IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11252 OF 2022

Chotu Lal
Prop. Of Wisemax Enterprises ...Petitioner
V/s.
Union of India & Ors. ...Respondents

Mr. Brijesh Pathak for Petitioner.
Mr. J. B. Mishra, Senior Counsel with Ms. Sangeeta Yadav for Respondent No.2.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 7 JANUARY, 2023

P.C.

The Petitioner is before us challenging the action taken by the Respondents under Section 83 of the Maharashtra Goods and Services Act, 2017 of attaching the bank account no. 098663300002462 vide order bearing No. IV (Hqrs. Prev.) CGST-N/12/2365/2022 Delhi dated 27 July 2022 and for a direction to allow the operation of the bank account.

2. Apart from the factual aspects raised by the Petitioner for contending that the bank account of the Petitioner was not liable to be attached, Petitioner has also raised an issue of jurisdiction of the Respondent-Authorities. According to the Petitioner, the Petitioner being a registered person falling within the jurisdiction of Tamil Nadu GST Act, 2017, the Respondent No.2 to 4 being

officers appointed under MGST Act, 2017 will not have jurisdiction over the Petitioner. Learned Counsel for the Petitioner states that this being the issue of jurisdiction, the Petitioner is entitled to invoke writ jurisdiction of this Court.

3 Learned Counsel for the Respondents has relied upon the decision of the Division Bench of this Court in the case of *M/s. Jaychem Enterprises Pvt. Ltd. Vs. Additional Director General, Nagpur Zonal Unit and Ors.*[1], to contend that the Petitioner should first take recourse to Rule 159(5) of the Maharashtra GST Rules to meet the case of the Petitioner on merits.

4 The Division Bench of this Court in the case of *Jaychem Enterprises Pvt. Ltd.* dealt with a challenge to an action taken under Section 83 of CGST Act. The Petitioner therein had also contended that the order of attachment was without jurisdiction and had relied upon the decision of the Gujarat High Court in case of *M/s. Formative Tex Fab Vs. State of Gujarat & Others.*[2] and the Punjab & Haryana High Court at Chandigarh in *Bindal Smelting Pvt. Ltd Vs. Additional Director General, Directorate General of GST Intelligence.*[3] The Division Bench in *Jaychem Enterprises Pvt. Ltd.* dealt with the contentions observing thus:-

> *" 5. On perusal of the decision in Bindal Smelting Pvt. Ltd.(supra), it appears that the Court considered the grievance raised before if only after recourse to Rule*

1 Writ Petition No. 2583 of 2021 dated 8 July, 2021
2 R/Special Civil Application No. 14059 of 2020
3 CWP No. 31382 of 2019 (O & M)

159(5) of the said Rules had been taken by the petitioner and an order passed on the objection that was raised. The Court examined the order passed by the relevant authority and bearing in mind the facts as well as the legal position, proceeded to pass an appropriate order.

6. It is clear that sub-rule (5) of Rule 159 of the said Rules provides a remedy if any particular order of attachment under sub-rule (1) leaves a party, subject to tax, aggrieved. We are of the opinion that such a remedy, as made available by the said Rules, is not an ineffective remedy but on the contrary, if sufficient case is set up, substantial relief can be granted to the objector. It is for the petitioner to satisfy the Additional Director General that for the reasons urged, the property ought to be released from attachment by making an appropriate order in Form GST DRC-23. The position as to whether the impugned order, in fact, seeks to protect the interest of the revenue or is otherwise, including the balance in the current account as submitted by the petitioner, would require a factual examination and determination. Thus, it is all the more necessary that the petitioner exhausts the remedy provided by sub-rule (5) of Rule 159 of the said Rules. Should the Additional Director General refuse to release the property from attachment, a reasoned order is required to be passed and such order could be subjected to a challenge before the appropriate forum in accordance with law.

7. Since the petitioner has not taken to recourse to sub-rule (5) of Rule 159 of the said Rules, we decline interference at this stage. However, we grant the petitioner a week's time to approach the Additional Director General under the said provision and if such an approach is made, a reasoned order shall be passed after extending an opportunity of hearing."

We find no reason, nor we are shown any, as to why we should not take the same view as taken in the case of *Jaychem Enterprise Pvt. Ltd.* and ask the Petitioner to approach the concerned authority under Rule 159 (5) of the GST Rules for revocation of the attachment. The contention of the Petitioner that the authority will not be able to decide the issue of jurisdiction is not correct as if the Petitioner demonstrates that the action taken under Section 83 of the Act is not proper in law and on facts, the concerned Authority can only release the attachment as per the said provision.

6. The grievance of the Petitioner that the bank account has remained attached for a long period of time, is to be noted but partially it is the Petitioner to blame for not taking recourse to Rule 159(5) of the Rules early. Be that as it may, since the bank account is attached in April 2022, we direct if the Petitioner approaches the authority under Rule 159 (5) of the Rules within one week, the concerned Authority will make an endeavour to take a decision thereupon as per law, within three weeks of filing of such application. All the contentions raised by the parties, including that of locus, are kept open.

7. Writ Petition is accordingly disposed of.

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

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2023.01.13 16:51:57 +0530