IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 **CWP-16784-2021 (O&M)**
Decided on : 3.9.2021

Punjab Plywood Industries **....Petitioner**

VS

Commissioner, Central Goods and Services Tax (CGST) and others
....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Jagmohan Bansal, Senior Advocate with
Mr. Naveen Bindal, Advocate for the petitioners.

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AJAY TEWARI, J.(Oral)

1. By this writ petition the petitioner has challenged the order Annexure P-9 whereby respondent has only for name sake modified its order dated 16.7.2021 as per the judgment of this Court but in reality continued attachment of Cash Credit Limit Bank Account No. 02102790000782 in HDFC Bank, Yamuna Nagar.

2. The Brief facts of the case are that the respondent No.1 passed an order provisionally attaching bank account of the petitioner on 16.7.2021 under Rule 159 (1) of the GST Rules. The petitioner filed the objections under Sub-rule 5 of Rule 159 but, since no decision was being taken thereon, filed CWP-15801-2021 which came up for hearing on 18.8.2021 when this Court directed the competent Authority to decide the objections immediately but not later than 23.8.2021 (Annexure P-7). Pursuant to that the impugned order has been passed.

3. The primary contention of the learned Senior Counsel for the petitioner is that the power under Section 83 of the CGST Act, 2017 has been misused in this case because the pre-conditions which are

prescribed therein viz. Pendency of proceedings under Sections 62, 63 , 64, 67, 73 and 74 of the CGST Act, 2017 was not available to the Department.

4. Learned Senior Counsel for the petitioner has relied upon the latest judgment of the Supreme Court in the matter of ***M/s Radha Krishan Industries vs. State of Himachal Pradesh and otheres*** reported as ***2021-TIOL-179-SC-GST*** decided on 20th April, 2021, where, in similar circumstances the Supreme Court allowed the appeal of the appellant holding as follows :-

> *"68. It is evident from the facts noted above that the order of provisional attachment was passed before the proceedings against the appellant were initiated under Section 74 of the HPGST Act. Section 83 of the Act requires that there must be pendency of proceedings under the relevant provisions mentioned above against the taxable person whose property is sought to be attached. We are unable to accept the contention of the respondent that merely because proceedings were pending/concluded against another taxable entity, that is GM Powertech, the powers of Sections 83 could also be attracted against the appellant. This interpretation would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively. Given that there were no pending proceedings against the appellant, the mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act."*

5. In the present case also no notice has been issued to the petitioner under Section 74 or any other Section enumerated above. He

has further argued in this very Judgment in Para 72 the Supreme Court also held that against such an order writ petition is maintainable as no appeal was maintainable under Section 107 of the Act.

6. Notice of motion.

7. On advance notice, Mr. Anshuman Chopra, Senior Standing Counsel appears and accepts notice on behalf of the respondents and seeks time to file reply but accepts that the facts have been enumerated in the record. In our considered opinion, once the facts are not disputed and quasi judicial order has been passed there is no requirement of filing reply. He has argued that in this case summons were issued to the petitioner for the purpose of investigation but the petitioner is not co-operating and therefore, on facts impugned order by which the bank account has actually been released and the petitioner has been asked to provide some other security is justified and legal.

8. In the circumstances, the conclusion is inescapable that the facts are covered by the judgment in the case of ***M/s Radha Krishan Industries*** *(supra).*

9. In view of the binding precedent of the Supreme Court of India, the petition is allowed and order of provisional assessment is set aside.

10. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

3.9.2021
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No