

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION (L) NO.5182 OF 2020

Praful Nanji Satra,
an adult, Indian Inhabitant of Mumbai
Occupation Business, having
residence address at 701/702,
Rehana Heights, Chapel Road,
Santacruz (West),
Mumbai-400 054.

...Petitioner

Versus

1. State of Maharashtra
Through the office of
Government Pleader,
High Court, Mumbai.
2. Commissioner of State Tax,
having its office at
8th Floor, GST Bhavan,
Mazgaon, Mumbai-400 010.
3. Joint Commissioner of State Tax
(Investigation A)
having its office at
C-9, 2nd Floor, Old Building,
GST Bhavan, Mazgaon,
Mumbai-400010.

...Respondents

...
Mr. Anand Pande a/w Mr. Shobhit Shukla and Ms. Pooja Pande i/b Ashok
R. Pande, learned counsel for the Petitioner.
Ms. Jyoti Chavan, AGP for the Respondents/State.

...
**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 08th FEBRUARY, 2021
PRONOUNCED ON : 31st MARCH, 2021.**

JUDGEMENT AND ORDER (PER UJJAL BHUYAN, J.) :

. Heard Mr. Pande, learned counsel for the petitioner and Ms.
Jyoti Chavan, learned AGP for the respondents/State.

2. By filing this petition under Article 226 of the Constitution of
India, petitioner seeks quashing of provisional attachment order dated

19.06.2020 issued by respondent no.3 attaching the bank account of the petitioner maintained with the ICICI Bank, Andheri West Branch, Mumbai.

3. Case of the petitioner is that he is a businessman having his office at Dev Plaza, 2nd floor, S.V. Road, Opp. Fire Brigade, Andheri (West), Mumbai- 400 058. There are various other offices carrying on their business from the said address.

4. Petitioner has rented out commercial premises on leave and license basis receiving license fees from the licensees. Since petitioner is required to pay goods and services taxes (GST) on such license fee, he is duly registered with the GST department and submitting GST returns regularly.

5. On 17.01.2020, office of respondent no.2 carried out search operations in the office address of the petitioner in respect of other companies having their offices there, namely, Satra Retail Private Limited, Bleu Noir Infrastructes Private Limited, Prarush Impex and Minaxi Satra Ventures whereafter, summons under section 70 of the Maharashtra Goods and Services Tax Act, 2017 (briefly 'the MGST Act' hereinafter) were issued. However, no such search was undertaken against the petitioner and petitioner has not received any summons from the office of respondent no.2.

6. It is stated that petitioner had submitted GST returns till February, 2020 and had accordingly paid GST. However because of Covid-19 pandemic, petitioner had not received any license fee in respect of the rented premises from March, 2020 and accordingly no GST was deposited from March, 2020. Resultantly, petitioner submitted GST

return for June, 2020 declaring NIL tax. As it is, respondents had extended the last date for filing of GST return till 31.07.2020.

7. On or about the 3rd week of June, 2020, petitioner came to know that his bank account bearing No.001101218141 maintained with the ICICI Bank, Andheri West Branch, Mumbai, was provisionally attached by respondent no.3. As a result, petitioner was prevented from operating the said bank account.

8. Since petitioner was not served with a copy of the provisional attachment order, a copy of the same was sought for and obtained by him from the ICICI Bank, which shows that petitioner's bank account was provisionally attached under section 83 of the MGST Act.

9. Though the provisional attachment order mentioned that proceedings have been launched against the petitioner under section 67 of the MGST Act, it is contended that no notice of proceedings under section 67 of the MGST Act has been served upon the petitioner; besides, no such proceedings were pending.

10. Aggrieved by such provisional attachment order of bank account, petitioner submitted detailed representation before respondent no.3 on 01.07.2020, requesting the said authority to withdraw the provisional attachment of bank account forthwith. However, there was no response to the said representation.

11. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

12. A common reply affidavit have been filed by respondent

nos.1, 2 and 3 through respondent no.3. At the outset, it is stated that petitioner has alternative remedy as provided under rule 159 (5) of the Maharashtra Goods and Services Tax Rules, 2017 (briefly the 'MGST Rules' hereinafter) which the petitioner has availed. Since petitioner has availed the said alternative remedy, writ petition would not be maintainable.

