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

\+ **W.P.(C) 11000/2024 & CM APPL. 29085/2025**

OM PRAKASH GUPTA .....Petitioner

Through: Mr. Sumit K. Batra, Mr. Manish Khurana, Ms. Priyanka Jindal, Advs.

versus

PR. ADDITIONAL DIRECTOR GENERAL DGGI & ORS. .....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Nancy Jain, Adv.
Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Subham Kumar and Mr. Deep Raj, Advs for R-1 to 3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 14.05.2025

1. This hearing has been done through hybrid mode.

CM APPL. 29085/2025 (seeking directions) in W.P.(C)-11000/2024

2. The present petition had been filed under Article 226 of the Constitution of India *inter alia* challenging the following:

(i) The letter of attachment of bank account (hereinafter '*attachment letter*) under Section 83 of the Central Goods and Services Act, 2017 (hereinafter *'CGST Act'*) dated 28th May, 2024.

(ii) The Show Cause Notice dated 20th June, 2024 (hereinafter '*SCN*') .

3. The challenge to SCN is levelled *inter alia* on the ground that prior

intimation under Form DRC-01A was not provided within the stipulated time period prescribed in terms of CGST Act and the same was issued only one day prior to the issuance of the SCN.

4. Insofar as the challenge to the attachment letter is concerned, the same is challenged on the ground that the letter has been issued -

(i) at a time when no proceeding was initiated against the Petitioner; and

(ii) in absence of an opinion of the Commissioner as to the necessity to attach the bank account for protecting the government revenue.

The Petitioner places reliance on Section 83 of the CGST Act and Clause 3.1.3 of ***Circular No. CBEC-20/16/05/2021-GST/359*** dated 23rd February, 2021 issued by Central board of Indirect Taxes & Customs (hereinafter *'CBIC'*).

5. The writ petition was first listed on 8th August, 2024 when detailed submissions were heard on the aspect of Section 83 of the CGST Act. The Coordinate Bench had considered the decision in ***M/s Radha Krishan Industries v. State of Himachal Pradesh & Ors.,*** and held as under:

> *"7.We find no merit in the aforesaid contentions. The fact that the summons under Section 70 of the CGST Act was posted immediately after the date of the impugned order does not mean that the proceedings were not commenced prior to transmission of the summons. The summons is dated 20.05.2024 and thus was issued prior to the impugned order.*
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> *8. It is relevant to refer to Section 83 of the CGST Act. The same is set out below:*
>
> > *"**83. Provisional attachment to protect revenue in certain cases.-***
> >
> > *(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 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).”

9. A plain reading of Section 83(1) of the CGST Act indicates that an order of provisional attachment can be passed where proceedings have commenced under Chapter XII, Chapter XIV or Chapter XV of the CGST Act. Chapter XIV of the CGST Act includes Section 67 to Section 72 of the CGST Act. It is apparent that the summons has been issued under Section 70 of the CGST Act – which falls under Chapter XIV of the CGST Act prior to passing the impugned order.

10. There is no cavil with the proposition that before making an order under Section 83(1) of the CGST Act, the Commissioner must necessarily form an opinion that such an order is necessary to protect the interest of the Government revenue. Further, the said opinion must be based on tangible material.

11. The Supreme Court in **Radha Krishan Industries v. State of Himachal Pradesh: (2021) 6 SCC 771** had in the context of provisions of Section 83 of the CGST Act concluded as under:

“76. For the above reasons, we hold and conclude that:

76.1. The Joint Commissioner while ordering a provisional attachment under section 83 *was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107(1).*

76.2. The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable.

76.3. The High Court has erred in dismissing the writ petition on the ground that it was not maintainable.

*76.4. **The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.***

*76.5. **The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.***

*76.6. **The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.***

*76.7. The **formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue.***

76.8. In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal.

76.9. Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:

> *(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and*
>
> *(b)An opportunity of being heard.*

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard.

