

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *February 09, 2021*

1.

Civil Writ Petition No.1655 of 2021

Parvati Steel Re-Rolling Mills

..... PETITIONER(S)

VERSUS

Deputy Excise & Taxation Commissioner, Ludhiana & others

..... RESPONDENT(S)

...

2.

Civil Writ Petition No.2260 of 2021

A.K. International

..... PETITIONER(S)

VERSUS

Deputy Excise & Taxation Commissioner, Ludhiana & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

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PRESENT: - Mr. Anurag Sharma, Advocate, with Mr. G.S. Saini,
Advocate, for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. Gaurav Goel, Advocate, for respondent No.3 in
CWP No.1655 of 2021 and for respondent Nos.2 and 3 in
CWP No.2260 of 2021.

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Sant Parkash, J

This judgment shall dispose of aforementioned two petitions
as they involve similar questions of facts and law.

The petitions have been preferred under Article 226/227 of
the Constitution of India, seeking writ a mandamus directing respondent
No.1 – Deputy Excise & Taxation Commissioner, Ludhiana Division, Mini

Secretariat, Ludhiana, to permit operation of bank accounts of petitioners as attachment order dated 13.06.2019 (Annexure P-1) cease to operate in terms of Section 83(2) of the Punjab Goods and Services Tax Act, 2017 (for short, 'PGST Act'); as also to direct the respondent(s) to defreeze the bank accounts of the petitioners.

For reference to facts, file of CWP No.1655 of 2021 is being taken up.

The petitioner – Firm is engaged in sale and purchase of ferrous metal and waste scraps duly registered under the PGST Act. Premises of petitioner - firm was searched and inspected on 11.06.2019 by the State GST authorities, and its partner - Mitha Ram was arrested. Vide order dated 13.06.2019 (Annexure P-1), bank accounts of the petitioner were attached by respondent No.1, provisionally, under Section 83 of the PGST Act. Subsequently, on 09.08.2020, the State Tax Proper Officer vide complaint No.2355/2019 filed a complaint against Mitha Ram before the Judicial Magistrat, 1st Class, Amloh (Punjab) and vide order dated 16.06.020 (Annexure P-2) passed by this Court in Criminal Miscellaneous No.M-42451 of 2019, Mitha Ram was released on bail.

Vide letter dated 31.10.2020 (Annexure P-3), petitioner sent a legal notice to respondent No.1 to defreeze its accounts provisionally attached beyond the statutory period of one year. The petitioner also wrote letter dated 29.12.2020 seeking permission to operate the accounts.

Learned counsel for the petitioner while placing reliance on **M/s A.P. Steels and Sri Sanjay Kumar Mishra v. Additional Director General, DGCI, Bangalore Zonal Unit, Bengaluru, 2020(4) GSLT 169** and **Namaskar Enterprise v. Commissioner of Goods and Service Tax,**

2020 (41) GSLT 297 contends that provisional attachment of a bank account of a party cannot continue beyond a period of one year prescribed under sub-section (2) of Section 83 of the Act and it directed the respondents to defreeze the petitioner's bank account within a certain period of time fixed therein. Thus, continuation of attachment of petitioner's accounts is wholly illegal, arbitrary and violative of Articles 14, 19(1)(g), 21, 265 and 300-A of the Constitution of India.

Per contra, learned counsel for the respondents submit that since the petitioner-firm has questioned the validity of order dated 13.06.2019, no interference is called for. That part, this is a provisional attachment of petitioner's bank account under Section 83 of PGST Act.

We have heard learned counsel for the petitioner and perused the record.

Similar, question has been answered in the case of **A.P. Steels (supra)**, wherein the following has been observed:-

“6. Crux of the matter in the present petition is whether Annexure-A, communication/order dated 28-5-2019 in respect of provisional attachment of Bank Account of the petitioners under Section 83 of the CGST Act, is existing in the eye of law as on this day or not? Section 83 of GST Act reads as under:-

“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 period of one year from the date of the order made under sub-section (1).”

7. By virtue of the sub-section (2) of Section 83 of the aforesaid Act, 2017, the impugned provisional attachment Bank account of the petitioners dated 28-5-2019 passed by respondent No. 1 under Section 83 of the CGST Act, 2017 is in vogue till 27-5-2020. Whereas, the petitioners have presented the present petition on 22-6-2020. As on 22-6-2020, the provisional attachment of bank account of the petitioners, the communication/order dated 28-5-2019 ceases to operate with effect from 27-5-2020.

8. In view of the aforesaid legal position, respondent Nos. 1 and 2 are hereby directed to defreeze the petitioners’ bank account within a period of two weeks from the date of receipt of this order.”

In view of the aforesaid legal position, we find substance in the contentions made by learned counsel for the petitioner. Both the writ petitions are hereby allowed in terms of decision rendered in **A.P.Steels’s case (supra)**. The respondents – Banks are directed to allow the petitioners to operate their bank accounts forthwith.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

February 09, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No