

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th January, 2021

+ **W.P.(C) 11245/2020 & CM APPL. 35053/2020**

PROEX FASHION PRIVATE LIMITED Petitioner
Through: Mr.Govind Rishi, Advocate

versus

GOVERNMENT OF INDIA & ORS. Respondents
Through: Mr.Harpreet Singh, Adv. for R-2
Mr.S.K.Tanwar, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

The proceedings in the matter have been conducted through video conferencing.

1. By way of the present petition, the petitioner seeks to challenge a communication dated 25.11.2020/01.12.2020 (Annexure-9 to the writ petition), by which the bank account of the petitioner in the respondent no.3-Bank ("the Bank") has been attached by respondent no. 2, purportedly under Section 83 of the Central Goods and Services Tax Act, 2017 ("the Act").

2. The contention of Mr. Govind Rishi, learned counsel for the petitioner, is that the respondent authorities have taken action against the petitioner under Section 83 of the Act, pursuant to proceedings

initiated under Section 71 of the Act, whereas Section 83 of the Act, on its terms, cannot be invoked in such a situation.

3. By an order passed on 30.12.2020, notice was issued to the respondents and they were directed to file a counter affidavit. Although time was extended for the said purpose yesterday, Mr. Harpreet Singh, learned counsel for respondent no.2, states that the counter affidavit has been filed only this morning and is thus not on record. However, a copy of the counter affidavit has been supplied to learned counsel for the petitioner and has also been made available to me electronically. Mr. Singh is directed to ensure that the counter affidavit is brought on record during the course of the day.

4. The relevant provisions of the Act are set out below:

“67. Power of inspection, search and seizure – (1)
Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,
he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting

goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make

copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.”

“71. Access to business premises – *(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.*

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

- (ii) *trial balance or its equivalent;*
- (iii) *statements of annual financial accounts, duly audited, wherever required;*
- (iv) *cost audit report, if any, under section 148 of the Companies Act, 2013;*
- (v) *the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and*
- (vi) *any other relevant record,*
for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.”

“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).”

(Emphasis supplied.)

5. The communication dated 25.11.2020/01.12.2020 reads as follows:

“F NO. 1-26(225)GST/Adt-1/Gr-64/C-7/Proex/2020-21

Dated: 25.11.2020

FORM GST DRC- 22

[See Rule 159(1)]

To

The Branch Manager,
Oriental Bank of Commerce,
B/1 Ground Floor, Abdul Aziz Road,
Karol Bagh, New Delhi 110005

***Provisional attachment of property under section 83 of
CGST Act, 2017***

It is to inform that M/S PROEX FASHION PRIVATE LIMITED, 1125, 2nd Floor, Mukherjee Nagar Delhi-110009 bearing PAN AADCR8078H is a registered taxable person under CGST Act. Proceedings have been launched against the aforesaid taxable person under section 71 of the said Act to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has an account in your bank having account number 00124011000368.

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act and on approval of the competent authority, I Anand Pal Singh Assistant Commissioner of Central Tax hereby provisionally attach the aforesaid account.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the said PAN without the prior permission of this department.

(Anand Pal Singh)
Assistant Commissioner”
(Emphasis supplied.)

6. In the counter affidavit filed by respondent no.2, it has been stated that proceedings were initiated against the petitioner pursuant to a communication from the Directorate General of Analytics and Risk

Management (DGARM). The petitioner was declared as a ‘risky exporter’, and an attempt was made to elicit certain information and documents from the petitioner. However, according to respondent No.2, several communications addressed to the petitioner at its registered office were returned undelivered. Proceedings under Section 71 of the Act were therefore initiated against the petitioner, and the attachment of the bank account under Section 83 of the Act is pursuant to those proceedings.

7. Mr. Singh submits, relying upon the Standard Operating Procedure dated 23.01.2020 (Annexure A-1 to the counter affidavit of respondent no.2), that the circumstances set out in the counter affidavit would have justified exercise of power under Section 67 of the Act, which is one of the provisions on the basis of which Section 83 of the Act can be invoked. However, he concedes that no proceedings under Section 67 of the Act were in fact taken against the petitioner, and the only provision under which action was taken against the petitioner was Section 71 of the Act.

8. Having considered the submissions of the parties, I am of the view that the impugned order cannot be sustained. It is clear from a plain reading of Section 83 that action thereunder is predicated upon pendency of proceedings under Sections 62, 63, 64, 67, 73 or 74 of the Act. A Division Bench of the Bombay High Court, in *Kaish Impex Private Limited vs. Union of India & Ors.* 2020 SCC OnLine Bom 125 has held as follows with regard to the scope of Section 83:

“13. Section 83 of the Act refers to the pendency of proceeding under Section 62, 63, 64, 67, 73 and 74.