76.10. The Commissioner is duty-bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached.

76.11. A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end.

76.12. The appellant having filed an appeal *against the order under section 74(9), the provisions of sub - sections (6) and (7) of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal."*

12. ***There is no requirement that the material on the basis of which the Commissioner has formed an opinion must be included in an order passed under Section 83(1) of the CGST Act. Thus, the contention that the impugned order is vitiated as it does not include all such material is unmerited.****"*

6. The Court also considered the fact that there were certain suspicious and fraudulent payments which were made which led to the freezing of the bank account and finally limited notice was issued with the following observations:

"14. ***In the present case, the impugned order records that the investigation has revealed that the petitioner had made suspicious and fraudulent payments to certain bank accounts and wrongfully availed and passed Input Tax Credit (hereafter ITC) to the extent of ₹87,54,083/-. The Show Cause Notice dated 20.06.2024 sets out in detail the allegations regarding wrongful availment of the ITC. It is alleged that the petitioner had availed of the ITC from two suppliers namely M/s Brighton Sales Inc. & M/s Caretech System. According to the department, the said suppliers were found to be non-existent. The petitioner allegedly availed of the ITC amount to ₹87,54,083/- during the relevant period from the said suppliers. The petitioner thus has the knowledge of the allegations that he was required to meet.***

15. __In view of the above, we find no ground to interfere with the impugned order attaching the petitioner's bank account.__ The petitioner is at liberty to seek further reasons from the Commissioner if the petitioner so desires. The petitioner is also at liberty to file objections under Rule 159(5) of the Central Goods and Services Tax Rules, 2017. Needless to state that if the same is filed, the concerned Commissioner shall decide the same in accordance with law.

16. __The petitioner has also challenged the issuance of the Show Cause Notice dated 20.06.2024 under Section 74 of the CGST Act on the ground that he had received the intimation dated 05.06.2024 only one day prior to the Show Cause Notice and had replied to the same. However, the same was not considered.__

17. __Issue notice limited to the said extent."__

7. This order was assailed by the Petitioner before the Supreme Court in ***S.L.P 28903/2024***. *Vide* order dated 3rd March, 2025, the same has been disposed of in the following terms:

"1. The subject matter of challenge before the High Court was an order of provisional attachment of bank account of the petitioner passed by the Commissioner under Section 83 of the Central Goods and Services Tax Act, 2017 (for short "the CGST Act"). The challenge before the High Court failed. In such circumstances, the petitioner is here before this Court with the present petition.

2. Today, when the matter was taken up for hearing, the learned counsel appearing for the petitioner pointed out that during the interregnum period a final order under Section 74 of the CGST Act has been passed and the petitioner is in the process of challenging the said final order in accordance with law. In such circumstances, *we need not now adjudicate this special leave petition on merits. The final order passed under Section 74 of the CGST Act, if ultimately challenged shall be looked into on its own merits in accordance with law without being influenced in any manner by any of the observations made by the High Court in its impugned order.*

*3. This Court in M/s Radha Krishan Industries versus State of Himachal Pradesh & Ors., (Civil Appeal No 1155 of 2021 arising out of SLP(C) No 1688 of 2021), has categorically said that **once the final order is passed under Section 74 of the CGST Act, the provisional attachment comes to an end**.*

4. The special leave petition stands disposed of.

5. Pending application(s), if any, stand disposed of."

8. As can be noticed from the order passed by the Supreme Court, during the pendency of this writ, the proceedings in the impugned SCN has continued, and an order under Section 74 of the CGST Act has been passed on 20th June, 2024. The Petitioner had already availed of its appellate remedy under Section 107 of the CGST Act in respect of the said order. The only issue that currently remains is in respect of the freezing of the bank account. In the opinion of this Court, after the order passed by the Supreme Court and the culmination of the proceedings in respect of the SCN, which was impugned, the order freezing the bank account would also automatically get lifted. This is also been observed by the Supreme Court itself in the order extracted above.

9. Since the Petitioner has already now availed of the appellate remedy assailing the final order passed in the SCN proceeding, the order dated 28th May, 2024, freezing the bank account of the Petitioner shall stand lifted.

10. Let a communication to this effect be given by the Department to the bank within a period of one week. A copy of the said communication shall

be marked to ld. Counsel for the Petitioner.

11. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

12. Next date of hearing in the matter is cancelled.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MAY 14, 2025
dj/Ar.