Ashvini Narwade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDITION

WRIT PETITION NO.15566 OF 2023

Ashok Kumar Vishwakarma … Petitioner

Versus

Union of India & Ors. …Respondents

Mr. Nirmal Pagoria for the Petitioner.

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

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 6th MARCH, 2024

P.C.

1. We have heard learned Counsel for the parties.

2. This Petition under Article 226 of the Constitution of India assails an Order dated 2nd November 2023 (Exhibit-L of the Petition) passed by the Commissioner, CGST & C. Ex. Bhiwandi Commissionerate, whereby the Application as filed by the Petitioner, objecting to the provisional attachment made under the provisions of Rule 159 of the Central Goods and Service Tax Rule, 2017 (for short "the **CGST** Rules"), has been rejected, thereby confirming the provisional attachment of the Petitioner's bank account, which is the subject matter of the provisional attachment order dated 6th April 2023. It may be observed that the Petitioner had earlier approached this Court in the proceedings of Writ Petition No.11326 of 2023 **(Ashok Kumar Vishwakarma**

Vs. Union of India & Ors.) assailing the provisional attachment, which came to be disposed of in terms of an order dated 4th October 2023 decided by a co-ordinate bench of this Court, of which one of us (Justice G. S. Kulkarni) was a member, whereby the Petitioner was permitted to take recourse to the provisions of Sub-Rule (5) of Rule 159 of the CGST Rules and approach the Commissioner praying for revocation of the provisional attachment of the Petitioner's bank account. In pursuance of such orders passed by the Division Bench, the Petitioner made an application dated 5th October 2023 in form GST DRC-22A to the Commissioner (CGST & C.Exc.), Bhiwandi, which has been rejected by the impugned order. The only contention as urged on behalf of the Petitioner in assailing the impugned order is that there was no reason to believe nor was there any tangible material for the Commissioner to confirm the provisional attachment of the Petitioner's bank account in exercise of the powers under Section 83 of the the Central Goods and Service Tax Act, 2017 (for short "the **CGST** Act"). In support of such contention, reliance is placed on the decision of the Supreme Court in the case of **M/s. Radha Krishan Industries Vs. State of Himachal Pradesh & Ors.**[1], contending that the Commissioner has not formed any opinion on any tangible material. On this ground the Petitioner has submitted that the impugned order is required to be quashed and set aside.

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

3. Having heard learned Counsel for the parties and having perused the record, we are not persuaded to accept the contentions as raised on behalf of the Petitioner for more than one reason.

4. At the outset, we may observe that, on a perusal of the Application filed by the Petitioner under Rule 159(5) of the CGST Rules, the basic essentials, which were necessary for the Petitioner to persuade the authority to revoke the provisional attachment and to make out a case that the opinion which was formed by the Commissioner for attaching the bank account is not a proper opinion based on the tangible materials, is absent from the Application.

5. On a query made to the Petitioner as to what is the contention that has been raised by the Petitioner in this regard, our attention is drawn by learned Counsel for the Petitioner to paragraph (j) of the Application filed by the Petitioner before the Commissioner praying for revocation of the attachment. The said contentions, as also the contentions of the Petitioner in paragragh (h), would be required to be noted, and read thus:-

> "h) Applicant submits that power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective. Such power cannot be used in manner which may have an irreversible detrimental effect on the business of the assessee.

> j) Applicant submits that in his present case Yours Good Office has exercised power without any tangible and cogent material which suggests that Assessee would sell his property to defeat the purpose of the CGST Act or there is flight risk of the assesse. It is apposite to note that Applicant filed application before the Police officer to take action against fake supplier. It is clearly shown that Assessee is duty bound and cooperating. He would cooperate the department till final conclusion of the investigation and take further legal remedy in accordance with law. During Investigation proceedings also Applicant submitted all relevant documents and cooperated the department. It is opposite to note that You good office take action merely only ground that Applicant took input tax credit from non-existent firm but did not mention any cogent ground which corroborates that Assessee intentionally after knowing ground took this credit and he was going to sale his assets to defeat the object of the CGST Act. In the present case Your good Office has not made cogent ground for attaching the property of the Assessee. Therefore aforesaid properties of the Applicant is liable to be de attached.

6. In our opinion, clearly, the contentions as raised by the Petitioner would not be a sufficient ground to hold that whatever material is relied upon in support of such attachment, and which forms part of the pre-show cause notice, would stand dispelled, and is not relevant.

7. We find from the impugned order, and more particularly from paragraph Nos.3 to 20, that there was substantial material for the Commissioner to form an opinion that the interest of the Revenue is required to be protected. Learned Counsel for the Petitioner has not contended that such material was not tangible material to form the opinion to attach the Petitioner's bank account nor such a case is made out in the application filed by the Petitioner for revocation of the provisional attachment. Thus, merely relying on the decision of the Supreme Court in **M/s. Radha Krishan Industries (supra),** would not

suffice, in the absence of material available for the Petitioner to confront the department against an action under Section 83 of the CGST Act.

8. Thus, the Petitioner having failed to even make out a *prima-facie* case against the provisional attachment, it is difficult for us to be persuaded to take a different view in the matter. In any event, it is brought to our notice by the learned Counsel for the Respondent that now a Show Cause Notice dated 29th February 2024, under the provisions of Sections 74(1) and 122 of the CGST Act, 2017 as also the Maharashtra GST Act, 2017 read with IGST Act, 2017 has been issued to the Petitioner. We have perused the said Show Cause Notice which according to the Respondent has abundant material which has been gathered by the department in the investigation in making a tax demand of Rs. 3.63 crores against the Petitioner, along with the recovery of other amounts as set out in paragraph 40 of the Show Cause Notice. We are also informed by the learned Counsel for the Revenue that the amount in the bank account of the Petitioner is only Rs.1,00,000/-, whereas the demand against the Petitioner is about Rs. 3.63 crores and further amounts, which aggregate to Rs.4.5 crores approximately.

9. In the light of the above discussion, we find no merit in this Petition. It is accordingly rejected, however, keeping open all contentions of the Petitioner to respond to the Show Cause Notice cum Demand Notice dated 29th February 2024.

10. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI, J.)