IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7373 OF 2021

Fine Exime Private Limited … Petitioner
Versus
Union Of India & Ors. … Respondents

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Mr.Prashant Mishra for Petitioner.
Mr.P.S. Jetly, Senior Advocate a/w. Mr.J.B. Mishra for Respondent No.1-UOI.
Mr.Huzefa Nasikwala a/w. Mr.Sujit Mashal i/b. Nasikwala Law Office for Respondent No.4.

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CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

DATE : 1st FEBRUARY 2022.
(Through Video Conference)

P.C. :-

1. Matter is placed on board for reporting compliance of the Order dated 17th November 2021 passed by the Division Bench of this Court in this Writ Petition, thereby directing the Additional Commissioner to decide the Show Cause Notice in accordance with law and upon granting an opportunity of hearing to the Petitioner, as early as possible, leaving all contentions open for the parties before the Adjudicating Authority. This Court has not disposed of the Writ Petition by the said Order. Parties were directed to complete their pleadings.

2. Learned counsel for the Petitioner on instructions states that, pursuant to the said Order dated 17th November 2021 passed by this Court, the Additional Commissioner has passed an Order on the said Show Cause Notice on 21st January 2022. He states that his client is being aggrieved by the said Order and will file appropriate proceedings.

3. Learned counsel for the Petitioner invited our attention to the prayers in the Writ Petition and would submit that in view of the Order passed by the Authority pursuant to the said Show Cause Notice, the provisional attachment Order dated 21st September 2021 issued by the Respondent No.2 under Section 83 of the Central Goods and Services Act, 2017 would seize to have effect automatically from the date of passing of such Order. In support of this submission, learned counsel for the Petitioner invited our attention to the Judgment of this Court delivered on 10th August 2021 passed in Interim Application No. 1322 of 2021 in Writ Petition No. 2127 of 2021 in case of Fine Exime Private Limited Vs. Union of India & Others and would submit that after adverting the Judgment of the Hon'ble Supreme Court in the case of ***Radha Krishan Industries Vs. State of Himachal Pradesh & Ors., reported in 2021 SCC OnLine SC 334,*** this Court has held that, the final Order of assessment having been passed under Section 74 of the CGST, the Order of provisional attachment must seize to subsist and comes to an end. After adverting to the Judgment of the Supreme Court in the case of ***Radha Krishan***

Industries (supra) in which it was held that, once the Final Order of assessment is passed under Section 74 of the CGST, the Order of provisional attachment must cease to subsist, this Court held that the Order of provisional attachment must come to an end.

4. Per contra, Mr.Jetly, learned Senior Counsel for Respondents would submit that the reliefs sought by the Petitioner at this stage, are not sought in the Petition and thus the reliefs relating to provisional attachment cannot be granted.

5. Perusal of prayer Clause (a) of the Petition clearly indicates that, the Petitioner has impugned the Orders/communication dated 21st September 2021 passed by the Respondent No.2, thereby provisionally attaching the bank account of the Petitioner, described in prayer Clause (b) of the Petition under Section 83 of the CGST Act.

6. On the last date when the matter was heard, the learned counsel for the revenue informed this Court that, the Show Cause Notice issued against the Petitioner was pending. In view of the said statement made by the learned counsel for the revenue, this Court directed the Additional Commissioner to decide the said Show Cause Notice in accordance with law.

7. Mr.Jetly, learned Senior counsel for the Respondents does not dispute that the Order of adjudication is already passed pursuant to the said Show Cause Notice issued against the Petitioner.

8. In our view, the Petitioner is thus entitled to seek the consequential reliefs, in view of the said assessment Order having been passed by the learned Additional Commissioner pursuant to the said Show Cause Notice.

9. The Hon'ble Supreme Court in the case of ***Radha Krishan Industries*** (supra) has held that, once the final Order of assessment is passed, provisional attachment must cease to subsist. This Court after adverting the said Judgment of the Hon'ble Supreme Court in the case of ***Radha Krishan Industries*** (supra) has held that, once assessment Order is passed, no proceedings of nature referred to in Sub-Section 1 of Section 83 can continue. The principles laid down by the Hon'ble Supreme Court in the case of ***Radha Krishan Industries*** (supra) applied to the facts of this case.

10. We are respectively bound by the principles laid down by the Hon'ble Supreme Court. Similar is the view taken by this Court in the case of ***Fine Exim Private Limited*** (supra), we do not propose to take different view in the matter. In our view, once assessment Order is passed pursuant to the said Show Cause Notice, the Order of provisional attachment cease to exist and comes to an end. It is accordingly declared that the said provisional attachment ceases to exist and come to an end.

11. In view thereof, nothing survives in the present Writ Petition. Writ Petition is accordingly disposed off. No Order as to costs.

12. The Respondents are directed to inform the concerned bank about lifting of the provisional attachment within 48 hours from today.

13. Parties to act on the authenticated copy of this Order.

[S. M. MODAK, J.] **[R. D. DHANUKA, J.]**

OMKAR SHIVAHAR KUMBHAKARN

Digitally signed by OMKAR SHIVAHAR KUMBHAKARN
Date: 2022.02.03 18:41:56 +0530