

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13967 OF 2023

Sunbright Designers Pvt. Ltd.

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Brijesh Pathak for Petitioner.

Ms. Shruti Vyas, Addl. GP with Ms. P. N. Diwan, AGP for State.

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

DATE : DECEMBER 07, 2023.

P.C.:

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantial reliefs:-

“(a) that this Hon’ble court may be pleased to issue writ in the nature of certiorari or any other appropriate writ or order thereby quashing the provisional attachment of the Bank Account: 50200006372609, vide Order bearing Ref. No. JC-INV-C/2023-24/DRC-22/B-81 Mumbai dated 27.06.2023, Exhibit G passed by the Respondent No.2;

(b) that this Hon’ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Certiorari or any other appropriate writ or order thereby directing the 2nd Respondent to withdraw Order bearing Ref. No. JC-INV-C/2023-24/DRC-22/B-81 Mumbai dated 27.06.2023, Exhibit G, consequently restore operation in the Bank Account 50200006372609, held with 4th Respondent;

(c) that this Hon’ble Court may be pleased to issue a writ, order or direction in the nature of mandamus or any other appropriate writ thereby declaring that the impugned Show Cause Notice bearing F. No. AC-INV-D-048/ Sunbright/SCN/2022-23/B-127 Mumbai dated 28.03.2023, Exhibit I and consequent Order No. AC/INV-D-048/MUM/Sunbright/2023-24/B-258 Mumbai dated 15.09.2023, Exhibit K passed by the 3rd Respondent, is without

jurisdiction and hence be pleased to quash and/or set-aside the same.”

2. The primary grievance of the petitioner is in regard to the provisional attachment of the petitioner’s bank account by the respondents in exercise of powers conferred under Section 83 of the CGST/MGST Act. The proceedings have some history. As argued by Mr. Pathak, learned counsel for the petitioner, the petitioner is engaged in the business of manufacturing apparels.

3. On 30 March, 2022 the respondent had issued a Summons under Section 70 of the Maharashtra Goods and Services Tax Act, 2017 (for short, “MGST Act”) to the petitioner’s bank namely respondent no.4 directing the bank to furnish certain records and documents. As also the petitioner’s bank was directed not to allow operation of the bank account of the petitioner. The petitioner at such time, approached the Court by filing Writ Petition No. 4624 of 2022. On 21 April, 2022, such notice/ summons issued under Section 70 to the bank was withdrawn.

4. Thereafter on 21 April, 2022, the 2nd respondent in exercise of powers under Section 83 of the MGST Act, attached the bank account of the petitioner. The petitioner had again approached this Court in the proceedings of Writ Petition No. 7070 of 2022 challenging the

jurisdiction of the 2nd respondent to attach the petitioner's bank account. By an order dated 07 January, 2023 passed by this Court, the said writ petition filed by the petitioner was disposed of, with a direction that the petitioner would make an application/file its objection in terms of Rule 159(5) of the MGST Rules. On 13 January, 2023, the petitioner filed objections before the 2nd respondent under Rule 159(5) of the MGST Rules. These objections came to be rejected by the Department on 23 February, 2023. The petitioner, in these circumstances, again approached this Court in the proceedings of Writ Petition No. 3905 of 2023. This Court by a judgment and order dated 30 June, 2023 disposed of the said writ petition inter-alia upholding that the communication dated 21 April, 2022 provisionally attaching the petitioner's bank account, was rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. It was also held that the extension of the provisional attachment by communication dated 19 April, 2023 was also illegal and accordingly the same was quashed and set aside.

5. However, before this Court could adjudicate Writ Petition No. 3905 of 2023, on 28 March, 2023 the petitioner was issued with a show cause notice as per the provisions of Section 122(1A) of the MGST Act. The show cause notice came to be decided by the adjudicating officer by

an order-in-original dated 15 September, 2023. However, in the meantime, the respondent had issued the impugned order dated 27 June, 2023 thereby provisionally attaching the bank account of the petitioner under Section 83 of the MGST Act. It is on such backdrop, the petitioner is before this Court contending that the respondent would not have jurisdiction to pass a fresh order provisionally attaching the bank account of the petitioner when the earlier orders were quashed and set aside.

6. We have heard Mr. Pathak on the contentions as urged on behalf of the petitioner as also Ms. Vyas, learned Addl. GP for the State.

7. In the peculiar facts and circumstances of the case, we are of the opinion that now as an order has been passed by the adjudicating officer deciding the show cause notices and as the petitioner is now desirous to assail the said order-in-original by adopting the appropriate remedy as available in law, it would be appropriate for the petitioner to proceed with such course of action of filing of an appeal to assail the order-in-original. Mr. Pathak states that such appeal would be filed within a period of four weeks from today.

8. In so far as the petitioner's bank account is concerned, it would be open for the petitioner to make an application before respondent No.2

praying for appropriate orders in regard to the revoking of the provisional attachment, contending that the impugned order dated 27 June, 2023 provisionally attaching the petitioner's bank account is illegal. If such an application is made, the same be decided as expeditiously as possible and preferably within a period of three weeks from the date of filing of the said application.

8A. Needless to observe that the petitioner would also be entitled to move an application in terms of Section 107(7) of the MGST Act. If such application is filed, it be considered by the authorities in accordance with law.

9. All contentions of the parties on the appeal as also interim application as may be filed by the petitioner are expressly kept open.

10. Subject to the information as being supplied to the Department in regard to the balance which is available in the bank account as provisionally attached and as may be permitted by the Designated Officer, the petitioner be permitted by the Designated Officer to operate the bank account to withdraw the amount which the petitioner would be required to deposit for the purpose of filing of an appeal.

11. We, however, clarify that the Designated Officer permitting the petitioner to operate the bank account to withdraw the limited amounts

for the purpose of pre-deposit, in no manner would amount to revoking or altering the orders of provisional attachment.

12. Ordered accordingly.

13. The petition stands disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]

(Order is corrected as per speaking to minutes of order dt. 11/12/2023.)