Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA/1940/2025

M/S. AMIT METALIKS LIMITED

VS

THE COMMISSIONER, CENTRAL GST &
CENTRAL EXCISE, PATNA - II, COMM. AND ORS.

WITH

WPA/3057/2025

ANKUR DEALCOM PRIVATE LIMITED

VS

COMMISSIONER CENTRAL GST AND CX, PATNA - II AND ORS.

For the petitioner In WPA/1940/2025	:	Mr. Saurabh Bagaria Mr. Indranil Banerjee Mr. Subrata Mukherjee Ms. Samrita Das
For the petitioner In WPA/3057/2025	:	Mr. Akshat Agarwal (VC)
For the respondent CGST/ CX Patna	:	Mr. Shib Shankar Banerjee Mr. Bhaskar Prasad Banerjee Mr. Abhradip Maity

For the UOI : Mr. Rajen Dutta
Mr. Rajesh Kumar Shah

For the State : Mr. Tanay Chakraborty
Ms. Saptak Sanyal

Heard on : 14.05.2025,
16.05.2025, 02.08.2025, 08.08.2025, 04.09.2025 & 06.02.2026.

Judgment on : 06.02.2026.

RAJA BASU CHOWDHURY, J (Oral):

1. Heard in part.

In Re: WPA/1940/2025

2. Challenging an order of provisional attachment of property dated 3rd January, 2025, issued under Section 83 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "said Act") by the Commissioner, CGST & Central Excise Patna-II, thereby attaching the bank accounts of the petitioner situated within the jurisdiction of this Court, the instant writ petition has been filed. Initially, the petitioner had also sought for a declaration that the proceedings initiated against the petitioner under Section 83 of the said Act including the order dated 3rd January, 2025, issued in Form GST DRC – 22, is void as according to the

petitioner, the Commissioner, Central GST and Central Excise, Patna-II did not have the jurisdiction and/or competence to pass the above order.

3. Although, this Court has heard the learned Advocates appearing for the respective parties on merits of the case, however, in the *interregnum* since, a period of one year has already elapsed from the date of passing of the provisional order of attachment, the learned advocate for the petitioner contends that, it may not be relevant any longer to consider the other aspects as by passage of time and having regard to the provisions contained in Section 83(2) of the said Act, a provisional attachment shall cease to have effect after expiry of the period of one year from the date of the order passed under sub-section (1) of Section 83 of the said Act.

4. Mr. Bagaria, learned Advocate representing the petitioner, submits that though immediately upon expiry of the period of one year, the order of provisional attachment has lost its force and ceases to have an effect in terms of the statutory mandate and though, the petitioner had requested the Commissioner, CGST & Central Excise

Patna-II as also its Banker *vide* letters dated 21st January, 2026 and 27th January, 2026 respectively, to defreeze the petitioner's Bank account maintained with the State Bank of India, Commercial Branch, Kolkata, the petitioner's Banker has chosen not to act on the basis of the aforesaid requisition. He submits that there is also no response from the Office of the Commissioner, CGST & Central Excise Patna-II. Copies of the aforesaid communications dated 21st January, 2026 and 27th January, 2026, as placed before this Court, are taken on record. By placing before this Court a further communication dated 29th January, 2026, he also submits that although, a further request was made to the petitioner's Banker being State Bank of India, Overseas Branch, Kolkata, to defreeze the petitioner's Bank account and to permit the petitioner to continue the banking operations, the same has also not been done. He submits that the issue as to whether provisional attachment order ceases to have effect having regard to the provisions contained in sub-section (2) of Section 83 of the said Act is no longer *res integra*. The Hon'ble Supreme Court, in the judgment delivered in the case of ***Kesari Nandan Mobile v. Office of Assistant Commissioner of State Tax (2), Enforcement Division –5*** reported in **2025 INSC 983**, in no uncertain terms has clarified that since the statute does not recognize an extension, no extension of such provision is permissible. In the changed circumstances as aforesaid, he submits that the order of provisional attachment dated 3rd January, 2025, issued by the Commissioner, CGST & Central Excise Patna-II can no longer have the effect of provisionally attaching the petitioner's property including its Bank accounts, and a declaration to such effect should be given so that the petitioner can use and utilize its property without any fetter.

5. Mr. Banerjee, learned Advocate representing the CGST authorities, submits that since the petitioner at this stage is no longer interested to seek a decision on the issue of competence of the Commissioner, CGST & Central Excise Patna-II, he does not want to advance any further arguments save that the effect of provisions of Section 83(2) of the said Act would follow. In any event, he

submits that the present petition cannot be converted by the petitioner to a petition seeking for mandatory direction on the Bank to permit operation of the Bank accounts.

