IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1488 of 2021
and
C.M.P.Nos.9531 & 12272 of 2021

1. The Principal Additional Director General
DGGI, Chennai Zonal Unit,
No.16, BSNL Building, Tower II,
5th and 8th Floor, Greams Road,
Nungambakkam, Chennai – 600 006.

2. The Senior Intelligence Officer,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building, Tower II,
5th and 8th Floor, Greams Road,
Nungambakkam, Chennai – 600 006.

... Appellants/Respondents

Vs.

M/s.Sri Marg Human Resources Pvt Ltd
Represented by its Director
M.Asokan,
No.43, Rukmini Nagar,
2nd Street, Poonamallee,
Chennai – 600 056. ... Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 26.05.2021 made in W.P.No.11284 of 2021.

Prayer in WP.11284 of 2021 : Writ Petition filed under Article 226 of the constitution of India praying for the issuance of Writ of certiorari to Call for 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 Account No.910020046003744, 3.State Bank of India, 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 28.1.2021 respectively on the file of the first respondent and quash the same.

For Appellants : Mr.Rajnish Pathiyil

For Respondent : Mr.B.Kumar
Senior Counsel
for Mr.A.Ganesan

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal filed by the Revenue is directed against the order dated 26.05.2021 made in W.P.No.11284 of 2021.

2.The said Writ Petition was filed by the respondent herein, challenging the order of provisional attachment under Section 83 of the Central Goods and Services Tax Act, 2017 ("CGST Act" for brevity). The respondent contended that the allegation made against them that they have fraudulently availed input tax credit on fictitious invoices to discharge the GST liability is wholly unsustainable and the Department erroneously proceeded in taking action against the officials of the respondent/writ petitioner and an order of arrest was also passed and the respondent had moved this Court by way of application for grant of bail in Crl.O.P.Nos.2175 and 2176 of 2021, wherein, a conditional order was passed and the respondent has partly complied with the conditions and being aggrieved by the other conditions imposed, the respondent have filed Petition for Special Leave to Appeal (Crl.) No.2666 of 2021, in which, notice has been ordered to the appellant/Department by order dated 19.04.2021. In the background of these facts, the respondent had approached the Writ Court, challenging the order of provisional attachment on the ground that, in terms of Section 67 of the CGST Act, there cannot be any attachment of future receivables so as to strangulate the entire business module of the writ petitioner and the recovery proceedings initiated by the appellant Department is contrary to the provisions of the CGST Act.

3.The Revenue has sought to sustain the order of provisional attachment by contending that the case, in which the respondent is involved, is with regard to bogus invoices to the tune of Rs.121 Crores and the Department has estimated the total fraud committed on the GST to be nearly Rs.21 Crores and the respondent have failed to comply with the conditional order passed by this Court while granting bail and only a sum of Rs.6.68 Crores has been paid as against the estimated tax due of about Rs.21 Crores. Further, it is submitted that, if the respondent/writ petitioner was aggrieved, they could very well have filed the objections to the order of provisional attachment in terms of Rule 159 of Central Goods and Service Tax Rules, 2017 ("CGST Rules" for brevity) and without resorting to such a procedure, the challenge to the order of provisional attachment was not maintainable.

4.The learned Writ Court, after taking note of all the factual circumstances, was of the view that a sum of Rs.5.68 Crores, which was lying in the Bank Account of the respondent, was appropriated by the appellant/Department and that the respondent had also agreed to pay another sum of Rs.1 Crore against the estimated tax due of about Rs.21 Crores. According to the learned Writ Court, the payment of Rs.5.68 Crores would amount to discharge of 27.05% of the estimated tax dues and therefore, the learned Writ Court came to the conclusion that there is no meaning in attaching the Bank Account. Furthermore, the Court held that the order of attachment of the Bank Account would infringe their right under Article 19(1)(g) of the Constitution of India and accordingly, directed the writ petitioner to deposit a sum of Rs.1 Crore within one week from the date of receipt of a copy of the order and on such deposit, the attachment order is to be vacated. The appellant/Department was directed to complete the investigation and issue appropriate show cause notice as expeditiously as possible and it will be open to the appellant/Department to seek for cancellation of bail order granted in favour of the Managing Director and Director of the respondent company for having violated the conditions of the bail order dated 19.02.2021.

5.After elaborate hearing of the learned Standing Counsel for the appellant/Department and the learned Senior Counsel appearing for the respondent/writ petitioner, we find that the observations made in the order impugned before us is premature. Admittedly, what was put to challenge was only the order of provisional attachment and the statutory machinery provides for a mechanism for filing objections against such provisional attachment. As rightly pointed out by the learned counsel appearing for the respondent/writ petitioner, the respondent appears to have understood the factual and legal provisions in a proper manner and has given a representation/objection, dated 18.03.2021, seeking to lift the order of attachment under Section 83 of the CGST Act. This application is undoubtedly an application to be reckoned under Rule 159(5) of the CGST Rules. However, the fact remains that the appellant/Department has not disposed of the said application by passing a reasoned order. The explanation given by the learned Standing Counsel for the appellant is that, pursuant to the said representation, summons was issued to the Director of the respondent company and statement has been recorded and the respondent has not furnished any alternate security to secure the interest of Revenue. In fact, we find that there is no order to the said effect.

