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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4947 OF 2024

Rajeev Jugalkishor Mundra

.. Petitioner

Versus

Commissioner of Goods and
Services Tax Maharashtra & Anr.

.. Respondents

Mr. Harsh Behany a/w Ms. Maithili Iyer a/w Ms. Atiksha Jain i/by HN
Legal and Adv. Maithili Iyer for the petitioner.

Ms. Jyoti Chavan, Addl. GP for respondent.

CORAM : M. S. Sonak &

Jitendra Jain, JJ.

DATE : 18 December 2024

P. C. (Per M.S.Sonak, J.) :-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The petitioner has pleaded that he was appointed as a nominee/non-executive director of Vistaar Logistic Pvt. Ltd. (“the company”) on 25 February 2016. By letter dated 18 March 2019, he resigned as a director due to personal reasons. On 20 March 2019, the board resolved to accept the petitioners’ resignation, which was communicated to the petitioner on the same day. The company also filed

form DIR-12 with the Ministry of Corporate Affairs regarding the acceptance of the petitioners' resignation.

4. By the impugned communication dated 22 February 2024 and 20 June 2024, respondent No.2 has attached/frozen the petitioners' Demat accounts referred to in prayer clause (b) of this petition on the ground that the company has defaulted in the payment of GST dues.

5. The petitioner, aggrieved by the attachment/freezing of his demat accounts even though he was no longer the director of the company and further, without even minimum compliance with principles of natural justice and fair play, has instituted this petition seeking the following reliefs :

(a). That the Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ in the nature of Certiorari or any other appropriate writ to call for the records and proceedings from the file of the Respondents which led to the unlawful attachment/freezing of the Petitioner's Demat accountss and after examining the legality, validity and propriety thereof be pleased to quash and set aside the State Tax Letter bearing Reference No. STO (C-008)/ND-13/CDSL/NSDL/Recovery/B-28 dated June 20, 2024 and State Tax Letter dated February 22, 2024 purportedly issued by Respondent No.

(b). That this Hon'ble court, in exercise of its powers under Article 226 of the Constitution of India, 1950, be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus or any other appropriate Writ thereby directing the respondents to lift the attachment of the Demat accountss of the petitioner bearing (i) accounts No. 1201090005044041; DP ID: 10900 held with Motilal Oswal Financial Services Limited; (ii) accounts No.1203320006536679; DP ID: 33200 held with Angel One

Limited; (iii) accounts No.1206950000027481; DP ID: 69500 held with Vijeta Broking India Private Limited and (iv) accounts No. IN300757-10619051; DP ID: IN300757 held with Integrated Enterprises (India) Private Limited;

6. Mr. Harsh Behany learned counsel for the petitioner submits that the impugned action of attachment/freezing of the petitioners' demat accounts was in gross violation of the principles of natural justice and fair play. He submits that no proceedings were ever initiated against the petitioner, who had resigned as a company director. He submitted that the impugned action was not backed by any of the statutory provisions of the Maharashtra Goods and Services Tax Act (MGST Act) and the rules made therein. He relied upon the decision of the co-ordinate bench in ***'Prasanna Karunakar Shetty Vs. State of Maharashtra'***¹, which was disposed of on 16 April 2024 in support of his contentions.

7. Ms Chavan defended the department's action by referring to Section 83 of the MGST Act. She pointed out that this attachment was only provisional, and the notice under Section 89 of the said Act is being issued to the petitioner. She submitted that the action was regarding the period during which the petitioner was a director. On these grounds, she submitted that no reliefs may be granted in this petition.

8. We have considered the rival contentions and examined the material on record.

¹ Writ Petition No. 3098 of 2024 dated 16/04/2024.

9. At this stage, we do not propose to go into the issue of the petitioners' resignation from the company because Ms. Chavan submits that on the records, the the liability is in respect of the period during which the petitioner was the director of the company. Still, we hold that the provisional attachment of the petitioners' Demat accounts by resorting to the provisions of Section 83 of the MGST Act was not justified. In any event, such action was not warranted without minimum compliance with principles of natural justice and fair play, given the peculiar circumstances of this case.

10. Section 83 of the MGST Act reads as follows:

Provisional attachment to protect revenue in certain cases :

83. [(1) 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 an 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.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

11. The above-quoted provisions refer to the initiation of proceedings under Chapters XII, XIV or XV. Nothing on record suggests that any proceedings have been initiated against the petitioner under these Chapters. The impugned action would not pass the muster of law laid

down by the co-ordinate bench in *'Prasanna Karunakar Shetty Vs. State of Maharashtra' (Supra)* .

12. At least prima facie, if the petitioner is held liable after the action in terms of Section 89 of the MGST Act, which will essentially involve compliance with principles of natural justice and fair play, only then could action for attachment/freezing of the petitioner's demat accounts have been initiated.

13. Accordingly, we requested Ms. Chavan to obtain instructions regarding the reliefs sought in this petition. On receiving instructions from Ms. Nita Kadam, State Tax Office C-008 Mulund-west-704/Nodal-13, who is present in the Court, Ms. Chavan states that the impugned communications dated 22 February 2024 and 20 June 2024 would be withdrawn, meaning thereby that the attachment/freezing of the petitioners' Demat accounts would no longer survive. On instructions, she also stated that notices in terms of Section 89 of the MGST Act would be issued to the petitioner, and the petitioner would be granted full opportunity before any action is taken based upon the same. She stated that the said officer would inform the depositories of this order within three working days of the order being uploaded.

14. Accordingly, we record Ms. Chavan's statement made on instructions. In terms of the statement, relief in terms of prayer clauses

(a) and (b) of the petition stands granted. This will, however, not preclude the respondents from proceeding in accordance with law, including issuing notices in terms of Section 89 of the MGST Act and complying with principles of natural justice if any precipitative action is proposed against the petitioner. All contentions of all parties are left open should any action be proposed to be taken in terms of Section 89 of the MGST Act.

15. The Rule is made absolute in the above terms of prayer clause (a) and (b) without any cost order. The interim application, if any, is disposed of.

16. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)