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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NOS.6055, 6061, 6063, 6065, 6067 OF 2022
AND

W.M.P.NOS.6138, 6141, 6146, 6148, 6151 OF 2022

M/s.KPN Travels India Ltd.,
Rep. By its Director, Mr.K.P.N.Raajesh,
No.23, B Rajaji Street,
Salem - 636 004.

... Petitioner in all W.Ps.

-Vs-

Director General of GST Intelligence,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building Tower - II,
5th & 8th Floor, Greams Road,
Chennai - 600 006.

... Respondent in all W.Ps.

Common prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent vide in the impugned order of provisional attachment in Form GST DRC-22 vide File Ref.Nos.DGGI/INV/GST/159/2021 - Gr O-351, .DGGI/INV/GST/159/2021 - Gr O-353, .DGGI/INV/GST/159/2021 - Gr O-349, .DGGI/INV/GST/159/2021 - Gr O-347, .DGGI/INV/GST/159/2021 - Gr O-345 dated 19.01.2022, under Section 83 of the CGST Act, 2017 to quash the said impugned order of provisional attachment of the Bank accounts as stated therein, under Section 83 of the CGST, Act, 2017 R/w Rule 159(1) CGST Rules, 2017 and consequentially direct the respondent to communicate the same to the concerned bank with immediate effect.

For Petitioner : Mr.Nithyaesh Nataraj
for M/s.S.Nirmal Aditya

For Respondent : Mr.V.Sundareswaran,
Senior Standing Counsel



COMMON ORDER

In these writ petitions, the petitioner has challenged the orders of attachment of bank accounts passed by the respondent/Revenue invoking Section 83 of the Central Goods and Service Tax Act, 2017 [in short, "the Act"].

2. Five different bank accounts of the petitioner have been attached by these impugned orders, which have been challenged on the prime ground that no specific reason based on the tangible material available with the Revenue has been stated to invoke Section 83 of the Act except to state that in order protect the interest of the Revenue, the power conferred under Section 83 of the Act was invoked.

3. Whether such kind of cryptic order in one line stating that "in order to protect the interest of the Revenue", can be passed or not have been considered by this Court in the case of M/s.Sree Meenashi Industries Vs. The Additional Chief Secretary & Ors. [W.P.Nos.3079 & 3083 of 2022]

4. Relying upon the said case, wherein the order was passed on 16.02.2022, Mr.Nithyaesh Nataraj, learned counsel appearing for the petitioner would submit that, the said order in M/s.Sree Meenashi Industries (cited supra) was passed of-course following the dictum of the Hon'ble Supreme Court in the case of M/s.Radha Krishnan Vs. State of Himachal Pradesh & Ors. [Civil Appeal No.1155 of 2021]. Therefore, he would submit that, the issue raised in these writ petitions is fully covered by the order of this Court as well as the Hon'ble Supreme Court and hence, these impugned orders would not stand in the legal scrutiny.

5. However Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the Revenue would submit that, nowhere in the provisions i.e., Section 83 of the Act, it has been stated that, the detail reasons as to how the Revenue has come to the conclusion based on the tangible material has to be given. Therefore, since it is a format, under which, such a proceedings are issued to attach the bank accounts of the assessee/dealer, only in order to protect the interest of the Revenue, as that language alone is used in Section 83 of the Act, that reason has been stated in the order impugned dated 19.01.2022.

6. However, there are tangible materials in the hands of the Revenue, which are available in the files and therefore that issue as to what are all the tangible materials and what conclusion has been arrived at or opinion formed by the Revenue to come to a conclusion that the bank accounts of the



petitioner/assessee are to be attached, need not be revealed in the order of attachment, therefore for that reason, the orders of attachment, which are impugned herein cannot be successfully assailed.

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7. Learned Standing Counsel would also submit that insofar as the dictum of the Hon'ble Supreme Court in the case of M/s.Radha Krishnan (cited supra) is concerned, where, the files were called for by the Hon'ble Supreme Court and thereafter, on satisfaction only, the orders have been passed. Therefore, the dictum of the Hon'ble Supreme Court in M/s.Radha Krishnan case (cited supra) may not be available or applicable to the present facts of the case. Therefore, on that ground, the impugned order cannot be assailed.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. The order impugned i.e., order of attachment dated 19.01.2022 reads thus.

