

05 25.05.2023
AGM/NB Ct. 07

WPA 12132 of 2023

J. L. Enterprises
Vs.
Assistant Commissioner, State
Tax, Ballygunge Charge.

Mr. Vinay Kumar Shraff,
Ms. Priya Sarah Paul.
...for the petitioner.

Mr. Nilotpall Chatterjee,
Mr. Debraj Saha.
...for the State.

The petitioner is a partnership firm. On 4th March, 2023, State Tax Department Officers visited the registered office of the said firm and inspected the books on accounts and verified records under Section 67 of WBGST Act and issued INS-01 form stating the following anomalies.

- “a. Mobile phones exported in the month of October’2022 has found to be activated in Indian territory after the date of EGM, therefore, it is a false export. The said allegation has been made on the basis of the Samsung report found in Samsung MCS portal.*
- b. E-invoice has been generated after the EGM date which concludes that export is false.*
- c. The goods purchased from the M.I.Telcom is a false transaction as the e-way bill generated for transportation is incorrect. In support of the same, a consent has been obtained from Shyamoli Poribahan & Gree Loine Travels.*

Copy of the DRC-01A form dated 25/03/2023 is annexed herewith and marked as "Annexure-P3".

It was further alleged:

- "a. Mobile phones exported in the month of October'2022 has found to be activated in Indian territory after the date of EGM, therefore, it is a false export. The said allegation has been made on the basis of the Samsung report found in Samsung MCS portal.*
- b. E-invoice has been generated after the goods left the territory which concludes that export is false.*
- c. Goods has been purchased from Global Trades for which no e-way bill has been generated.*
- d. E-way bill has been wrongly generated by the supplier for inward supply.*
- e. Noticee has not received the goods.*

On the basis of the above allegation, show cause notice has been issued by the Ld. Authority asking why-

- Input Tax credit amounting to Rs.57,96,325/- (CGST) and Rs.57,96,325/- (SGST) should not be disallowed.*
- Interest u/s 50(1) should be paid*
- Penalty amounting to Rs.14,49,081/- (CGST) and Rs.14,49,081/- (SGST) should not be imposed."*

Subsequent to issue a show cause notice in DRC-014, the respondent issued a notice to the banker of the petitioner's firm to provisionally attach the cash-credit facility of the said firm.

Challenging the said order of provisionally attachment, the petitioner has approached this Court under Article 226 of the Constitution of India.

It is submitted by the learned advocate for the petitioner referring to a decision of this Court in the case of ***Jugal Kishore Das Vs. Union of India*** reported in 2013 SCC Online Cal 19941 that the cash-credit limit is a facility provided by the bank to its customers to use and utilise the money and if such facility availed of, it would attract the interest to be charged for the same so utilised. It is further held that the cash-credit facility is not a debt to be attached by the respondent authority.

Learned counsel appearing for the petitioner further refers to another decision of the ***Division Bench of Gujarat High Court*** reported in 2022 (64) GSTL 482 (Guj) wherein it is specifically held that the law is well-settled that a cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.

Referring to a decision of the Hon'ble Supreme Court in ***Radha Krishan Industries Vs. State of Himachal Pradesh*** reported in 2021 (48) GSTL 113 (SC). It is submitted by the learned advocate for the petitioner that the order of provisional attachment before assessemnt order should be imposed in rarest of rare cases and sparingly.

The Hon'ble Supreme Court quoted the observation of the Gujarat High Court in ***Valerius Industries Vs. Union of India*** reported in 2019 (30) GSTL 15 (Guj) as hereunder:

“52. [...]”

The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information ... It is not any and every material, howsoever vague and indefinite or distant, remote or far-fetched, which would warrant the formation of the belief.

- (1) The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.*
- (3) The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.*
- (4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.*
- (5) The power under Section 83 of the Act should neither be used as a tool to harass the*

assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things:

(i) whether it is a revenue neutral situation.

(ii) the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.”

Thus, it is submitted by the learned advocate for the petitioner that cash-credit facility is not a debt and it is not provisionally attached under Section 83 of the CGST Act and rules made thereunder.

The learned advocate for the respondent, on the other hand submits that Section 83 of the Central Goods and Services Tax Act, 2017 gives power to the GST authority to provisionally attach the bank accounts to protect revenue in certain cases. cash-credit facility is also a bank account issued by the bank in favour of the petitioner wherefrom the petitioner is using credit

facility for the purpose of his business. It is found from the record of the case that even the petitioner has been paying GST from the said cash-credit account.

Be that as it may, it is held by this Court that cash-credit facility is not a debt and therefore, it cannot be made attachable. This Court is bound by the above-stated precedent.

Here comes another issue. The statute provides under Rule 159 Sub-Rule 5, the remedy whose property is attached. Thus, it is contended by the learned advocate for the respondent that where there is efficacious and speedy remedy in the statute, such remedy cannot be bypassed and no relief should be granted to the petitioner in this regard under Article 226 of the Constitution of India.

The issue as to whether relief under writ jurisdiction should be granted in a case where there is alternative statutory remedy was called upon for determination before the Hon'ble Supreme Court in relation Section 13 and Section 17 of the SARFAESI Act.

In ***Mardia Chemicals Limited Vs. Union of India*** (2004) 4 SCC 311, it was observed by the Hon'ble Supreme Court while dealing with a constitutional challenge to the validity of Section 17 of the SARFAESI Act that borrowers cannot be left remediless in this case they have been wronged by a secured creditor, bank or financial institutions and that borrowers have a right to approach the DRT after measures are taken against the borrower under Section 13 (4) of the Act and the same provides reasonable protection to the borrower.

In ***Overseas Bank Vs. Ashok Shaw Mill*** reported in (2009) 8 SCC 366, the Apex Court discussed the jurisdiction of the DRT under Section 17 of the said Act. The Court noted that certain checks and balances have been introduced through Section 17 in order to prevent misuse of the wide powers conferred upon banks and financial institutions under the said Act. The Apex Court held that Section 17 of the Act permits the borrower who is aggrieved by measures taken against him under Section 13(4) to approach DRT and the DRT has been visited with the power to declare any such action invalid. Section 17(3) of the Act vests with the DRT, the authority to question the action taken by secured creditor. In ***United Bank of India Vs. Satyawati Tandon*** reported in (2010) 8 SCC 110, the Supreme Court held that the said Act is a Code in itself and the remedy provided under Section 17 is an expeditious and effective remedy available to an aggrieved person.

The Supreme Court ultimately held that the High Court will not ordinarily entertained a petition under Article 226 of the Constitution of India, if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of public money and the dues of the bank and other financial institutions.

In the instant case, it relates to recovery of GST. Subsection 5 of Section 159 clearly gives adequate power to the petitioner to file objection for releasing the bank account or, in the instant case cash-credit facility.

In view of such circumstances, when there is efficacious relief in the statute itself, this Court is of the view that the petitioner should adopt such efficacious relief and this Court is

not inclined to afford any relief under Article 226 of the Constitution.

The instant writ petition is thus, dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Bibek Chaudhuri, J.)