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

% *Decision delivered on: 15.09.2022*

\+ **W.P.(C) 1392/2021**

M/S NEUTRON STEEL TRADING PVT LTD & ORS... Petitioners

Through: Mr T.P.S. Kang, Adv. with Ms Nisha Dhaka, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Asheesh jain, CGSC with Mr Adarsh Kumar Gupta & Mr keshav Mann, Advs. for R-1&2.
Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur & Jatin Kumar Gaur, Advs. for R- 3 to 5.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The following substantive reliefs have been sought by the petitioner in the writ petition:

> *"a) To declare Rule 159 and sub rules (1) (5) and (6) ultra vires to constitution;*
> *b) To issue a Writ of Mandamus or any other appropriate writ in the nature of mandamus whereby setting aside the order dated 14.08.2020 & 28.09.2020 passed by the Respondent 3;"*

2. Mr T.P.S. Kang, who appears on behalf of the petitioners, at the outset, says that he does not wish to press relief sought in prayer clause "a", as extracted above.

2.1 Therefore, the principal issue which concerns us is whether or not, in the given case, provisional attachment should be lifted. The other issue which arises in the instant case concerns the legal efficacy of the order dated 28.09.2020.

3. It is not disputed before us that more than one year has passed since the time the provisional attachment order was issued.

3.1. Insofar as the stipulated timeframe of one year is concerned, which is to enable the respondent/revenue to carry out investigation, that period is provided in Section 83 of the Act.

3.2. As is evident, more than two (2) years have passed since the provisional attachment was ordered of the subject bank account. Provisional attachment was ordered in the case on 14.08.2020.

4. On the previous date i.e., 18.08.2022, we had heard the matter and etched out the broad grievances articulated before us by Mr Kang on behalf of the petitioner. For the sake of convenience, the relevant extract of the said order is set forth below:

> *"1. The record reveals that the grievance of the petitioners principally emanates from the order of the attachment dated 14.08.2020 passed vis-à-vis the subject bank account.*
> *2. Being aggrieved, the petitioners approached this Court by way of a writ petition i.e., W.P.(C) 6609/2020.*
> *2.1. This writ petition was disposed of via judgment dated 18.09.2020. Via the said judgment, this Court had directed the petitioners to take recourse to the statutory remedy prescribed under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 [in short, 'CGST Rules'].*
> *3. The record reveals that the petitioners did avail the said remedy which resulted in an adverse order dated 28.09.2020 being passed qua them.*
> *3.1. Therefore, in the instant writ petition, challenge has been laid to not only the order dated 14.08.2020, but also the order dated 28.09.2020.*

4. Mr Tej Pal Singh Kang, who appears on behalf of the petitioners, says that apart from anything else, since one year has passed, which is the maximum period prescribed under Section 83 of the Central Goods and Service Tax Act, 2017 [in short, 'CGST Act'], the respondent/revenue is required to lift the attachment.

5. We may note that the other relief that the petitioner claims is a declaratory relief. The petitioner seeks a declaration that Rule 159 along with Sub-Rules (1), (5) and (6) of the CGST Rules be declared ultra vires the Constitution.

6. Mr Akshay seeks accommodation on the ground that Mr Harpreet Singh, the counsel for respondent nos.3 to 5/revenue, is unavailable, as a member of his family has taken ill.

7. Accordingly, list the matter on 15.09.2022.

8. Counsel for the respondent nos. 3 to 5/revenue, will obtain instructions, with regard to what has been noticed hereinabove".

5. Mr Harpreet Singh, who appears on behalf of the respondent/revenue, fairly concedes that the provisional attachment order dated 14.08.2020, has not been renewed.

6. Therefore, it clearly emerges that the period of one year provided in Section 83 of the Act stands crossed. In these circumstances, the provisional attachment order cannot survive.

7. We are told by Mr Singh that investigations are about to conclude and perhaps a show-cause notice will be issued to the petitioner.

7.1. That being the position, in any event, the continuation of the provisional attachment beyond the prescribed period makes no sense.

8. Accordingly, the respondents are directed to lift the provisional attachment within two days of receipt of the copy of instant judgment.

9. Insofar as the challenge to the order dated 28.09.2020 is concerned, it

loses legal efficacy in view of the direction issued by us for lifting provisional attachment.

9.1. It is pertinent to note that there is no discussion whatsoever in the order dated 28.09.2020 with regard to the maximum timeframe set out for investigation under section 83 of the Act and the resultant consequences of that period having been crossed.

9.2. The order dated 28.09.2020, insofar as it seeks to continue the provisional attachment order is set aside.

9.3. The allegation on merits i.e., whether or not the petitioner is enabling other entities to avail input tax credit (ITC), although it does not carry out business, will possibly be adjudicated if and when a show-cause notice is issued.

10. We make it clear that nothing stated herein will impact either the investigation or further proceedings in the matter such as issuance of show-cause notice, if deemed fit.

10.1. It does without saying that all such steps shall align with provisions of law.

11. The writ petition is disposed of in the aforesaid terms.

12. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 15, 2022/SA/r