IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11326 OF 2023

Ashok Kumar Vishwakarma	..	Petitioner
v/s.		
Union of India & Ors.	..	Respondents

….

Mr. Nirmal Pagaria, for the Petitioner.

Ms. Jaymala Ostwal, a/w. Mr. Siddharth Chandrashekhar, for Respondent Nos. 1 and 2.

Ms. Shruti D. Vyas, "B" Panel Counsel for State.

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CORAM: G.S. KULKARNI & JITENDRA JAIN, JJ.

DATE : 4th OCTOBER, 2023

P.C:-

We have heard learned Counsel for the Petitioner as also learned Counsel for the Revenue in the present proceedings filed under Article 226 of the Constitution of India. The Petitioner has challenged the order dated 25th April 2022 passed by the Commissioner, CGST & Central Excise, Bhiwandi Commissionerate exercising powers under Section 83 of the Central Goods And Service Tax Act, 2017 (CGST Act) ordering provisional attachment of the Petitioner's Bank Account No.50200033711279 held by the Petitioner in the HDFC Bank, Anjur Road, Mankoli, Bhiwandi Branch. There is also a provisional attachment order passed under Section 83 dated 6th April 2023 by which the immovable property, being Flat No. C-103, 1st Floor, Durga Residency, Kharbav Village, Taluka Bhiwandi, Thane, Maharashtra-401 302 has been provisionally attached by such order as communicated to the Joint Sub-Registrar, Bhiwandi Taluka-I at Bhiwandi.

2. The Petitioner is before this Court assailing both such orders passed under Section 83 of the CGST Act. The primary contention as urged on behalf of the Petitioner is that in passing the orders of provisional attachment under Section 83 of the CGST Act, the Commissioner has not formed any opinion on the tangible materials. In support of his contentions, the Petitioner has placed reliance on the decision of the Supreme Court in **M/s. Radha Krishan Industries vs. State of Himachal Pradesh & Ors.**[1] to contend that such an order will be required to be held in breach of the principles of natural justice.

3. We have perused both the orders. We find from the order dated 6th April 2023 that proceedings have been launched against the Petitioner under Section 67 and Section 74 of the CGST Act so as to determine the tax or any other amount due from the Petitioner. The

1 Civil Appeal No.1155 of 2021 (Arising out of SLP (C) No.1688 of 2021, New Delhi, April 20, 2021.

order records that in the course of investigation it was revealed that the Petitioner had indulged in availment and in passing on ineligible Input Tax Credit (ITC). The order also records that as per the reports received from various CGST Commissionerate, the Petitioner had already availed ineligible ITC of a substantial amount of Rs.3.21 crores from non-existing/non genuine persons in contravention of Section 16 of the CGST Act and further investigation in this regard is in progress. It is during the pendency of such investigation the Commissioner has exercised the powers as conferred under Section 83 of the CGST Act not only attaching the bank account of the Petitioner but also the immovable property. We also note that the impugned order/s are passed invoking the provisions of Section 83 of the CGST Act in Form GST/DRC-22.

4. On perusal of Rule 159, in our opinion, sub-rule (5) would be relevant in the context of the contentions as raised by the Petitioner, which is to the effect that such rule provides for an opportunity to the Petitioner to file an objection to the attachment in question and on which the Commissioner would hear the Petitioner. It would be appropriate to extract sub-rule (5) of Rule 159 of the CGST Rules, which reads thus:-

> "Rule 159. **Provisional attachment of property.**-
> (1)…….
> (2) …..
> (3) ….
> (4) …..

(5) Any person whose property is attached may file an objection in Form GST DRC-22A to the effect that the property attached was or is not liable to attachment and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in Form GST DRC-23.
(6) ......"

5. In so far as the Petitioner's reliance on the decision in **M/s. Radha Krishan Industries** (supra) is concerned, there can be no two opinions on the position in law as laid down in the said decision. However, the question would be whether the same would become applicable in the facts and circumstances of the present case. We may also note that the facts of the case before the Supreme Court were completely in variance to the facts in the present case, in as much as, the appellant therein, as observed by the Supreme Court in para 12 of the said decision, had made a representation and had denied the liability. We note from the decision of the Supreme Court that it was a case where the Petitioner had invoked the provisions of sub-rule (5) of Rule 159 of CGST Rules by making a representation. Thus, in our opinion, in the facts and circumstances of the case, the reliance of the Petitioner on this decision is misplaced. Moreover, considering the present facts, nothing prevents the Petitioner from adopting such course of action which was already undertaken by the appellant in the case of **M/s. Radha Krishan Industries** (supra).

6. We are accordingly of the opinion that the appropriate remedy for the Petitioner would be to invoke sub-rule (5) by raising an

objection to the orders of attachment in question as the rule itself would permit. Thus, considering such stage of the proceedings, in the facts and circumstances of the case, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to interfere in the impugned attachment orders.

7. We accordingly do not entertain the present petition. It is rejected, however, keeping open the remedy of the Petitioner to invoke sub-rule (5) of Rule 159 of the CGST Rules. All contentions in that regard are expressly kept open.

8. As the Petitioner was bonafide pursuing the present petition, we permit the Petitioner to raise an objection by invoking sub-rule (5) of Rule 159 of the CGST Rules within one week from the date of uploading of this order. If the same is filed, let the same be decided by the Commissioner in accordance with law without raising any objection as to limitation.

9. Petition disposed of. No order as to costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**