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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3145 OF 2019

Kaish Impex Private Limited
(Through its Director – Deepak Kumar
Goyal), 201, 2nd floor, Makers Chamber-5,
Nariman Point, Mumbai, Maharashtra
400 021 .. Petitioner

Versus

1. The Union of India, through the
Secretary, Department of Legal Affairs,
Ministry of Law & Justice, Branch
Secretariat, Aaykar Bhavan, Marine
Lines, Mumbai.

2. The Principal Chief Commissioner
CGST & Central Excise, 1 5, New
Central Excise Bldg., M.K.Road,
Churchgate, Mumbai.

3. Assistant Commissioner of CGST
Range (IV), 1 0, Ganges Ink, Building,
L.B.S.Marg, Vikhroli (West), Mumbai-
400 083.

4. Additional Director General,
Directorate General of GST
Intelligence, Bhopal Zonal Unit,
4th Floor, Chinarr Incube Business Centre,
Hoshangabad Road, Bhopal .. Respondents

Ms.Anjali Jha Manish a/w Mr.Priyadarshi Manish a/w Mr.Sagar Kasar, for the Petitioner.

Mr.Pradeep S.Jetly a/w Mr.J.B.Mishra, for the Respondents.

CORAM : NITIN JAMDAR &
M.S.KARNIK , JJ.

Date : 17 January 2020.

Oral Judgment : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. The Petitioner has challenged the action of the authorities under the Central Goods and Service Tax, Mumbai of attaching the Petitioner's bank account in State Bank of India.

3. The Petitioner-Kaish Impex Private Limited is a Company incorporated under the Companies Act, 1956. The Petitioner Company is engaged in the export of perfumes and compound fragrance oil. The Petitioner is registered under the Goods and Service Tax Act, 2017 (the 'Act'). The Petitioner, in pursuant of its activity of export, had carried out various transactions with different entities.

4. The Respondent-Authorities under the Act initiated an

inquiry against an export firm in Delhi - M/s.Maps Global. The Respondent-authorities suspected that M/s.Maps Global was involved in fraudulent availing of Input Tax Credit, and this Input Tax Credit was utilised for payment of export goods, and later a refund was sought. The Respondent-authorities scrutinized the bank account of M/s.Maps Global and noticed that an amount of Rs.28,50,000/- was transferred to one M/s.Balajee Enterprises, on 19 June 2019 and 12 July 2019. The Respondent-authorities suspected these transactions were fictitious and no material was supplied to M/s.Maps Global. Further, according to Respondent-authorities M/s.Balajee Enterprises transferred an amount of Rs.1,63,00,000/- to the account of the Petitioner on 17 October 2019.

5. The Directorate General of GST Intelligence issued a summons to the Petitioner on 22 October 2019 to attend on 5 November 2019, referring to inquiry against M/s.Maps Global. The summons stated that the authorities had reason to believe that the Petitioner had facts and documents material for the inquiry. The Petitioner was summoned under section 70 of the CGST Act to give evidence and produce documents in the office of the Directorate General of GST Intelligence. On the same day, the Directorate General issued a communication to the State Bank of India informing the Bank Manager of proceedings being initiated against the Petitioner and a provisional attachment of bank account is necessary under section 83 of the CGST Act. Accordingly, the Bank Manager

was directed that no debit be allowed to be made from the said account or any other account operated by the Petitioner. The Petitioner received a communication from the State Bank of India on 5 November 2019 regarding attachment by the Respondent-Authorities. Challenging this action of attachment under Section 83 of the Act, the Petitioner has moved the present Petition.

6. We have heard Ms.Anjali Jha Manish, learned Counsel appearing for the Petitioner and Mr.Pradeep Jetly, learned Counsel for Respondents.

7. Ms. Manish, learned Counsel for the Petitioner contended as follows. The action of the Respondent-authorities is beyond the power conferred under section 83 of the Act. Only if all parameters laid down in this Section are satisfied that the action of attaching a bank account can be taken. The contingencies in which an order of provisional attachment can be made are enumerated in section 83 namely, the pendency of proceedings under section 62, 63, 64, 67, 73 and 74 of the Act. No proceedings have been initiated or pending against the Petitioner under these Sections. Only a summons under section 70 of the Act was issued to the Petitioner. Section 70 is not referred to in section 83 of the Act. The action of provisional attachment is regulated under Rule 159(1) of the CGST Rules and a format provided for the issuance of such notice. Assuming for the sake of argument if proceedings are initiated against

M/s.Maps Global under these sections, provisional attachment can be of the bank accounts of M/s.Maps Global, and not of Petitioner. Even according to the Respondents, the amount transferred by M/s.Maps Global to M/s.Balajee Enterprises was on 12 June 2019 and 19 June 2019 and if it was allegedly transferred by M/s.Balajee Enterprises to the Petitioner on 17 October 2019, then during this period M/s.Balajee Enterprises could have entered into various other transactions. The statements made by the Petitioner have been corroborated by M/s.Balajee Enterprises. Accordingly to it is prayed that the impugned order bequashed.

