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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2927/2024 & CM APPL. 12078/2024 (Stay)

M/S JAI SHRI BANKE BIHARI TRADERS .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.

Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.

Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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\+ W.P.(C) 2935/2024 & CM APPL. 12094/2024 (Stay)

M/S ANANYA METAL AND ALLOYS .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant &

Mr. Abhay Singh, Advs. for Resp./ UOI.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.
Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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+ W.P.(C) 2937/2024 & CM APPL. 12097/2024 (Stay)

M/S JAI SHRI SANWARIYA TRADERS .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.
Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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+ W.P.(C) 2938/2024 & CM APPL. 12098/2024 (Stay)

NIYATI STEEL PVT. LTD. .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.
Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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\+ W.P.(C) 2940/2024 & CM APPL. 12103/2024 (Stay)

M/S JAI SHRI BANKE BIHARI TRADERS .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr.

Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.
Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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\+ W.P.(C) 2941/2024 & CM APPL. 12108/2024 (Stay)

PARTHAVI METAL AND ALLOYS .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.
Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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\+ W.P.(C) 2942/2024 & CM APPL. 12113/2024 (Stay)

JAI SHRI KRISHNA LAZERTECH .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.

Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.

Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional Legal Manager for R-5/ HDFC Bank.

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\+ W.P.(C) 2944/2024 & CM APPL. 12125/2024 (Stay)

MANYATA ENTERPRISES .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Aditya Manubarwala, Ms. Hiral Gupta, Ms. Sukanya Singh, Mr. Devarshi Mohan & Ms. Akriti Manubarwala, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kant & Mr. Abhay Singh, Advs. for Resp./ UOI.

Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Kumar Abhishek, Advs., Mr. Abhinav Singh, Superintendent & Ms. Hansaa Meena, I.O. for R- 2 to 4.

Mr. Ashwini Chawla, Adv. with Mr. Ashwani Kumar, Regional

Legal Manager for R-5/ HDFC Bank.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **06.11.2024**

1. The writ petitioners had approached this Court challenging the validity of the provisional attachment orders dated 13 December 2023 issued by the respondents in purported exercise of powers conferred by Section 83 of the **Central Goods & Services Tax Act, 2017**[1].

2. It appears that prior to the present attachment order which stand impugned, HDFC Bank, a respondent herein, had on 04 August 2022 frozen what the petitioners described to be "cash credit facilities". Apart from the aforesaid, it had also frozen savings bank accounts standing in the name of Mr. Karan Kumar Agarwal, Mrs. Kiran Agarwal, Karan Kumar Agarwal HUF and Mrs. Sunita Devi.

3. It is the case of the petitioners that since the period of one year, which is statutorily prescribed in Section 83, came to lapse on 04 August 2023, the freezing of accounts as ordered by the respondents could not be continued.

4. The petitioners, consequently, appear to have approached the Commissioner of Central Goods and Services Tax for the de-freezing of the bank accounts. Since the respondents failed to accede to that request, the petitioners were constrained to approach this Court by way of W.P.(C) 15607/2023 [in W.P.(C) 2927/2024], W.P.(C) 16133/2023 [in W.P.(C) 2935/2024], W.P.(C) 965/2024 [in W.P.(C) 2937/2024], W.P.(C) 15620/2023 [in W.P.(C) 2940/2024], W.P.(C)

[1] CGST Act

938/2024 [in W.P.(C) 2941/2024], W.P.(C) 948/2024 [in W.P.(C) 2942/2024] and W.P.(C) 16131/2023 [in W.P.(C) 2944/2024]. It was during the pendency of those writ petitions that the impugned provisional attachment orders came to be passed.

5. The principal submission that appears to have been addressed in the writ petitions was of the power under Section 83 being exercised repeatedly and thus in a mala fide attempt to overcome the statutory restrictions which apply. It was in the aforesaid backdrop that learned counsel had invited our attention to the following pertinent observations as rendered by the Supreme Court in **Radha Krishan Industries vs. State of Himachal Pradesh & Ors.**[2]:

> "**75.** Moreover, an order of provisional attachment was issued by the Joint Commissioner which was withdrawn on 30-1-2019, after considering the representations made by the petitioner. On the very ground, without any material change in circumstances, another order of provisional attachment came to be issued by another Joint Commissioner. Therefore, it was the contention of the petitioner before the High Court that the subsequent order of provisional attachment is in substance and effect an order reviewing the earlier order withdrawing the order of provisional attachment which was not permissible and therefore the subsequent order of provisional attachment is without jurisdiction. The High Court has not considered this aspect. Both the earlier and the subsequent orders of provisional attachment are on the same grounds. Therefore, unless there was a change in the circumstances, it was not open for the Joint Commissioner to pass another order of provisional attachment, after the earlier order of provisional attachment was withdrawn after considering the representations made by the petitioner. This is an additional ground to set aside the subsequent order of provisional attachment."