6. Having heard the learned Advocates appearing for the respective parties and having considered the materials on record, I find that undisputedly, an order dated 3rd January, 2025, in Form GST DRC – 22 had been issued on the petitioner attaching the petitioner's property including its Bank accounts under Section 83(1) of the said Act. From the tenor of the order it is apparent that the provisions of Section 83(1) of the said Act had been invoked. The order dated 3rd January, 2025 had since been digitally signed by the Commissioner on 6th January, 2025 at about 18:16:28 hours. Having regard to the provisions contained in Section 83(2) of the said Act, it is apparent and clear that the above provisional attachment shall cease to have effect after expiry of the period of one year from the date of the order passed under sub-section (1) of Section 83 of the said Act. It is an admitted position that the above period has already expired. In this context,

it would be relevant to refer to Section 83 of the said Act and the paragraphs 14, 39, 40 and 41 of the judgment delivered in the case of ***Kesari Nandan Mobile*** (supra). The relevant statutory provision and the relevant paragraphs are extracted hereinbelow:-

> ***"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.]*
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> *(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).***"**

> ***"****xxx xxx xxx*
>
> ***14.*** *The question of law arising for decision in this appeal is: whether the CGST Act or any other law in force permits issuance of a second provisional attachment order under sub-section (1) of Section 83 of the CGST Act after the initial provisional attachment order issued thereunder ceases, by reason of efflux of a year from the date of its issuance, in terms of sub-section (2) thereof?*
>
> *xxx xxx xxx*
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> ***39.*** *The appellant's argument that the Parliament, being cognizant of other taxing statutes, deliberately chose not to incorporate an extension provision in the section, also carries considerable merit. The procedure of provisional attachment is not alien to tax jurisprudence. Such*

> *preemptive measure can be found in several statutes, including the Customs Act and the Excise Act, and the Income Tax Act, 1961 as well. Ergo, when the statute does provide for an extension, the authority thereunder is free to do so, subject to such restrictions as may be imposed. Conversely, when a statute does not provide for an extension, renewal, re-issuance, revival — whatever be the nomenclature — the executive cannot overreach the statute to do so.*
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> ***40.** Lastly, insofar as the issue of delegation and assumption of jurisdiction as alleged by the appellant is concerned, we have not considered the contention in view of the impugned provisional attachment orders being liable to be set aside on the point of law discussed above.*
>
> ***41.** For the foregoing reasons, the question in paragraph 14 is answered in the negative. We hold that the respondent could not have issued the impugned provisional attachment orders dated 13th November, 2024 and 18th December, 2024 upon the previous ones having ceased to have any effect by operation of law after a year of its issuance. The bank accounts attached by the respondent shall stand de-freezed and be made operable forthwith upon production of a copy of this judgment before the banks where the appellant maintains its accounts.*”

7. As would appear from the above, that not only the provision of the said Act clearly provides that the order under Section 83(1) of the said Act in terms of Section 83(2) ceases to have effect after expiry of the period of one year from the date of the order, the Hon'ble Supreme Court has also while interpreting the above section in no uncertain terms held that by efflux of time of one year in terms of the provisions of Section 83(2) of the said Act the

order of provisional attachment ceases to have effect. Accordingly, in my view, the order of attachment dated 3rd January, 2025 which is clearly beyond the period of one year, cannot be continued any further.

8. Since, by efflux of time and having regard to the provisions contained in Section 83(2) of the said Act, the provisional attachment order has ceased, neither can the Commissioner, CGST and Central Excise Patna-II, nor can the petitioner's Banker continue with the freezing of the petitioner's property and/or the bank accounts on the basis of the above order of provisional attachment.

9. In the light of the above, the writ petition is partly allowed to the extent noted above without going into the issue as to whether the Commissioner, CGST & Central Excise Patna-II has the jurisdiction and/or competence to pass the order at the first instance.

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10. The present writ petition has also been filed, *inter alia*, challenging the provisional order of attachment of property under Section 83 of the said Act dated 3rd

January, 2025, issued by the Commissioner, CGST & Central Excise, Patna-II.

11. Having heard the learned Advocates appearing for the respective parties and having regard to the judgment delivered today in the case of ***M/S. AMIT METALIKS LIMITED v. THE COMMISSIONER, CENTRAL GST & CENTRAL EXCISE, PATNA - II, COMMISSIONERATE & ORS. (WPA/1940/2025)*** and the period of one year having already expired from the date of the order under Section 83(1) of the said Act, nothing survives in the instant writ petition for fresh consideration.

12. The writ petition is partly allowed by observing that not only the provision of the said Act clearly provide that the order under Section 83(1) of the said Act in terms of Section 83(2) ceases to have effect after expiry of the period of one year from the date of the order, the Hon'ble Supreme Court in the case of ***Kesari Nandan Mobile*** (supra), has also while interpreting the above section in no uncertain terms held that by efflux of time of one year in terms of the provisions of Section 83(2) of the said Act the order of provisional attachment ceases to have effect.

Accordingly, in my view, the order of attachment dated 3rd January, 2025 which is clearly beyond the period of one year, cannot be continued any further.

13. Since, by efflux of time and having regard to the provisions contained in Section 83(2) of the said Act, the provisional attachment order has ceased, neither can the Commissioner, CGST and Central Excise Patna-II, nor can the petitioner's Banker continue with the freezing of the petitioner's property and/or the bank accounts on the basis of the above order of provisional attachment.

14. Urgent Photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(RAJA BASU CHOWDHURY, J.)

**Tanmoy
AR (Court)**