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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 15.07.2022

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W.P.(C) 13911/2021**ZURIC TRADERS**

..... Petitioner

Through: Dr Avinash Poddar, Adv.

*versus***THE COMMISSIONER, CUSTOMS AND
CENTRAL EXCISE, DELHI AND ANR**

..... Respondents

Through: Mr Ravi Prakash, CGSC with Ms
Shruti Shiv Kumar, Adv.**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 principal grievance of the petitioner emerges from the communication dated 25.02.2020 addressed by the respondents/revenue to the IndusInd Bank, Punjabi Bagh Branch, New Delhi.
2. Since the communication is brief, for the sake of convenience, the same is extracted hereafter:

*“To,**The Bank Manager,
IndusInd Bank, Punjabi Bagh Branch,
Ground Floor, UGF, Plot No 29 North West Avenue,
Club Rd, Punjabi Bagh, Delhi 110026**Sir /Madam,****Subject: Confirmation for GST refunds of Zuric Traders (IEC
No. AACFZ5051G)-reg.***



Please refer to your letter no. 02/2020/Zurich Traders/001 dated 17.02.2020 on the above subject.

2. In this regard, it is informed that the issue has been taken up with jurisdictional GST field formation with a request to examine the issue in entirety and report the outcome to this office. In view of the above, it is requested to keep the account blocked and maintain the status-quo till credentials of M/s. Zurich Traders are established and verified.

3. This issues with the approval of Competent Authority.

*Yours faithfully
s/d
Assistant Commissioner”*

3. Notice in this petition was issued on 07.12.2021, which was made returnable on 27.01.2022. At the point in time when the notice was issued, an opportunity was granted to the respondents/revenue to file a counter-affidavit in the above-captioned writ petition.

3.1 Since then, the matter has been listed twice i.e., on 27.01.2022 and 15.03.2022. On 27.01.2022, since the Bench did not convene, the matter was adjourned to 15.03.2022. On 15.03.2022, the respondents/revenue sought a further four weeks to file a counter-affidavit in the matter.

4. Mr Ravi Prakash, who appears on behalf of the respondents/revenue, concedes that a counter-affidavit was lodged with the Registry only on 14.07.2022. Quite naturally, the counter-affidavit could not have been placed on record by the Registry, as it was lodged a day before the hearing.

5. As indicated at the very outset, *via* the impugned communication dated 25.02.2020, the petitioner's bank account remains blocked since February/March 2020. Nearly two years and four months have passed since the respondents/revenue took recourse to the impugned action.



5.1. The respondents/revenue have taken their own sweet time to lodge the counter-affidavit and that too, one day before the next date of hearing.

5.2. Since the counter-affidavit is not on record, and the petitioner's counsel has pressed the matter, given the leeway granted to the respondents/revenue up until now, we have called upon Mr Prakash to argue the matter and put forth the respondents/revenue's defence in the matter.

6. Mr Prakash has submitted that the impugned action has been taken in the exercise of powers under Section 83 of the Central Goods and Services Tax Act, 2017 [hereafter referred to as "the 2017 Act"].

6.1. It is Mr Prakash's contention that by virtue of the orders passed by the Supreme Court in *Suo Motu* Writ Petition (C) No.3/2020, the timeframe prescribed under Section 83 of the 2017 Act stands extended.

6.2. In other words, according to Mr Prakash, the attachment order would continue till the date provided in the order.

6.3. Based on the order dated 10.01.2022, passed in WP(C.) 3/2020, it is contended that the period spanning between 15.03.2020 and 28.02.2022 shall stand excluded and that the department would have the benefit of period prescribed in Section 83 of the 2017 Act i.e., period for which the provisional attachment order is to subsist, which would commence from 01.03.2022.

6.4. It is further contended that, firstly, since the period of limitation prescribed under Section 83 of the 2017 Act is more than 90 days, the limitation would expire on 01.08.2022.

7. Mr Prakash informs us that the aforementioned submission was advanced in W.P.(C.) No.3551/2020, titled ***M/s Vikas WSP Ltd. & Ors. v. Directorate Enforcement & Anr*** which concerned provisional attachment orders passed under Section 5(1) of the Prevention of Money Laundering



Act, 2002 [hereafter referred to as “the 2002 Act”]. Mr Prakash contends that Section 83 of the 2017 Act is *pari materia* to Section 5(1) of the 2002 Act.

