IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8298 OF 2022

Shri Pradeep Kumar Siddha … Petitioner

V/s.

Union of India and ors. … Respondents

Mr.Brijesh Pathak, Advocate for the Petitioner.

Mr.J.B.Mishra with Mr.Dhananjay B. Deshmukh, Advocates for Respondents No.1 and 2.

Mr.Varun Shinde i/by Mr.Vivek Sawant, Advocates for Respondent No.3.

Mr.Rahul Kumar, Deputy Commissioner of CGST and Mr.Sanjay P. Mathur, Superintendent-Officers present.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.

DATE : 28 APRIL 2023.

P.C.:-

1. Heard learned counsel for the parties.

2. When the petition came up on board before the Division Bench on 18 July 2022 following order came to be passed :-

"1. On 02.05.2022, in an earlier petition that was filed by petitioner being writ petition No. 8915 of 2021, the court directed respondents to unfreeze the account maintained by petitioner with Axis Bank. Petitioner states that notwithstanding the order, Axis Bank did not unfreeze the account. Axis Bank complied with the order after petitioner, vide its advocate's email dated 13.05.2022, threatened contempt action against Axis Bank.

2. It is petitioner's case that on 20.05.2022, respondents took away Rs. 62,32,400/- from its Axis Bank account and it has been transferred by the bank to respondents by way of RTGS. Mr. Pathak states that no instructions to debit the amount has been given by the account-holder to Axis Bank to transfer the amount to the account of GST authorities.

3. To a query put by the court, Ms.Bharucha, on instructions, from Mr.Sanjay Prakash Mathur, Superintendent, CGST, Thane Commissionerate states that after the amount was debited, the respondents never addressed any communication to petitioner that the amount has been debited from his account. Ms. Bharucha's case is that petitioner, even after the order was passed by the court, did not co-operate and therefore, respondent Nos. 1 / 2 got the amount debited by Axis Bank from petitioner's account.

4. We fail to understand, prima facie, as to how the authorities get this power to take away amount from anybody's account without account holder's permission or even after taking away the money, they would not even consider it necessary to inform the account-holder that money from their account has been debited. This is nothing but high handedness and gross abuse of power.

5. Respondent No. 2 is directed to deposit the entire amount of Rs.62,32,400/- with the Registrar (Judicial-I) of this Court on or before 28.07.2022 failing which this court may issue contempt notice against respondent No. 2.

6. Petitioner has also annexed an instruction received bearing F. No.GST/INV/Instructions/2022-23 dated 25.05.2022 in which instructions have been given to all the officers not to use force or coercion against any taxpayer and in case of wrongdoing on the part of tax officer, strict disciplinary action as per law may be taken against the officers.

7. The concerned officer who instructed the bank to debit the amount of petitioner shall file his personal affidavit explaining therein under what authority of law that he got removed the money from petitioner's bank account or directed the bank to debit the bank account and why did he do it without even informing petitioner even after giving instructions to the bank. The officer is put to notice that this Court may even consider taking action against the officer if it is not satisfied with the explanation. We are making these observations because there have been many matters where the taxpayers account is frozen and the taxpayers come to know only from the bank but after giving instructions to freeze the accounts, the authorities are not even bothering to inform the account-holders that it has given such instructions. This according to us is nothing but oppressing a taxpayer by misusing their position and amounts to harassment of all taxpayers.

8. The affidavit shall be filed and copies served on or before 25.07.2022. Rejoinder, if any, to be filed and copies served by 3.00 p.m. on 29.07.2022.

9. Stand over to 1st August, 2022."

3. Thereafter, affidavit-in-reply has been filed. The Respondents have relied upon section 79(1)(c)(i) of the Central Goods and Services Tax Act ("CGST Act" for short). According to the Petitioner, this provision is entirely inapplicable.

4. Section 79 of the CGST Act deals with recovery of tax and lays down the modes for recovery. These are: deduction from the money owed to such person which is under the control of proper officer; to recover the amount by detaining or selling the goods which belong to such person which are under the control of the proper officer; under Section 79 (1) (c) (I) of the CGST Act by issuing notice in writing to any other person from whom the money is due to such person or who holds or may subsequently hold such money for or on account of such person. As regards section 79(1)(c)(i) of the CGST Act is concerned, it is akin to garnishee proceeding as it can be seen from further procedure that needs to be followed.

5. In the present case, the Respondents-authorities have proceeded to unilaterally deduct the amount from the Petitioner's bank account by giving instructions to the Bank and transferring it to the Electronic Cash Ledger of the Petitioner. Having failed to demonstrate the legal basis for such course of action, the learned counsel for the Respondents, on instructions, states that the amount deposited in this Court may be permitted to be withdrawn so that it will be deposited

in the bank account of the Petitioner. The Officer who has made a statement shall file an affidavit to that effect and within how much time the amount would be credited to the account of the Petitioner. Upon such affidavit being filed within two weeks, Registrar (Judicial) will permit the Respondents to withdraw the amount. After withdrawal, the same shall be credited to the bank account of the Petitioner within a period of two weeks.

6. Writ Petition is accordingly disposed of.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

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