds Act and therefore the continuance of the impugned attachment orders will be of no prejudice to the petitioner.

8. Heard the learned Senior Counsel for the petitioner Company and the learned Senior Panel Counsel for the respondents Department.

9. No doubt, wide powers have been vested with the Officers under Section 67 of the CGST Act, 2017. The said proceedings also entails a provisional attachment of assets during the pendency of the proceedings under Sections 62, 63, 64, 67, 73 and 74 of the said Act. However, such protection cannot be made against future receivables.

10. Admittedly, an amount of Rs.5.68 Crores, which was lying in the account has been appropriated till date. The petitioner has also agreed to remit another sum of Rs.1 Crore. Thus, as against the proposed/estimated tax due involved i.e. Rs.21 Crores, the petitioner has already discharged a sum of Rs.5.68 Crores i.e. 27.05%. After all, there is a mechanism provided under the Act for proper adjudication of the tax due and determination under Sections 73 and 74 of the Act. Therefore, there is no meaning in attaching the bank accounts further.

11. The respondents have reportedly commenced the investigation during October, 2020. The respondents can issue notice under Section 73 of the CGST Act, 2017 and thereafter, determine the amount due and recover the amounts.

12. In the facts and circumstances of the case, I find sufficient reasons to interfere with the impugned attachment orders dated 12.01.2021 and 28.01.2021. It is made clear that the attachment proceedings cannot be at the cost of right of provision under Article 19(1)(g) of the Constitution of India. However, it is made clear that the petitioner shall deposit a sum of Rs.1 Crore within a period of one week from the date of receipt of a copy of this order, as was undertaken by the learned Senior Counsel for the petitioner. On such deposit of Rupees One Crore, the impugned attachment orders shall stand vacated. Further, the accounts shall be maintained transparently, as undertaken by the learned Senior Counsel for

the petitioner. The Respondents are directed to complete the investigation and issue appropriate show cause notice as expeditiously as possible, to protect the interest of the revenue. It is also open to the respondents to take steps for canceling the bail order in case, the Managing Director and the Director of the petitioner company have violated any of the conditions of the bail order dated 19.02.2021.

13. With the above directions, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

ars/sni

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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W.P.No.11284 of 2021

BP(CO)
CB(03/06/2021)