7.1. We are told that although, the Learned Single Judge, *via* judgement dated 18.11.2020, repelled a similar submission advanced on behalf of the Directorate of Enforcement, the matter was carried in appeal to the Division Bench.

7.2. In the appeal, which is registered as LPA No.362/2020, we are informed, notice has been issued and via order dated 02.12.2020, *status quo* has been ordered with regard to the ownership, possession and encumbrance on the properties in question.

7.3. Mr Prakash contends that the issue is at large and therefore, the respondents/revenue have a substantial defence to offer, *vis-à-vis* the relief sought by the petitioner.

8. Dr Avinash Poddar, who appears on behalf of the petitioner, argues to the contrary. According to Dr Poddar, a plain reading of the impugned communication would show that there is no reference to Section 83 of the 2017 Act.

9. Furthermore, Dr Poddar says that the impugned communication was not served on the petitioner. The petitioner obtained knowledge of the same, only when the fact that the petitioner’s bank account had been blocked was communicated to him.

9.1. It is Dr Poddar’s submission that had the relevant provision been mentioned in the communication, the right of the petitioner to file objections would have been triggered under Rule 159(5) of the CGST Rules, 2017 [hereafter referred to as “2017 Rules”].

9.2. Since the communication was never served and the information



received did not disclose that the action had been taken under Section 83 of the 2017 Act, no objections could be filed and consequently, the principles of natural justice were, infringed.

9.3. As per Dr Poddar, no proceedings, as contemplated under Section 83 of the 2017 Act, have been commenced against the petitioner. Therefore, it is Mr Poddar's submission, that the action is violative not only of the provisions of Section 83 of the 2017 Act, but also Rule 159(5) of the 2017 Rules.

9.4. In support of his plea, Dr Poddar has referred to the judgment of the Supreme Court in dated 20.04.2021 titled *M/s Radha Krishan Industries v. State of Himachal Pradesh & Ors.* 2021 6 SCC 771.

10. In rejoinder, Mr Prakash says that representations were received from the petitioner. It is also his submission that investigations have been made against persons who had supplied goods to the petitioner.

10.1. In this behalf, reference is made to paragraph 12 of the counter-affidavit; a hard copy of which has been placed before us by Mr Prakash. The said paragraph adverts to three entities, who supposedly had made inward supplies to the petitioners i.e., M/s Laser India Trading, M/s Great Polimar Export and M/s Sharma Traders.

10.2. It is, therefore, the contention of Mr Prakash that their investigations have shown that foreign currency remittances have not been received against exports made by the petitioner *vis-à-vis* which IGST refund was credited to the account of the petitioner.

10.3. It is, thus, contended that the respondents/revenue have to make the recovery of the IGST refund availed by the petitioner, given the aforesaid circumstances.

11. Having heard learned counsel for the parties, we are of the view that



the impugned communication would have to be set aside for the following reasons:

- (i) First and foremost, the impugned communication does not advert to Section 83 of the 2017 Act, as would be evident from the extract set forth hereinabove.
- (ii) Mr Poddar is right in contending that had reference been made to Section 83 of the 2017 Act, then the petitioner would have been entitled to trigger the provisions of Rule 159 (5) of the 2017 Rules i.e., to file objections *qua* the impugned act i.e., purported “blocking” of the concerned bank account maintained by the petitioner with the IndusInd Bank, Punjabi Bagh Branch, New Delhi. It is important to emphasize that the expression used in Section 83 is “provisional attachment” and not “blocking”; with the former having a definitive connotation in law, as its use requires fulfilment of certain prerequisites.
- (iii) Even if one were to assume that the action was taken under Section 83 of the 2017 Act [as obtaining on the statute 20/25 February 2020], it could have been triggered only during the pendency of proceedings against the petitioner under any one of the following Sections: Sections 62, 63, 64, 67, 73 and 74 of the 2017 Act. That apart, clearly no proceedings, at least to the knowledge of the petitioner, are pending under any of the said provisions.
- (iv) The Section 83 also required the respondents to form an opinion that provisional attachment was necessary to protect the interests of the revenue.
- (v) As alluded to above, since, concededly, no proceedings had been initiated on the date when the impugned communication was issued to the petitioner under any of the above aforementioned provisions, the impugned order was issued without jurisdictional facts being present. [See ***Radha Krishnan*** case]



