M/L - 5
03.03.2025
Court. No. 5
S.Kundu

WPA 30968 of 2024

J L Enterprises
Vs.
Assistant Commissioner, State Tax, Ballygunge Charge.

Mr. Vinay Shraff,
Mr. Dev Agarwal,
Mr. Harsh Gudodia,
Ms. Doyel Dey

...for the petitioner.

Mr. A. Ray,
Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. D. Sahu,
Mr. S. Sanyal

...for the State.

1. Questioning the provisional order of attachment issued under Section 83 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), dated 13th April, 2023 passed by the Assistant Commissioner of State Tax, the instant writ petition has been filed.
2. Mr. Shraff, learned advocate appearing in support of the writ petition by drawing attention of this Court to the provisions contained in Section 83 of the said Act would submit that a power has been conferred on the authorities after initiation of proceedings under Chapter XII, XIV and XV of the said Act, to issue an order in writing thereby attaching provisionally any property including the bank account belonging to the taxable person provided the same in the opinion of the

Commissioner is necessary for the purpose of protecting the interest of the Government Revenue.

3. By drawing attention of this Court to the provisions contained in Sub-section (2) of Section 83 of the said Act, he would submit that ordinarily an attachment shall seize to have effect after expiry of the period of one year from the date of the order made under Section (1) of Section 83 of the said Act.

4. According to him, since the order has been passed on 13th April, 2023, such order in usual course comes to an end on the expiry of the one year therefrom. In any event, according to Mr. Shraff, the aforesaid provision can no longer be made applicable since the proceeding as referred to in the order dated 13th April, 2023 purportedly initiated under Section 74 of the said Act has since come to an end by passing of a final order and demand has been raised in Form DRC 07 dated 6th June, 2023, the order of attachment could, in any event, no longer be continued. He still further submits that the petitioner has preferred an appeal from the final order under Section 107 of the said Act by making payment of the pre-deposit as is required under Section 107 (6) of the said Act. According to him, once, the pre-deposit is made and the appeal is found to be in order, in terms of Section 107(7) of the said Act, the demand in Form DRC 07 cannot be enforced further. On such ground as well, the order of attachment issued under Section

83(1) of the said Act dated 13th April, 2023 cannot be continued further.

5. *Per contra*, Mr. Chakraborty, learned advocate appearing on behalf of the respondent would submit that the appeal has since been dismissed and as such the defence of Section 107(7) of the said Act, is no longer available to the petitioner.

6. Having heard the learned advocates appearing for the respective parties, I find that in terms of the scheme of Section 83 of the said Act, a provisional attachment ordinarily seizes to have effect after expiry of one year from the date of the order made under Sub-section (1) thereof. Having regard thereto, and without going into the question as to whether the respondents can seek to implement their demand consequent upon dismissal of the appeal, I am of the view that the order of attachment passed under Section 83 (1) of the said Act dated 13th April, 2023 has in effect expired by efflux of time and cannot be enforced against the petitioner at this stage any further. The same shall, however, not stand in the way of the respondents from proceeding against the petitioner on the basis of any independent cause of action or for enforcing the demand in accordance with law.

7. With the above observations and directions, the writ petition stands disposed of.

8. There shall be no order as to costs.

9. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)