

WHETHER PROPERTY CAN BE PROVISIONALLY ATTACHED U/S 83 OF CGST ACT, 2017 BY STATE TAX OFFICER WHO HAS BEEN AUTHOURISED TO CONDUCT RAID AT PREMISES OF ASSESSEE.

VALERIUS INDUSTRIES VS UNION OF INDIA

PETITIONER: VALERIUS INDUSTRIES

RESPONDENT: UNION OF INDIA

FACTS OF THE CASE:

Petitioner is in business of purchase and sale of copper material whereby scrap material is converted into pipes and then sell them. During the year 2017-18 a total of 291538.38 kg of copper amounting Rs 15,51,00,399/- was purchased. Among which Rs 4,97,21,109/- were purchased from few entities which were claimed as fake entities leading to bogus billing. Raid was conducted at premises of petitioner.

Writ has been filed against following 3 orders:

1. Demand raised amounting to Rs 1,60,79,302/- comprising of tax, interest and penalty
2. Provisional attachment of goods amounting to Rs 1,60,00,000/- and provisional attachment of FD/RD and Blockage of ITC without providing opportunity of being heard
3. Stay the operations of orders passed for provisional attachment and blockage of ITC.

LEARNED COUNSEL FOR PETITIONER:

As submitted by the learned counsel that order for provisional attachment of property u/s 83 of GST Act, 2017 is without jurisdiction as the same has been conferred upon **Commissioner** whereas in the present case the same has been issued by State Tax Officer. Blockage of ITC by a computer entry is also illegal. Also, order passed is unjust, arbitrary and contrary to provisions of section 74 of CSGT Act, 2017 as there is no opportunity of being heard has been provided.

LEARNED COUNSEL FOR RESPONDENT:

As per section 83, during pendency of any proceeding under Sections 62, 63, 64, 67 and 73 or Section 74, as the case may be, the **Commissioner** has the power to pass an order of provisional attachment if he is of the opinion that it is necessary to do so for the purpose of protecting the interest of the government revenue. It has been submitted that Commissioner of State tax is authorized to delegate power to AC, DC, State tax officer. In the present case the same has been delegated to state tax officer and therefore order is passed within the jurisdiction.

HELD:

Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for consideration is whether the State Tax Officer could have exercised powers under Section 83 of the GST Act, 2017 for the purpose of provisional attachment of the property owned by the writ applicant.

State GST vis a vis Central GST

SECTION	STATE GST ACT	CENTRAL GST ACT
5(3)	<i>The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other Officer who is subordinate to him.</i>	
2(24)	<i>Commissioner” means the Commissioner of State tax appointed under section 3 and includes the Chief Commissioner or Principal Commissioner of State tax appointed under section 3;”</i>	<i>Commissioner” means the Commissioner of State tax appointed under section 3 and includes the Chief Commissioner or Principal Commissioner of State tax appointed under section 3;”</i>
2(25)	<i>“Commissioner in the Board” means the Commissioner referred to in section 168 of the Central Goods and Services Tax Act;”</i>	<i>Commissioner in the Board” means the Commissioner referred to in section 168;”</i>
167	<i>The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.”</i>	<i>Delegation of powers. The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.”</i>
168	Power to issue instructions or directions. <i>The Commissioner may, if he considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the State tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.</i>	<i>(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.</i> <i>(2) The Commissioner specified in clause (91) of section 2, subsection (3) of section 5, clause (b) of subsection (9) of section 25, subsections (3) and (4) of section 35, subsection (1) of section 37, subsection (2) of section 38, subsection (6) of section 39, subsection (5) of section 66, subsection (1) of section 143, subsection (1) of section 151, clause (l) of subsection (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”</i>

If the provisions of the CGST Act would have been applicable to the facts of the present case, then there would have been no difficulty at all in quashing the order passed by the Commissioner of the State Tax delegating his power of Section 83 to the subordinate officers on the ground that the same is without jurisdiction. However, it appears that so far as the State GST Act is concerned, the Commissioner, in Section 5(3) of the Act, would be the Commissioner of the State Tax and in the same manner, the Commissioner, in Sections 167 and 168 of the Act respectively, shall also be the Commissioner of the State Tax.

Under Section 67 of the Act, 2017, the legislature has thought fit to use the words “proper officer not below the rank of Joint Commissioner”. In Section 83, even that discretion is taken away and it is only the Commissioner who has been empowered to act under Section 83 of the Act. In our opinion, therefore, the subjective satisfaction, which is required for the purpose of Section 83 of the Act, is not dependent on Section 67 of the Act or to put it in other words, just because, a search has been undertaken resulting in seizure of goods by itself may not be sufficient to arrive at the subjective satisfaction that it is necessary to pass an order of provisional attachment to protect government revenue.

Let’s look at the matter from a different perspective. Section 83 talks about the **opinion** which is necessary to be formed for the purpose of protecting the interest of the government revenue. There has to be proper material based upon which opinion has to be given. Therefore, the opinion to be formed by the Commissioner or take a case by the delegated authority cannot be on imaginary ground, wishful thinking, howsoever laudable that may be. There has to be reasonable belief. It is equally true that it is not necessary for the authority under the Act to state reasons for its belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed, as it has been held by the Supreme Court in **Sheonath Singh's case [AIR 1971 SC2451]**

Regarding the matter of demand raised amounting to Rs 1,60,79,302/- comprising of tax, interest and penalty. A demand cannot be raised until the SCN has been issued as section 74 of CGST Act mandates to call upon assessee to show cause as to why the amount mentioned therein should not be charged. Thus, said order to be quashed. We also fail to understand as to on what basis the input tax credit could have been blocked by way of computer entry. At the most, the same could have been ordered to be provisionally attached, but how could the same have been blocked. Such action is also not sustainable in law. However, it is clarified that if the authority wants to proceed against the writ applicant under Section 74 of the Act, then it shall be open for the authority to do so after issuing appropriate show cause notice and give an opportunity of hearing to the writ applicant.

CRUX:

Provisional attachment u/s 83 can be done only if there are materials or information. It should be exercised only if there is reasonable apprehension that assessee may default in ultimate collection of demand. It should, therefore, be exercised with extreme care and caution.