Section 63 deals with the assessment of unregistered persons. Section 64 is regarding a summary assessment in respect of certain special cases. Section 67 falls in Chapter XIV and refers to the power of inspection, search and seizure. Section 73 is in Chapter XV wherein it deals with the determination of tax not paid or short paid or erroneously refunded or wrongly availed, utilised for any reason other than fraud or any willful mis-statement made on suppression of facts. Section 70 confers power on the proper officer to summon any person whose attendance he considers necessary to give evidence or to produce documents or any other thing in any inquiry. Such inquiry is deemed to be a judicial proceeding under Penal Code, 1860.

xxxx

xxxx

xxxx

16. The impugned order dated 22 October 2019 proceeds on the assertion that proceedings have been launched against the Petitioner under section 67 section 70 of the Act. As far as section 67, i.e. search is concerned, it is an uncontroverted position that no proceedings have been initiated against the Petitioner under section 67 of the Act. On the date of provisional attachment of the bank account, only a summons under of the Act was issued to the Petitioner. Section 70 is not mentioned in Section 83 of the Act. No proceedings were pending against the Petitioner under section 62, 63, 64, 73 and 74 of the Act. Thus the Petitioner contends that power under section 83 could not have been invoked against the Petitioner.

17. Primary defence of the Respondents is that even if section 62, 63, 64, 67, 73 and 74 mentioned in section 83 of the Act are not referable to the case of the Petitioner, since a summons is issued to the Petitioner in pursuant to the inquiry initiated against M/s. Maps Global under section 67 of the Act, by the issuance of summons the proceedings get extended to the Petitioner also.

18. The analysis of section 83 of the Act will show that such interpretation is not permissible and not

contemplated by the legislature. Section 83 read with Rule 159(1), and the form GST DRC-22, lay down a scheme as to how provisional attachment in certain cases is to be levied. Section 83 though uses the phrase 'pendency of any proceedings', the proceedings are referable to section 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions. Section 83 read with section 159(2), and the form GST DRC-22 show that a proceeding has to be initiated against a specific taxable person, an opinion has to be formed that to protect the interest of Revenue an order of provisional attachment is necessary. The format of the order, i.e. the form GST DRC-22 also specifies the particulars of a registered taxable person and which proceedings have been launched against the aforesaid taxable person indicating a nexus between the proceedings to be initiated against a taxable person and provisional attachment of bank account of such taxable person.

19. Power to provisionally attach bank accounts is a drastic power. Considering the consequences that ensue from provisional attachment of bank accounts, the Courts have repeatedly emphasized that this power is not to be routinely exercised. Under Section 83, the legislature has no doubt conferred power on the authorities to provisionally attach bank accounts to safeguard government revenue, but the same is within well-defined ambit. Only upon contingencies provided therein that the power under section 83 can be exercised. This power is to be used in only limited circumstances and it is not an omnibus power." (Emphasis supplied.)

9. The Division Bench decision of the Punjab and Haryana High Court in *Bindal Smelting Pvt. Ltd. vs. Additional Director General*

MANU/PH/2993/2019 is to similar effect. In paragraph 7, the Division Bench has identified the following safeguards from an analysis of the statutory regime:

- “i) Order should be passed by Commissioner;*
- ii) Proceeding under Section 62 or 63 or 64 or 67 or 73 or 74 should be pending;*
- iii) Commissioner must form an opinion*
- iv) Order should be passed to protect interest of revenue.*
- v) It must be necessary to attach property.”*

The Punjab and Haryana High Court, in paragraph 10 of the said decision, and a Division Bench of the Gujarat High Court, in *Valerius Industries vs. Union of India*, MANU/GJ/1743/2019 (paragraph 44 and 52) have also commented upon the drastic nature of an order of attachment under Section 83, albeit in the context of the subjective satisfaction to be recorded by the authority.

10. As held in the aforesaid judgements, the attachment of bank account entails serious consequences to the assessee, particularly in the case of a running concern such as the petitioner herein. The power to attach the bank account must therefore be exercised only in strict compliance with the statutory power, and cannot be extended to cover situations which are not expressly contemplated by the section. Absent the statutory precondition for exercise of the power of attachment, any order under Section 83 is wholly illegal and unsustainable.

11. In the present case, without going into the merits of the allegations made against the petitioner, the admitted position is that no proceedings under any of the provisions mentioned in Section 83 of

the Act were in fact initiated against the petitioner. In these circumstances, the impugned order dated 25.11.2020/01.12.2020 (Annexure-9 to the writ petition) is *ultra vires* the statutory powers of the respondent no. 2, and is hereby quashed.

12. This order will not preclude the respondents from taking such action against the petitioner as they may be entitled to in law, including passing of any orders under Section 83 of the Act in accordance with the conditions of that Section. However, Mr. Rishi assures the Court that the petitioner will supply information and documents to respondent no. 2 as and when called for.

13. Learned counsel for respondent no.3 will convey this order to the Bank forthwith.

14. The writ petition is allowed in the aforesaid terms. The pending application also stands disposed of.

JANUARY 6, 2021

'hkaur'

PRATEEK JALAN, J