8. Mr.Jetly opposing the Petition submitted as follows. The power of provisional attachment is conferred to protect interests of Revenue, and this was a fit case where this power had to be exercised. Investigation is in progress. Money trail is traced from M/s.Maps Global to the Petitioner and inquiry is underway. Action is taken against M/s.Maps Global under section 67 which referred to under section 83 of the Act. The language of section 83 indicates that during the pendency of any proceedings (in this case under section 67 of the Act) if a summons is issued under section 70 to further the inquiry to other taxable persons provisional attachment of bank account of other taxable persons also is permissible and contemplated. He submitted that thus the Petition be dismissed.

9. Under the scheme of Act, levy and collection of tax are

provided for in Chapter III, Assessment is under Chapter XII and Inspection, Search, Seizure and Arrest are dealt with under Chapter XIV. Chapter XV which deals with Demand and Recovery. This chapter provides for provisional attachment under section 83. Section 83, under which the power is exercised reads thus :-

> *'Provisional attachment to protect revenue in certain cases. — (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that to protect 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 in such manner as may be prescribed'.*

Therefore, during the pendency of any proceedings under section 62, 63, 64, 67, 73 and 74, the Commissioner can provisionally attach any property including bank account belonging to the taxable person. For this purpose the Commissioner has to form an opinion that it is necessary to do so for protecting the interest of the government Revenue. These steps have to be taken in such manner as prescribed. Rule 159(1) of CGST Rules, 2017 deals with provisional attachment of property. This Rule reads thus :-

> *(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.*

Rule 159(1) states that when the Commissioner decides to attach any property including the bank account, he shall pass an order in form GST DRC-22. Various forms have been appended to the GST Rules 2017. Form GST DRC-22 lays down the format in which the order has to be issued provisionally attaching the property and the communication thereof to the financial institution. The form is reproduced hereinbelow for ready reference.

FORM GST DRC - 22

[See rule 159(1)]

Date:

Reference No.:

To
.....Name
_____Address
(Bank/Post Office/Financial Institution/Immovable property registering authority)

Provisional attachment of property under section 83

It is to inform that M/s ----------(name) having principal place of business at ---------- (address) bearing registration number as ---------- (GSTIN/ID), PAN ---------- is a registered taxable person under the <<SGST/CGST>> Act. Proceedings have been launched against the aforesaid taxable person under section <<---------→> of the said Act to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said

person has a -

<<saving / current / FD/RD/ depository >> account in your << bank/ post office/ financial institution >> having account no. << A/c no. >>;

or

property located at << property ID & location >>.

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I .....(name)..... (designation), hereby provisionally attach the aforesaid account / property.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

or

The property mentioned above shall not be allowed to be disposed of without the prior permission of this department.

Signature
Name
Designation

Copy to -

The form of the order shows that it is to be addressed to the taxable person. The Sections under which the proceedings are launched against such a taxable person are to be referred and then a direction is

to be issued for not allowing any debit.

10. Section 83 of the Act refers to the pendency of proceeding under Section 62, 63, 64, 67, 73 and 74. Section 63 deals with the assessment of unregistered persons. Section 64 is regarding a summary assessment in respect of certain special cases. Section 67 falls in Chapter XIV and refers to the power of inspection, search and seizure. Section 73 is in Chapter XV wherein it deals with the determination of tax not paid or short paid or erroneously refunded or wrongly availed, utilised for any reason other than fraud or any willful mis-statement made on suppression of facts. Section 70 confers power on the proper officer to summon any person whose attendance he considers necessary to give evidence or to produce documents or any other thing in any inquiry. Such inquiry is deemed to be a judicial proceeding under Indian Penal Code.

