

24 16.06.2023
RP Ct. No. 01
AN

MAT 1001 of 2023
with
IA No. CAN 1 of 2023

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

Mr. Vinay Kr. Shraff
Miss. Priya Sarah Paul
Mr. R. Banerjee
Mrs. S. Dey

... For the Appellants

Mr. A. Ray, Ld. G.P.
Mr. T.M. Siddiqui

... For the State

1. We have elaborately heard the learned advocates appearing for the parties.

2. This intra-Court appeal is directed against the order dated 25.05.2023 passed in WPA 12132 of 2023. By the said order the writ petition was disposed of by relegating the appellant to resort to the remedy provided under Section 159(5) of Central Goods and Services Tax Rules 2017 (for short “the Rules”).

3. The petitioner was aggrieved by an order of provisional attachment of cash credit account maintained by the appellant with its banker. The legal question involved in the writ petition was whether an order of provisional attachment can be made to a cash credit account. In fact, the learned Single Bench has noted all the decisions, which were cited by the learned advocate for the appellant and has held that the cash credit facility is not a debt and, therefore, it cannot be made attachable and that

the writ Court is bound by the precedent. The operative portion of the order reads as follows:

*“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-fetching, 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.”

4. In the light of the above conclusion, it goes without saying that the Court has accepted the legal position which has been settled by various decisions which have been referred to in the impugned order. If such be the case, no useful purpose will be served by relegating the petitioner to avail the remedy under sub-Section 5 of Section 159 of the Rules. Therefore, we are of the view that the learned writ Court ought to have allowed the writ petition in its entirety instead of relegating the appellant to a remedy which is inapplicable to the cases where there is an order of provision attachment of a cash credit account.

5. In the light of the above, the appeal stands allowed and the order passed by the learned writ Court is set aside insofar as it directs the appellant to avail the remedy under Sub-Section 5 of Section 159 of the Rules and in other respect where the learned writ Court has rightly accepted the legal position stands confirmed.

6. In the light of the above conclusion the respondents are directed to lift the order of provisional attachment of the cash credit account within 10 days from receipt of the server copy of this order.

7. Needless to state that this order will not in any manner prejudice the rights of the department to initiate

other proceedings in accordance with law and this order pertains only to the provisional attachment of the cash credit account and not to the other bank accounts of the appellant.

8. In the result, the appeal stands **allowed** to the extent indicated hereinabove. Consequently, the connected application stands allowed.

(T. S. Sivagnanam)
Chief Justice

(Uday Kumar, J.)