6. In order to assess the validity of the submission which had been addressed, we had on the previous occasion also perused the record which had been produced for our consideration by Mr. Ojha, learned counsel who represents the respondents. Having gone through the said

[2] (2021) 6 SCC 771

record, as well as the disclosures which are made in the counter affidavit filed on behalf of respondent nos. 2 to 4, we find ourselves unconvinced that the invocation of the power conferred by Section 83 was either arbitrary or unjustified.

7. This since the record would reflect that the orders impugned in the instant writ petitions are clearly not based on the factual material which formed the basis of the original orders of attachment. This is, therefore, not a case where the respondents could be said to have tried to overcome the statutory prescriptions of Section 83 and continued the attachment of the bank accounts based on material which already existed. In fact as per the disclosures made in the counter affidavit, and which also finds support from the original record which was produced, the fresh orders of attachment are founded on further enquiries that were undertaken and the investigation which ensued. This is apparent from paragraphs 31 to 40 of the counter affidavit.

8. Faced with the above, on the last occasion, learned counsel for the petitioners had contended that the attachments would in any case not sustain since the accounts represented 'cash credit facilities' which had been extended to it. It was to examine the correctness of the aforesaid submission that we had called upon HDFC Bank to file an affidavit in these proceedings.

9. Pursuant to that direction, an affidavit has been filed on behalf of the said respondent and in which the details of the bank accounts are set forth in paragraph 3. From the disclosures made in that affidavit, we find that most of the accounts are current accounts and not 'cash credit facilities' as had been asserted. We thus find no merit in the submission which was advanced or the challenge which was addressed on that score.

10. We find ourselves unable to discern any legal fetter that could be said to be applicable to an attachment of a current account and which is distinct from a cash credit facility which is essentially in the nature of an overdraft extended by a bank or financial institution.

11. That only leaves us to deal with the argument of learned counsel for the petitioners that current accounts cannot be subjected to attachment and which contention was advanced on the basis of a purported understanding of the judgment rendered by the Punjab & Haryana High Court in **Bindal Smelting (P) Ltd. vs. Additional Director General, Directorate General of GST Intelligence**[3]. We note that the said High Court in *Bindal Smelting* had observed as follows:

> "**18.** Applying the above quoted provisions of CGST Act, 2017 and taking cue from afore-cited judgments of Gujarat High Court, which has noticed consistent judicial pronouncement and Bombay High Court, we find that in the present case attached account is Over Cash Credit account and Petitioner had debit balance of Rs. 6.42 Crore, thus question arises that whether continuation of attachment would protect interest of revenue or not. The Petitioner is running unit and more than 100 families are dependent upon Petitioner. Till date no proceedings under Section 74 of CGST Act are pending which would start as soon as show cause notice is issued. The Respondent has seized record of the Petitioner who has further supplied various documents as well put personal appearance through Directors and employees.
>
> **xxxx xxxx xxxx**
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> **20.** We are of the opinion that Respondent can attach an account only if there is some balance in the form of FDR or savings. The power of attachment of bank account cannot be exercised as per whims and caprices of the Authority. The Commissioner is bound to ensure that by attachment of property or bank account, interest of revenue is going to be protected. In case a property is mortgaged with bank and value of property is less than outstanding dues of bank, provisional attachment is meaningless and action remains only on paper. In the absence of record showing that interest of

[3] (2019 SCC OnLine P&H 6015)

revenue is protected by attaching property or bank account, action deserves to be declared as taken without application of mind and formation of opinion on the basis of cogent material. Thus, attachment of current account having debit balance does not protect interest of revenue, instead merely ruins the business of a dealer. Such an action of attachment of "over cash credit" account for the sake of recovery of confirmed demand, may in some peculiar case, may be still permitted but not at the stage of pending investigation."

12. As is manifest from a reading of the aforesaid passages of the decision in *Bindal Smelting*, the above quoted observations stem from the fact that the current account in question, and which formed the subject matter of consideration of that High Court, evidenced a debit balance. It was in that light that the High Court had observed that the attachment of current accounts having a debit balance would surely not protect the interest of the Revenue.

13. However, that is not the position which obtains here since, and according to the respondents, the balance standing in the accounts in question would be approximately INR 80 lakhs. The impugned attachments, in the facts of the present case, therefore, cannot be countenanced to be an exercise in futility and which would have been the position if those accounts had exhibited a debit balance.

14. Consequently, and for the aforesaid reasons, we find no merit in the writ petitions. The same shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 6, 2024/kk