1 . The order of provisional attachment of the Petitioner's bank account is placed on record by the Respondents by way of affidavit in reply. It reads as under :-

> *'To,*
>
> *The Bank Manager,*
> *State Bank of India,*
> *Alamal House, Jamnalal Bajaj Marg,*
> *Nariman Point, Mumbai (MH) 400021.*
>
> *Provisional attachment of property under section 83.*

It is to inform that M/s. Kaish Impex Pvt. Ltd. Having principal place of business at 201, 2nd Floor, MAKER CHAMBER 5, NARIMAN POINT, MUMBAI – 400 021 having registration number 27AAGCK9660D1ZC and PAN AAGCK9660D is a registered taxable person under the SGST/CGST Act. Proceedings have been launched against the aforesaid taxable person under section 67 & 70 of the said Act to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has a current account in your bank having account no.38530527339.

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, Ajay Kumar Pandey, Additional Director General hereby provisionally attach the aforesaid account / property.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

Further, it is also requested to inform the aforementioned Tax Payer about the same after debit freezing their bank account.'

(emphasis supplied)

This order refers to Petitioner as a registered taxable person. It then refers to proceedings having been launched against the Petitioner as aforesaid taxable person under section 67 & 70 of the Act. Thereafter the authorities have proceeded to issue the order.

12. The impugned order dated 22 October 2019 proceeds on the assertion that proceedings have been launched against the Petitioner under section 67 section 70 of the Act. As far as section 67, i.e. search is concerned, it is an uncontroverted position that no proceedings have been initiated against the Petitioner under section 67 of the Act. On the date of provisional attachment of the bank account, only a summons under of the Act was issued to the Petitioner. Section 70 is not mentioned in Section 83 of the Act. No proceedings were pending against the Petitioner under section 62, 63, 64, 73 and 74 of the Act. Thus the Petitioner contends that power under section 83 could not have been invoked against the Petitioner.

13. Primary defence of the Respondents is that even if section 62, 63, 64, 67, 73 and 74 mentioned in section 83 of the Act are not referable to the case of the Petitioner, since a summons is issued to the Petitioner in pursuant to the inquiry initiated against M/s.Maps Global under section 67 of the Act, by the issuance of summons the proceedings get extended to the Petitioner also.

14. The analysis of section 83 of the Act will show that such interpretation is not permissible and not contemplated by the legislature. Section 83 read with Rule 159(1), and the form GST DRC-22, lay down a scheme as to how provisional attachment in certain cases is to be levied. Section 83 though uses the phrase

'pendency of any proceedings', the proceedings are referable to section 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions. Section 83 read with section 159(2), and the form GST DRC-22 show that a proceeding has to be initiated against a specific taxable person, an opinion has to be formed that to protect the interest of Revenue an order of provisional attachment is necessary. The format of the order, i.e. the form GST DRC-22 also specifies the particulars of a registered taxable person and which proceedings have been launched against the aforesaid taxable person indicating a nexus between the proceedings to be initiated against a taxable person and provisional attachment of bank account of such taxable person.

15. Power to provisionally attach bank accounts is a drastic power. Considering the consequences that ensue from provisional attachment of bank accounts, the Courts have repeatedly emphasized that this power is not to be routinely exercised. Under Section 83, the legislature has no doubt conferred power on the authorities to provisionally attach bank accounts to safeguard government revenue, but the same is within well-defined ambit. Only upon contingencies provided therein that the power under section 83 can be exercised.

This power is to be used in only limited circumstances and it is not an omnibus power.

16. It is therefore not possible to accept the submission of the Respondents that even though specified proceedings have been launched against one taxable person, bank account of another taxable person can be provisionally attached merely based on the summons issued under section 70 to him.

17. In view of our discussion as above, we hold that the order dated 22 October 2019 provisionally attaching the bank account of the Petitioner was without jurisdiction and is liable to be quashed and set aside.

18. The Petitioner also advanced various contentions to demonstrate how the Petitioner is not involved in the money trail or is not guilty of the offences under the Act. We do not have to go into that question because of our conclusion of the absence of power with the Authorities to provisional attach the bank account of the Petitioner in the facts.

19. The Petition succeeds. Rule is made absolute in terms of prayer clause Para 21(i), (ii) and (iii) of the provisional attachment on the bank account specified in the prayers clause stands lifted. The concerned bank authorities will act upon the same. All parties to act

on the authenticated copy of the order.

20. At this stage, Mr. Jetly, the learned Counsel for the Respondents prays that this direction is stayed for some period. The mandate we have issued will come into effect two weeks after the order is uploaded on the server of this Court.

M.S.KARNIK, J. ***NITIN JAMDAR, J.***

Maria Luiza Sequeira
Digitally signed by Maria Luiza Sequeira
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