06 AN RP

20.08.2024 Ct. No. 01

MAT 1541 of 2024
with
IA No. CAN 1 of 2024

Lakshman Saraf
Vs.
Senior Intelligence Officer, Directorate General of GST Intelligence Kolkata Zonal Unit & ors.

Mr. Pranit Bag
Mrs. Rita Mukherjee
Mr. Ghanshyam Jha
Mr. Rowsan Kr. Jha
... For the Appellant

Mr. Bhaskar Prasad Banerjee
Mr. Tapan Bhanja
... For the respondent DGGI

Mr. R. N. Bag
Ms. Rini Bhattacharyya
... For the Union of India

Mr. Uday Sankar Bhattacharya
Mr. Abhradip Maity
Ms. Shatabdi Sen
... For respondent no. 5

Mr. Arnab Basu Mullick
... For respondent no. 7 & 8

Mr. Dipanjan Datta
... For respondent no. 14

Mr. Paritosh Sinha
Mr. Amitava Mitra
... For respondent no. 15

Mr. R. N. Bag
Ms. Sharmila Datta Das
Ms. Rini Bhattacharya
... For respondent no. 16

1. This intra-Court appeal by the unsuccessful writ petitioner is against the judgment dated 08.07.2024 passed in WPA 12270 of 2024. In the said writ petition, the appellant had impugned the provisional attachment orders issued under Section 83 of the CGST Act, 2017.

2. After hearing the learned counsel for the respective parties elaborately and considering the materials placed, we are convinced that the learned Single Judge has rightly declined to interfere with the orders of provisional attachment noting that in terms of Rule 159(5) of the relevant rules, the appellant has a remedy as against a provisional attachment order. A provisional attachment order issued to the bank cannot be examined under a magnifying glass. In fact, the Department may not be required to even make a detailed disclosure of what was the material which was available to the Department which prompted them to exercise powers of the provisional attachment since disclosure may hamper the investigation. In the instant case, the allegation against the appellant is that he is the mastermind behind the entire issue which is under investigation. Learned counsel appearing for the Department submitted that the show cause notice which was subsequently issued has returned with postal endorsement that the addressee cannot be located.

3. Thus, we are of the view that the learned Single Judge has rightly declined to interfere with the orders of provisional attachment. Learned counsel appearing for the appellant placed heavy reliance on the decision of the High Court of Gujarat in the case of **Valerius Industries vs. Union of India** reported in **(2019) 109 taxmann.com 218 (Gujarat)** and has drawn our attention to paragraph 44 of the judgment. What is important to note is the factual finding recorded in paragraph 48 of the judgment where the Court found that in the said case the tax liability came to be determined under Section 74 of the Act without issuance of any show cause notice to the appellant therein and in conclusion, in paragraph 52(1), the Hon'ble Division Bench has pointed out that subject to satisfaction should be based on some credible materials and information and also should be supported by super winning factor.

4. In the instant case, merely going by the expressions used in the communication sent to the banks for attachment or to the transport authorities or to the registration authorities, a conclusion cannot be drawn at this stage that there is no credible material. In our view, the challenge to the orders of provisional attachment was prematured, that apart, the appellant had a remedy under the relevant rules, which the appellant did not exhaust.

5. Therefore, we find no grounds to interfere with the impugned order passed by the learned Single Judge and accordingly, the appeal fails and is hereby **dismissed**.

6. After we have passed the above judgment, learned counsel appearing for the appellant on instruction from his client submitted that the appellant will invoke the remedy available under the relevant rules. In the event, the remedy under the relevant rule is availed, the authority concerned shall decide the matter uninfluenced by any observation made by the learned Single Judge in the impugned judgment or any observation which we have made in this judgment.

7. Consequently, connected application also stands **dismissed.**

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)