(vi) Lastly, the argument advanced by the petitioner that the inward suppliers of the petitioner had been investigated (an aspect that we have referred to hereinabove) and that it has been revealed that foreign remittances against the exports made by the petitioner have not been received, is a facet which, apparently, has never been put to the petitioner. There is nothing placed on record to show that this aspect was put to the petitioner, despite the petitioner making several representations. (See communications dated 06.10.2021, 14.10.2021 and 25.11.2021 addressed by the petitioner to the respondents/revenue.)

12. It is in this context that the respondents/revenue say that there is a possibility of recovery proceedings being launched against the petitioner, as, according to them, IGST credited to the petitioner's account has been wrongly availed.

13. The issue in the present proceedings, according to us, centers around the tenability of the blocking order which was triggered by the respondents/revenue *via* the impugned communication.

13.1. In our opinion, the blocking order does not comply with the jurisdictional prerequisites which are embedded in Section 83 of the 2017 Act.

14. Before we conclude, we would also like to advert to the submission made by Mr Prakash, that since, an appeal is pending *vis-à-vis* a *para materia* provision found in Section 5(1) of the 2002 Act, in which *status quo* has been ordered, the blocking order should continue to operate.

14.1. His submission does not impress us for the reason that a perusal of the interim order passed by the Division Bench in LPA No.362/2020 dated 02.12.2020, shows that the operation of the judgment passed by the Learned Single Judge in the **Vikas** case (*supra*) has not been stayed, as the interim



order directs *status quo* with regard to the ownership, possession and encumbrances on the properties in issue in that matter. That apart, it is an interim order which pertains to a different statute. The final judgement of the Learned Single Judge is against the proposition advanced by the respondents/ revenue, that the life of the order passed under Section 5(1) of the 2002 Act will get prolonged because of the order dated 10.01.2022, passed by the Supreme Court in *Suo motu* WP(C.) no. 3/2020. In this context it may be useful to bear in mind that Section 83 of CGST Act, 2017 provides a timeframe i.e., statutory space for enabling investigation, to protect the interest of the revenue and not a period of limitation.

14.2 Besides this, the scope and effect of the provisions of Section 83 of the Act has been decisively ruled upon by the Supreme Court in the ***Radha Krishnan*** case. We are bound by the judgment rendered by the Supreme Court in the said case.

14.3 We may also note that the argument advanced by Mr Prakash that the period provided in Section 83 of the Act i.e., one year, will expire only on 01.08.2022 is also flawed, for the reasons given hereinabove which are briefly the following:

- (i) Firstly, the impugned communication is not issued under Section 83 of the 2017 Act.
- (ii) Secondly, there are, concededly, no proceedings pending against the petitioner under the provisions referred under Section 83 of the 2017 Act, as it stood at the relevant point in time (i.e., Sections 62, 63, 64, 67, 73 74 of the 2017 Act.)
- (iii) Thirdly, it is our understanding that the order passed by the Supreme Court in *Suo Motu* WP(C.) 3 of 2020, will not extend the time frame provided under Section 83 of the 2017 Act.



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(iv) Lastly, even if, paragraph 5(iii) of the order dated 10.01.2022, were to apply, which is what Mr Prakash seeks to place reliance on, the timeframe provided therein, which is, one year, would have perhaps expired in the first week of June 2022. As indicated above, this part need not detain us, as the impugned communication and action is otherwise unsustainable in law.

15. The impugned communication is, thus, quashed.

16. The respondents/revenue will communicate to the concerned bank i.e., IndusInd Bank, Punjabi Bagh Branch, New Delhi, the direction issued by us.

16.1. The subject bank account will be unblocked.

17. The writ petition is disposed of, in the aforesaid terms.

18. Needless to add, if any other remedy is available to the respondents/revenue, with regard to the alleged infraction in law committed by the petitioner, this judgement will not come in its way.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 15, 2022/aj

Click here to check corrigendum, if any