

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8629-2023

Date of Decision:- 13.10.2023

M/s Dholagiri Enterprises

....Petitioner

Vs.

Commissioner, CGST, Pkl and anr.

....Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present:- Ms. Radhika Suri, Sr. Advocate assisted by
Mr. Abhinav Narang, Advocate
for the petitioner

Mr. Sourabh Goel, Sr. Standing counsel
for the respondents.

Ritu Bahri, J.

1. The petitioner-assesee has approached this Court by filing the present writ petition for issuance of writ in the nature of certiorari for quashing order dated 20.01.2023 (P-1) and show cause notice dated 11.04.2023 (P-3)

2. The facts as stated in the petition are that search operations were carried out against the petitioner on 08.01.2021 by various teams of CGST under section 67 of CGST Act. An inquiry was initiated against the petitioner by Superintendent Anti Evasion, CGST, Panchkula under section 70 of CGST Act. The Bank Account of the petitioner was provisionally attached under section 83 of the Act by respondent no 1, vide order dated 10.03.2021/12.03.2021 and the petitioner filed its objections on 19.03.2021 against provisional attachment, under rule 159(5) of CGST Rules, 2017 which were not decided by respondent no 1.

3. Petitioner approached this Court by filing CWP No. 21916-2021 and vide order dated 23.11.2021, this Court called the explanation of respondent No. 1

for not deciding the objections for more than 08 months. Respondent No. 1 was also directed to decide objections by passing a speaking order before next date of hearing. Thereafter, respondent No. 1 decided the objections filed by the petitioner, vide speaking order dated 10.01.2022 and issued DRC-23 dated 10.01.2022 to Banker of the petitioner for restoration of Bank account of the petitioner. Vide order dated 11.01.2022, the bank account of the petitioner was again provisionally attached by respondent No. 1 under Section 83 of the Act. The petitioner challenged this order by filing CWP No. 941-2022.

4. In the meantime, CWP No. 21916-2021 came up for hearing on 20.02.2023 and the petition was dismissed as having been rendered infructuous. Thereafter, when CWP No. 941-2022 came up for hearing before this Court, learned counsel for the respondent has handed over a copy of impugned order dated 20.01.2023 ordering provisional attachment of the bank account of the petitioner.

5. Thereafter, respondent No. 2 issued letter dated 07.03.2023 (P-2) with respect to intimation of liability under Section 122 read with Section 127 of CGST Act, 2017 in terms of circular dated 06.07.2022. A penalty amounting to Rs.25,77,96,424/- under Section 122 (1) (ii) and penalty amounting to Rs.24,94,11,453/- under Section 122 (1) (vii) was imposed upon the petitioner for availing and passing on ITC on the basis of goodsless invoices. A show cause notice was also issued on 11.04.2023 (P-3) against the petitioner. Hence the present writ petition.

6. Learned senior counsel for the petitioner has argued that at the time of search on 08.01.2021 under Section 67 of CGST Act, the proceedings of enquiry initiated under Section 70 of the Act did not conclude. She has further argued that Section 83 (1) of the CGST Act which was amended w.e.f 01.01.2022 stipulates that power of attachment can be exercised on initiation of any

proceedings under Chapter XII, XIV or XV. The Commissioner may in order to protect the interest of the Government revenue, can attach provisionally any property including bank account belonging to the taxable person or any person specified in sub Section (1A) of Section 122. She has argued that for invoking fifth part of Section 83 against any person specified therein, the conditions specified under first part of Section 83 must be fulfilled which has not been done in the present case.

7. She has further argued that proceedings initiated under Section 122 read with Section 127 did not fall under Chapter XII, XIV or XV and hence the attachment of the bank account is against the amended provisions of Section 83 of CGST Act and the impugned order is liable to be set aside.

8. Reference has been made to the judgment of Hon'ble the Supreme Court of India in a case of *M/s Radha Krishan Industries vs. State of Himachal Pradesh and others, (2021) 6 SCC 771* where Hon'ble the Supreme Court has considered the amended provisions of Section 83 of CGST Act.

9. It has further been argued that in the speaking order dated 10.01.2022 (P-7), it has been admitted that search under Section 67 are no more pending upon conclusion of search. The impugned order is bad in law as it was passed without initiation of any proceedings under Chapter XII, XIV or XV which is one of the statute for valid exercise of the power of attachment but such condition has not been fulfilled by the Commissioner.

