

CWP No.11407 of 2020 (O&M)
Date of decision : 18.01.2021

Himanshu Infraprojects Pvt. Ltd.

..... Petitioner

versus

Commissioner, Central Goods &
Services Tax, GST Commissionerate,
City Centre, Rohtak, Haryana & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jagmohan Bansal, Advocate
for the petitioner.Mr. Anshuman Chopra, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

1 By this petition the petitioner has challenged (i) an order by which his bank account was attached and (ii) prayed for refund of Rs.63.00 lakhs which as per him was got deposited by him without there being any Show Cause Notice or demand.

2 As regards the first relief he has relied upon Section 83 of the Central Goods and Services Tax Act, 2017 (for short 'the Act') to contend that in the present case the order was passed by the Assistant Commissioner. Section 83 of the Act is to the following effect :-

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

3 As per the counsel for the respondents the order itself reveals that it was passed with the consent of the Commissioner. However, this would not be a complete answer because under Rule 159 a person whose property has been provisionally attached can file objections and if the written order of the Commissioner is not communicated to him he would not be in a position to know what are the reasons which the Commissioner had, to arrive at the conclusion that it was in the interest of the Revenue to attach the property. If what is stated by the learned counsel for the respondent is accepted then such a person would never have the benefit of the reasons which weighed with the Commissioner and consequently not be able to file any effective objection.

4 Resultantly, the order of attachment has to go and is consequently set aside. As regards the second plea of refund it is the case of the respondents that the amount was voluntarily deposited by the petitioner and now a Show Cause Notice has been sent demanding more duty.

5 In this connection, counsel for the petitioner has relied upon a Division Bench Judgment of this Court in ***Concepts Global Impex Vs. Union of India, 2019 (365) E.L.T. 32 (P&H)*** in that case also there was an identical fact situation where that person had deposited certain amount of money which as per him were taken by coercion but which as per the respondents was deposited voluntarily. However, at the time of deposit,

just like in the present case neither any demand or Show Cause Notice was pending and just like in the present case when that writ petition came up for hearing a Show Cause Notice had already been issued. This Court however directed the refund of the amount after retaining 10% of the duty demanded.

6 Counsel for the respondents has accepted that this judgment is fully applicable but has relied upon the judgment of the Delhi High Court passed in ***Ambay Industrial Corporations Vs. Union of India & ors., passed in W.P.(C) 12679/2019 decided on 02.12.019*** wherein the Delhi High Court has held that in such a case the aggrieved person can always file a suit for recovery.

7 In our considered opinion, the judgment of the Division Bench of this Court would be binding on this Bench as against the judgment of another High Court.

8 Consequently, we dispose of the prayer for refund in the same terms as in the aforementioned case of ***Concepts Global Impex (supra)***.

9 Since the main case has been decided, the pending Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

18.01.2021

pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No