“ Provisional attachment of property under Section 83

It is to inform that M/s.KPN TRAVELS INDIA LTD. Having principal of business at No.23 B, Rajaji Street, Swarnapuri, Salem, TN - 636 004 bearing GST registration No.as 33AABCK2751L1Z1, PAN AABCK2751L is a registered taxable person under section 647 of the said Act to determine the tax or any other amount due from the said entry and its Directors. As per information available with the department, it has come to my notice that the said entity and its Directors have accounts in your bank having account numbers:

- i. 611905040880
- ii. 611905039784

In order to protect the interests of Revenue and in exercise of the powers conferred under Section 83 of the Act, I, Mayank Kumar (Principal Additional Director General), hereby provisionally attach the aforesaid account/property.



Sd/-

(Emphasis supplied)

25. With regard to the invocation of Section 83 of the TNGST Act, if we look at the content of the provisions, it merely says that, where during the pendency of any proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 and Section 74 of the Act, if the Commissioner is of an 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 persons.

26. The simple language used in Section 83 of the TNGST Act may suggest that, if the Commissioner is of an opinion that, for the purpose of protecting the interest of the Government Revenue, he can invoke Section 83 of the TNGST Act and to attach the property provisionally including the bank account of the assessee.

27. However, the said content of Section 83 of the GST Act was interpreted by the Hon'ble Supreme Court in Radhakrishna's case (cited supra), where, the following mandatory guidelines has been given:

"72. For the above reasons, we hold and conclude that

(i) The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);

(ii) The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

(iii) The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;

(iv) The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;

(v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and



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that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

(vi) The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;

(vii) The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue;

(viii) In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal;

(ix) Under the provisions of Rule 159 (5), the person whose property is attached is entitled to dual procedural safeguards: (a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and (b) An opportunity of being heard; There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard;

(x) The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;

(xi) A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; and

(xii) The appellant having filed an appeal against the order under section 74 (9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.''



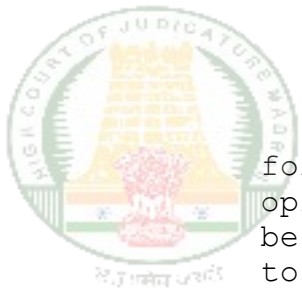
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28. In the said findings given by the Hon'ble Supreme Court, the findings at Clause (iv), (v), (vii) and (x) are more relevant for the present case. In Clause (iv), the Court says that, the power to order a provisional attachment of the property of the taxable person including a bank account is a draconian in nature. Therefore the conditions, which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. In clause (v), the Court says that, the exercise of the power for ordering a provisional tax attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the Government Revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on the basis of tangible material, that the assessee is likely to defeat the demand, if any, and that therefore it is necessary so to do for the purpose of protecting the interest of the Government Revenue. In clause (vii), the Court says that the formation of an opinion of the Commissioner under Section 83(1) must be based on the tangible material, bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the Government Revenue. In clause (x), the Court says that, the Commissioner is duty to bound to deal with the objection to the attachment by passing a reasoned order, which must be communicated to the taxable person, whose property is attached.

29. If we apply the said 4 clauses in the facts of the case, certainly this Court without hesitation, can come to a conclusion that, the said criterion fixed by the Hon'ble Supreme Court in Radhakrishna's case (cited supra) has not been met in the present case by the Commissioner, who passed the order under Section 83 of the Act.

30. The Commissioner in the impugned order under Section 83, merely says, in order to protect the interest of the Revenue and in exercise of the powers conferred under Section 83 of the TNGST Act, I Thiru.K.Phanindra Reddy, I.A.S, Additional Chief Secretary / Commissioner of State Taxes, Chennai - 600 005 hereby provisionally attach the aforesaid account.

31. On what basis, the Commissioner has decided to invoke Section 83 to go for a provisional attachment before which, whether the Commissioner has



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formed an opinion to do so, before forming such opinion, what are all the tangible material available before him or placed before him, so as to enable him to form such an opinion, all these aspects have not been even indicated in the order of provisional attachment.