10. On notice of the petition, a reply has been filed by the respondents taking a stand that investigation against M/s Dholagiri Enterprises (GSTIN: 06DMLPK8324R1Z8) was initiated on 08.01.2021 and search was conducted as per the provisions of Section 67(2) of the CGST Act, 2017 at the registered and residential premises of the petitioner and at other premises of the petitioner. Detailed investigation revealed that the petitioner was involved in

'availment as well as passing of fake ITC on the basis of goodsless invoices and the Penalty has been demanded from the petitioner vide Show Cause Notice dated 11.04.2023 under Section 122(1)(ii) and 122(1)(vii) of the CGST Act, 2017. In addition, penalty under Section 122(1)(x), (xii), (xvii) and 122 (3) of the CGST Act, 2017 has also been demanded vide the said show cause notice dated 11.04.2023. During the course of investigation, the petitioner was found to be engaged in availment as well as passing on of huge amount of fake ITC on the strength of goodsless invoices, the bank account of the petitioner was provisionally attached under the provisions of Section 83 of the CGST Act, 2017 in order to safeguard the interests of Government revenue. The objections regarding provisional attachment of Bank Account dated 10.03.2021 which were filed by the petitioner were decided and the bank account was ordered to be released vide order dated 10.01.2022. However, the bank account was again provisionally attached vide separate order of even date 20.01.2023. The petitioner has not filed any cross objection till date against the said provisional attachment dated 20.01.2023 as per the provisions of law.

11. Learned counsel for the respondent has argued that since the petitioner has not availed the statutory remedy of filing objections to the provisional attachment order, the present petition is not maintainable in view of the judgment of Hon'ble the Supreme Court of India in a case of ***State of Punjab vs. M/s Shiv Enterprises and ors., 2023 Live Law (SC) 56***. The present writ petition is premature.

12. After the detailed investigation, the show cause notice dated 11.04.2023 was issued to the petitioner after initiation of proceedings under Section 67 of the Act. Once the proceedings were initiated under Section 67 of the Act, which falls under Chapter XIV of the Act, there is no infirmity in the provisional attachment of the bank account which will remain in force for a period

of one year. The show cause notice is pending before the proper officer/adjudicating authority, therefore, in the interest of safeguarding the interest of the Government revenue, it is imperative that the Bank account of the petitioner remains provisionally attached till the adjudication of the case and thereafter, till the realization of the confirmed Government dues.

13. The case of the petitioner is covered under Sub Section (1) of 83. Further as per Rule 159 (5) of CGST Rules, 2017, any person whose property is attached may, file an objection in Form DRC-22A, which the petitioner has not done in the present case.

14. In the present case after the search was conducted on 08.01.2021 under Section 67 of CGST Act and thereafter bank account of the petitioner was attached under Section 83 of the Act, the power of attachment can be exercised on initiation of any proceedings under Chapter XII, XIV or XV. Since the proceedings were initiated under Section 67 of CGST Act, this procedure falls under Chapter XIV.

Hence, even after amendment of Section 83 (1) of the CGST Act w.e.f 01.01.2022, the power of attachment can be exercised on initiation of any proceedings under Chapter XV, which has been done in the present case. The argument of learned counsel for the petitioner that the proceedings have been initiated under Section 122 read with Section 127 does not fall under Chapter XII, XIV or XV is liable to be rejected.

Reference at this stage can be made to *Shiv Enterprises case supra*, wherein it has been observed as under:-

“4. From the notice dated 14.09.2021, it can be seen that the original writ petitioner was called upon to show cause within 14 days from the receipt of the said notice, as to why the goods in question and the conveyance used to transport such goods shall not be confiscated under the provisions of Section 130 of the Punjab GST Act, 2017 and IGST Act, 2017 and CGST Act, 2017 and

why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable.

5. In the show cause notice, there was a specific allegation with respect to evasion of duty, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice. However, in exercise of powers under Article 226 of the Constitution of India, the High Court entertained the writ petition against the show cause notice and set aside the show cause notice under Section 130 of the Act by observing in para 29 as under:

29. From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to evade payment of tax. It is also not the case of the State that the petitioner did not account for any goods on which he is liable to pay tax under the Act or that he supplied any goods liable to tax under the Act without having applied for registration or that he supplied or received any goods in contravention of any of the provisions of the Act. From the perusal of show cause notice issued to the petitioner under Section 130, the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he shall be able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. Needless to reiterate any person can claim input tax credit under the provisions of the 2017 Act only if the same has been actually paid to the Government. Thus, the action of the respondents in initiating proceedings under Section 130 on the basis of show cause notice dated: 14.09.2021 cannot be sustained

Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

6. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14.09.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today. and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.

7. All the contentions/defences which may be available to the respondent-original writ petitioner are kept open to be considered by the appropriate authority in accordance with law and on its own merits.

8. The present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs."

15. Reference has been made to the judgment of Hon'ble the Supreme Court of India in a case of **United Bank of India vs. Satyawati Tondon and others passed in SLP (C) No. 10145-2010** wherein in para 17, it has been observed as under:-

"the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigor in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all

such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

16. Reference at this stage can further be made to the provisions of Section 83 which reads as under:-

“Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub- section (1A) of section 122, in such manner as may be prescribed.”

17. In the present case, the show cause notice was issued after initiation of proceedings under Section 67 of the Act and these proceedings falls under Chapter XV and, thus, there is no infirmity in attachment of the bank account of the petitioner, which would be enforced for a period of one year.

18. The writ petition is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

(KULDEEP TIWARI)
JUDGE

13.10.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No