6.The question is whether an order is required to be passed if an objection is field in terms of Rule 159(5) of CGST Rules. This issue has been answered by the Hon'ble Supreme Court in the case of M/s.Radha Krishnan Industries v. State of Himachal Pradesh and others [Civil Appeal No.1155 of 2021, dated 20.04.2021]. In the said decision, the Hon'ble Supreme Court had pointed out that, where the Bank Account is attached, it prevents the person from operating the account and the business entity, whose bank account is attached, is seriously prejudiced by the inability to utilize the proceeds of the account for the purpose of business. Therefore, it was pointed out that the dual procedural safeguards inserted in Sub-Rule 5 of Rule 159 demand strict compliance. Further, it was pointed out that the Commissioner, who hears the objections, must pass a reasoned order either accepting or rejecting the objections and to allow the Commissioner to get by without passing a reasoned order will make his decision subjective and defeat the purpose of subjecting it to judicial scrutiny, and therefore, the Commissioner must deal with the objections and pass a reasoned order indicating whether and if not, why the objections are not being accepted.

7.Admittedly, such an order has not been passed in the case of the respondent pursuant to their representation dated 18.03.2021. As noticed above, the respondent has failed to comply with the conditions imposed by this Court while granting bail vide order dated 19.02.2021. No doubt, the respondent have preferred Special Leave Petition before the Hon'ble Supreme Court, in which, notice has been ordered. Thus, as on date, the respondent have not complied with the order passed by this Bail Court and the objections filed under Rule 159(5) of CGST Rules have not been disposed of by passing a reasoned order. It will be too early for the learned Writ Court to make an observation that there is no meaning in attaching the Bank Account further. It is too early for the Court to adjudicate as to whether at all the future receivables, if any, could be attached. We say so because, the statutory Rule provides for a procedure, where the person whose Bank Account has been attached, can seek for lifting of such attachment. Thus, the respondent, having sought for lifting the attachment by filing representation/objection dated 18.03.2021, ought to have pursued the same. Without pursuing the said objections, a challenge to the provisional attachment order has to be held to be premature.

8.Thus, for the above reasons, we are inclined to interfere with the order passed in the Writ Petition. This Writ Appeal is allowed and the order and directions issued in the Writ Petition are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

9.We direct the respondent to submit fresh objections in terms of Rule 159(5) of the CGST Rules, within three days from the date of receipt of a copy of this judgment. On such objections being filed, the appellant/appropriate authority shall consider the objections and pass a speaking order and communicate the same to the respondent within a period of seven days therefrom. Thereafter, it is open to the respondent to work out their remedy in the manner known to law.

10.It is needless to say that, when an objection is filed under Rule 159(5) of CGST Rules, the disposal of the said objection should be in an objective manner and precisely, for such a reason, the Hon'ble Supreme Court has used an expression that the “Commissioner should dispose of the objections by passing a reasoned order”. Undoubtedly, the interest of Revenue has to be protected. Assuming for the sake of arguments that, all is not well with the respondent and the respondent is guilty of having defrauded the Revenue, the endeavor of the Revenue should be to recover the tax and statutory dues. This would be possible only if the assessee is able to generate revenue. It appears that it is not the case of the appellant/Department that the respondent is a shell company and has no business activities, rather on a prima facie reading, we find that the allegation is that they have created bogus records and claimed input credit for discharging the GST dues. Therefore, the approach of the authority should be of the view to protect the interest of the Revenue and parallelly also ensure that the assessee is not strangulated on account of the attachment of all the Bank Accounts. These observations may be borne in mind by the appropriate authority while considering the application under Section 159(5) of the CGST Rules.

Sd/-
Assistant Registrar(CS V)
//True Copy//

Sub Assistant Registrar

mkn

To
1. The Principal Additional Director General,
   DGGI, Chennai Zonal Unit,
   No.16, BSNL Building, Tower II,
   5th and 8th Floor, Greams Road,
   Nungambakkam, Chennai – 600 006.

2. The Senior Intelligence Officer,
   DGGI, Chennai Zonal Unit,
   No.16, BSNL Building, Tower II,
   5th and 8th Floor, Greams Road,
   Nungambakkam, Chennai – 600 006.

+1CC to Mr.Rajnish Pathiyil, Advocate, Sr.No.41255
+1CC to Mr.A.Ganesh, Advocate, Sr.No.40951

W.A.No.1488 of 2021

RR (CO)
K.RK. (16.09.2021)