



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4934/2024

**Elitecon International Limited having its registered office at 152,
Shivani Apartment, Delhi**

Vs.

**Union of India, Through the Secretary, Ministry of Finance,
Department of Revenue and others**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Dr. Sujay Kantawala, Advocate with Mr. Anupam Dighe,
Ms.Chandani Tanna, Mr. A.M. Sudame, Advocates for Petitioner
Mr. N.S. Deshpande, DSGI for Respondent No.1 / Union of India
Mr. S.N. Bhattad, Advocate for Respondent Nos.2 and 3

**CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 5th SEPTEMBER, 2024

1. At the outset, the learned counsel for petitioner seeks to delete the respondent Nos.4 to 6 from the array of respondents. The same is permitted at the risk and consequences of the petitioner. The deletion be carried out forthwith.

2. The petition questions the orders dated 24.07.2024 (page Nos. 69, 70 and 72), whereby in exercise of powers under Section 83 of the Central Goods and Services Tax Act, 2017, orders of provisional attachment of the petitioner have been passed by the respondent No.2. Mr. Sujay

Kantawala, learned counsel for the petitioner submits, that the impugned orders are infirm inasmuch as it does not reflect the opinion of the Commissioner, that for the purpose of protecting interest of the Government revenue it is necessary to do so.

3. In view of the above contentions, we had asked Mr. Bhattad, learned counsel for the respondents, to point out the reasons for forming such an opinion, as the impugned orders does not reflect any reasons for recording such opinion. Mr. Bhattad, learned counsel for the respondents has today produced before us the copy of the original file and draws our attention to the note No.5, which according to him would be the document indicating reasons for the Commissioner forming such opinion. Though we are not legally entitled to appreciate the note, as the opinion has to be reflected from orders itself, however, in order to satisfy ourselves, we took a look at the note and we find that even that does not contain any reason for forming an opinion by the Commissioner that for the purpose of protecting the interest of the Government revenue, it is necessary to issue an order of provisional attachment of the properties of the petitioner.

4. Section 83(1) of the GST Act reads as under :

“Section 83. Provisional attachment to protect revenue in certain cases -

[(1) Where, after the initiation of any proceeding under Chapter XII, Chapter IIV, 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 (1-A) of section 122, in such manner as may be prescribed.”

5. The language of Section 83(1) of the Central Goods and Services Tax Act, 2017, in our considered opinion is mandatorily to be followed as it visits the petitioner with penal consequences. It was, therefore, necessary that the impugned order under Section 83(1) of the Central Goods and Services Tax Act, 2017, indicate the reasons which weighed with the Commissioner to form an opinion, that for the purpose of protecting the interest of the Government of revenue and order of provisional attachment was necessary. The mandate of

Section 83(1) of the said Act enjoins upon the Commissioner to pass an order in writing in that regard, the very purpose of which is to embody the reasons for forming such an opinion, which then can be tested in a challenge raised thereto. However, in absence of any reason for forming such an opinion, in our considered opinion, the impugned orders cannot be sustained. The same are accordingly hereby quashed and set aside and the matter is remitted back to the Commissioner to record reasons in writing for forming such an opinion in case he deems it fit and proper again to do so.

6. The petition is accordingly allowed in above terms. No costs.

(SMT. M.S.JAWALKAR,J.)

(AVINASH G. GHAROTE,J.)