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

% ***Date of Decision: 21.08.2024***

\+ W.P.(C) 11501/2024 CM APPL. 47728/2024 CM APPL. 47729/2024

M/S MJ BIZCRAFTS LLP (THROUGH ITS PARTNER SH. RAJENDER KUMAR) .....Petitioner

Through: Mr. R.P. Singh, Mr. Ayush and Mr. Shivam Sharma, Advs.

versus

CENTRAL GOODS AND SERVICES TAX, DELHI SOUTH COMMISSIONERATE (THROUGH ITS COMMISSIONER) & ORS. .....Respondents

Through: Mr. Kuber Dewan, Ms. Neeharika Aggarwal and Mr. Kaustubh Srivastava, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

<u>VIBHU BAKHRU, J. (Oral)</u>

1. The petitioner has filed the present petition impugning the order dated 25.06.2024 (hereafter *the impugned order*) passed by respondent no.1, whereby the order dated 10.05.2024 passed under Section 83(1) of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*)/Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*), provisionally attaching the petitioner’s four bank accounts maintained with the ICICI Bank, was upheld.

2. The petitioner had filed an objection on 20.05.2024 to the provisional attachment order dated 10.05.2024 under Rule 159 (5) of the Central Goods and Services Tax Rules, 2017 (hereafter *the CGST Rules*), which was rejected by the impugned order.

3. The impugned order indicates that the petitioner was operating a night club under the name 'PRIVEE' at Shangri-La, Eros Hotel, New Delhi. And, specific intelligence was received and developed which indicated that the petitioner was evading taxes. It is alleged that the petitioner was not disclosing the actual sale of liquor in its GST returns.

4. On 07.03.2024, the Anti-Evasion branch of the respondents conducted a search at the petitioner's principal place of business pursuant to an authorization for search issued under Section 67(2) of the CGST Act. It is alleged that during the search, it was found that the petitioner was using a POS machine for recording its daily sales. It is alleged that the data retrieved from the POS machine indicate that the petitioner had suppressed the sale value of liquor. The statement of one of the constituent partners of the petitioner firm was also recorded under Section 70 of the CGST Act. He is alleged to have stated that he is a dummy partner and the actual beneficiaries of the firm were two other persons. He is also alleged to have accepted that the total sale of liquor as per the data available in the POS machine amounted to ₹66,69,81,943/- and VAT amounting to ₹16,10,40,710/- was charged during the period June, 2019 to March, 2024 (till 07.03.2024). It is alleged that the said statement is correct and substantiates the allegation that the sale value of liquor, as disclosed, was substantially less than the actual value.

5. According to the respondents (mentioned in the impugned order), the primary GST liability as computed is approximately ₹4.7 Crores.

6. In the aforesaid circumstances, the competent officer came to the conclusion that it is necessary to secure the government revenue, pending conclusion of the proceedings. There was only ₹26,96,726/- in the

petitioner's bank account and therefore, the same was provisionally attached, in exercise of powers under Section 83(1) of the CGST Act/DGST Act.

7. Learned counsel appearing for the petitioner has assailed the impugned order, essentially, on two grounds: First, he submits that the impugned order passed under Section 83(1) of the CGST Act/DGST Act indicates that the proceedings under Section 67 of the CGST Act/DGST Act had commenced and had formed the basis of the said order. He contends that the said proceedings have since culminated in a Show Cause Notice dated 31.07.2024 (hereafter *the SCN*) under Section 74 of the CGST Act /DGST Act for the relevant period. He submitted that the powers under Section 83(1) of the CGST Act/DGST Act could be exercised only once the proceedings have commenced. According to him, this would imply that once the proceedings mentioned in the order under Section 83(1) of the CGST Act/DGST Act are concluded, the order of provisional attachment was required to be lifted.

8. Second, he submits that the issue involved is, essentially, a legal issue as to whether the petitioner is liable to pay any GST on sale of liquor and therefore there is no occasion for the Commissioner to exercise his powers under Section 83(1) of the CGST Act/DGST Act.

9. At this stage, it is necessary to refer to Section 83(1) of the CGST Act/DGST Act. The same is reproduced below:

> "(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 order in writing, attach provisionally, any property, including bank

account, belonging to the taxable person or any person specified in subsection (1A) of section 122, in such manner as may be prescribed. .....”

10. The opening sentence of the Section 83(1) of the CGST Act/DGST Act indicates that an order of provisional attachment under Section 83(1) of the CGST Act/the DGST Act can be passed “after the initiation of any proceedings under Chapter XII, Chapter XIV or Chapter XV” of the CGST Act/the DGST Act. In the present case, this pre-condition is clearly satisfied as proceedings under Section 67 of the CGST Act/the DGST Act had been initiated prior to the issuance of the order dated 10.05.2024 provisionally attaching the petitioner’s bank account. The contention that since the impugned order only mentions the proceedings under Section 67 of the CGST Act/the DGST Act, the life of the impugned order was confined till the conclusion of the proceedings, is unpersuasive. We find no basis for the said contention.

11. The only requirement under Section 83(1) of the CGST Act/the DGST Act is that an order of provisional attachment should be issued after the proceedings under Chapter XII, Chapter XIV or Chapter XV of the CGST Act/the SGST Act/the IGST Act, have commenced. As stated above, this condition is fully satisfied. In the present case, the proceedings against the petitioner are continuing and the Show Cause Notice dated 31.07.2024 under Section 74 of the CGST Act/the DGST Act has been issued.

12. The petitioner’s contention that the impugned order is liable to be set aside as the controversy involved is centred around the question of law is also unpersuasive. The object of provisional attachment under Section 83(1) of the CGST Act/the DGST Act – as is apparent from the plain language of Section 83(1) of the CGST Act/the DGST Act – is to protect Government

revenue. It is not relevant whether the controversy involves a question of law or a question of fact. The principal condition for the exercise of power under Section 83(1) of the CGST Act/the DGST Act is formation of opinion on the basis of material that is necessary to pass an order to protect Government revenue.

13. In the present case, the respondents have conducted a brief exercise of estimating the value of GST, which according to the Commissioner has not been paid by the petitioner. It is also apparent that the impugned order has been passed to protect the Government revenue.

14. In view of the above, we find no merit in the present petition.

15. The same is dismissed.

16. This order shall not preclude the petitioner from approaching the respondent authorities for offering other unencumbered assets for provisional attachment, in lieu of the bank accounts, for protection of Government revenue. Dismissal of the present petition will not preclude the concerned officer from considering such alternative.

17. All rights and contentions of the parties on the merits of the controversy as to whether any amount is due to the petitioner, are reserved.

18. All pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 21, 2024/cl