IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10539 OF 2026

S.K. Enterprises … Petitioner

Versus

The Union of India And Ors. … Respondents

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Mr. Manohar Samal a/w Mr. Aishwary Jain, Mr. Pramod Sanap, Mr. Shrinu Patro and Ms. Prachitara Patra for the Petitioner.

Mr. M.P. Sharma a/w Ms. Kavita Shukla for the Respondents.

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CORAM: M.S. KARNIK &
SANDESH D. PATIL, JJ.

DATED : 1st OCTOBER 2026

ORAL ORDER (Per M.S. KARNIK, J.)

1. By this Petition, the Petitioner impugns the Povisional Bank Attachment Order dated 5th May, 2026 issued in FORM GST DRC-22 by the Respondent No.2 under Section 83 of the CGST Act, 2017 read with Rule 159(1) of the CGST Rules, 2017, whereby the TJSB Sahakari Bank account and every other accounts linked to the Petitioner's PAN has been provisionally attached.

2. The impugned Order is the communication addressed to the

Petitioner's banker. We have perused the impugned Order. In the impugned Order, Section 83 of the CGST Act, 2017 is referred. The justification offered is *"In order to protect the interests of the Revenue and in exercise of the powers conferred under Section 83 of the CGST Act, 2017"*.

3. The Hon'ble Supreme Court in ***Radha Krishan Industries Vs. State of Himachal Pradesh and Ors. [(2021) 6 SCC 771]***, has held that the power under Section 83 is draconian and that its valid exercise requires: (i) formation of an opinion by the Commissioner; (ii) formation of such opinion before ordering a provisional attachment; (iii) the opinion being that it is necessary to do so to protect the interest of the government revenue; (iv) an order in writing; and (v) the observance of the Rules by the Commissioner. Validity depends upon a strict and punctilious observance of these preconditions by the Commissioner. Section 83 does not authorise pre-emptive strikes on the property of the assessee, merely because property is available for being attached. The opinion must rest on tangible material having a live link with the necessity to attach, and the attachment must be proportionate to its purpose.

4. The Hon'ble Supreme Court in **Radha Krishnan Industries Vs. State of Himachal Pradesh** (*Supra*) further held as under :-

> *"**76.5** 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."*

5. In the present case, a bare reading of the impugned Order indicates that except for observing that the interests of the Revenue needs to be protected, there is no other consideration for invoking the powers of attachment under Section 83. None of the pre-requisites spelt out by their Lordships in ***Radha Krishan Industries Vs. State of Himachal Pradesh (Supra)*** have been followed by the Commissioner.

6. The learned Counsel for the Respondents in fact agrees that the ITCs, which are availed by the Petitioner were reversed. It is however submitted that the investigation is under way and after the investigation, the adjudicating proceeding will take place. It is

submitted that the interests of the Revenue needs to be protected.

7. Our attention is invited to the Affidavit-in-Reply filed on behalf of the Respondent Nos.1, 2 and 3. It is submitted that the affidavit-in-reply justifies the need for provisionally attaching the bank account of the Petitioner. Our attention is also invited to the statement made by the Petitioner during the course of the investigation. It is pointed out that not only the Petitioner has admitted that the ITC which is availed of has been reversed, but it also clearly indicates that the Petitioner was guilty of availing the ITC fraudulently. It is further submitted that the Petitioner is not co-operating with the investigation and that it is not attending the hearing when called upon to do so.

8. We have heard the learned Counsel for the Petitioner. We have also heard the learned Counsel for the Respondents.

9. In our opinion, the impugned Order cannot be justified, based upon the justification in the Affidavit-in-Reply. The Order must speak for itself. The Hon'ble Supreme Court in the matter of ***Mohinder Singh Gill Vs. Chief Election Commissioner (1978) 1 S.C.C. 405*** has

held as under :-

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out..."*

10. We find that the statement of the Petitioner has been recorded. ITC availed of has been reversed. The learned Counsel for the Petitioner submits, on instructions, that the Petitioner is co-operating with the investigation and would continue to co-operate with the investigation. On instructions, the learned Counsel for the Petitioner undertakes to appear and co-operate with the investigation as and when called for.

11. The impugned Order completely falls short of a valid exercise of power under Section 83 as held by the Hon'ble Supreme Court in ***Radha Krishan Industries Vs. State of Himachal Pradesh (supra).***

12. We have no hesitation in quashing and setting aside the

impugned Order dated 5th May, 2026. It is obviously open for the Respondents to pass the appropriate Orders in accordance with law. The Petition is, therefore, allowed in terms of prayer clause (a).

13. Writ Petition No.10539 of 2026 is disposed of accordingly.

(SANDESH D. PATIL, J.) **(M.S. KARNIK, J.)**