32. This kind of exercise of power under Section 83, which, in the words of the Hon'ble Supreme Court, is a draconian one, cannot be approved as it does not meet the requirement of fair play and strict adherence of the provisions of the Act as interpreted by the Hon'ble Supreme Court in the judgment cited supra in Radhakrishnan case.

33. The said judgment in the Radhakrishnan case (cited supra) has been taken into account by the writ Court in M/s.Mutharamman & Co., case (cited supra) dated 05.10.2021, where the learned Judge after having allowed the said writ petition by setting aside the similar order under Section 83, directed the Revenue to complete the process of assessment within a time frame of six weeks.

34. When Intra-court appeal was filed, the Hon'ble Division Bench of this Court by order dated 21.12.2021, while affirming the said order of the writ court, has only modified the time limit prescribed by the learned Judge to complete the assessment.

35. Therefore, absolutely there can be no quarrel as of now that, what shall be the criterion to be followed by the Commissioner or any other officer, who exercise the power under Section 83 of the Act before invoking such provisional attachment provision and while exercising the power, whether an opinion has been formed by the officer and such an opinion was formed based on any tangible material available before him for consideration and all these things if not exhaustively but atleast to the limited extent, must have been indicated in the order itself, so that the assessee can have a prima facie satisfaction that atleast the provision of the Act has not been violated as interpreted by the Hon'ble Supreme Court. Therefore, in the present case, this Court has no hesitation to hold that, the first respondent has not followed the mandatory guidelines issued by the Hon'ble Supreme Court in the said judgment in Radhakrishnan Case (cited supra) followed by orders



passed by the writ court as referred to above while passing order under Section 83 dated 20.12.2021, making a provisional attachment of the Bank Account of the petitioners in these cases.

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13. The principle enumerated in the judgment in Radhakrishnan Case (cited supra) by the Hon'ble Supreme Court certainly or squarely would be made applicable in the present set of facts of the case also.

14. The findings given in para 72(iv), (v), (vii), (x) are more relevant for the facts of the present case, this has been specifically dealt with in the order of M/s.Sree Meenashi Industries case (cited supra) at paragraph 28 to 35, which are quoted herein above.

15. Therefore these cases also are nowhere superior to the said case in M/s.Sree Meenashi Industries case (cited supra) and therefore the principle of the Supreme Court in M/s.Radha Krishnan case (cited supra) certainly can be invoked in this case also and if it is applied, the necessary corollary would be that, the impugned orders would not stand in the legal scrutiny.

16. Though an argument was advanced by the learned Standing Counsel appearing for Revenue that based on the tangible materials, which are available with the Revenue, they can very well sustain the order of attachment, this Court however feels that, the present order shall not stand in the legal scrutiny as it does not reveal any such tangible material. Therefore, if these orders are set aside, it does not preclude the Revenue to proceed further by once again invoke Section 83 of the Act and this has been indicated in para 42 of the order in M/s.Sree Meenashi Industries case (cited supra), which reads thus:

"42. It is made clear that, this order, setting aside the provisional attachment order and the consequential Bank communication in respect of these two cases, shall not stand in the way for the respondent / Revenue to invoke Section 83 once again, if they have reasons with tangible materials and records to form an opinion that in the interest of Revenue, such an invocation of Section 83 become inevitable and after recording such reasons that kind of invocation could be possible at the hands of the Revenue."

17. Therefore, the interest of the Revenue, in case, if they want to invoke Section 83 of the Act by following the procedures



contemplated in M/s.Sree Meenashi Industries case (cited supra), is also protected.

18. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

- That the impugned orders are set aside.
- However, it is open to the respondent/Revenue to invoke Section 83 of the Act once again, if they have tangible materials at their hands as indicated in para 42 in M/s.Sree Meenashi Industries case (cited supra).

19. With these observations and directions, all these writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Director General of GST Intelligence,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building Tower - II,
5th & 8th Floor, Greaves Road,
Chennai - 600 006.

+10ccs to M/s.S.Nirmal Aditya, Advocate, S.R.No.26898

+1cc to Mr.V.Sundareswaran, Senior Panel Counsel, S.R.No.26949

W.P.Nos.6055, 6061, 6063, 6065, 6067 of 2022
and
W.M.P.Nos.6138, 6141, 6146, 6148, 6151 of 2022

AK-II(CO)
RLP(09/06/2022)