12.1. It is stated that proceedings under section 67 of the MGST Act were initiated by virtue of issuance of statutory Form GST INS-01 dated 17.01.2020. As per assignment, Smt. Poonam M. Ombase, Assistant Commissioner of State Tax, Investigating Officer, along with a team of state tax Inspectors visited the place of business of M/s. Prarush Impex. Referring to the provisions of section 67 of the MGST Act, it is stated that after visiting the said premises and carrying out search, it was found out that there is a group of companies which are registered in the same place as that of the petitioner. In all these companies, family members of the petitioner or the petitioner himself are either proprietor/director/shareholder. They are supplying goods and services to each other and making money transactions with each other. The names of the firms/companies and their proprietors/ directors/ shareholders are as under:

SR. No.	Name of Firm	Name of Proprietor/Shareholders
1	Prarush Impex	Proprietor- Shri. Rushabh Praful Satra (Son of Petitioner)
2	Satra Retail Pvt Ltd.	Shareholders- <u>Shri. Praful Nanji Satra</u> <u>51% (Petitioner)</u> Shri. Rushabh Patel Satra 49% (Son of Petitioner) Relatives of Key Managerial person- <u>Shri. Praful Nanji Satra</u>

		(Petitioner) Authorized Signatory- Shri. Praful Nanji Satra (Petitioner)
3	Satra Properties (India) Ltd.	Director- Shri. Praful Nanji Satra (Petitioner) Shareholders- Shri. Praful Nanji Satra 26.21% (Petitioner)
4	Minaxi Satra Ventures	Proprietor- Smt. Minaxi Praful Satra (Wife of Petitioner)
5	Praful Nanji Satra	Proprietor- Shri. Praful Nanji Satra (Petitioner)
6	Bleu Noir Infrastructure Development Pvt Ltd	Directors- Shri. Rushabh Praful Satra (Son of Petitioner) Smt. Minakshi Praful Satra (Wife of Petitioner)

12.2. It is stated that on *prima facie* verification of the available record of the related group of companies, following malpractices have been noticed as stated in paragraph 42 of the reply affidavit:

"A. That the Petitioner is not keeping the books of account at the registered place of business (violation of section 35 of the MGST Act).

B. Non-cooperation by the Petitioner at the time of visit and thereafter (violation of section 122 of the MGST Act)

C. Alleged undisclosed financial transactions in bank account no. 001101218141 ICICI Bank of the Petitioner with related group of companies.

D. That Petitioner Mr. Praful Nanji Satra is defaulter of GST return GSTR 3B for the period from February 2020 to June 2020.

E. Satra Retail Pvt. Ltd. (in which Petitioner Praful Nanji Satra is shareholder (51%) and authorized signatory as per records) has allegedly generated fake e-waybill to the tune of Rs. 9.83 crore. It is to say that on close scrutiny of e-way bills it is found out that the origin and destination addresses in the e-

way bills are the same. There is a blatant evasion of tax by disposing off the stock of goods by M/s Satra Retail Pvt. Ltd (in which Petitioner Praful Nanji Satra is shareholder (51%) and authorized signatory as per records).

F. Based on the available records tentative liability of other related group of companies in which Petitioner is shareholder, authorized signatory and Director is more than Rs. 23 crores approximately (The said tentative liability is subject to verification, if the taxpayer cooperates and submits books of accounts, records etc).”

12.3. Contending that proceedings under sections 62, 63, 64, 67, 73 and 74 of the MGST Act are pending against the petitioner, provisional attachment order has been justified.

13. Petitioner has filed rejoinder affidavit. On the alternative remedy, it is submitted that even if the representation dated 01.07.2020 is construed to be an application under rule 159 (5) of the MGST Rules, then respondents were under an obligation to give a hearing to the petitioner and thereafter to take a decision in the matter. No such hearing was granted to the petitioner, not to speak of any decision taken.

13.1. Petitioner has reiterated that to the best of his knowledge, no proceedings under sections 62, 63, 64, 67, 73 and 74 of the MGST Act were pending against him. From the reply affidavit of the respondents, it is evident that proceedings under section 67 of the MGST Act were initiated in respect of M/s. Prarush Impex with which petitioner is nowhere connected. That being the position, exercise of power under section 83 of the MGST Act *qua* the petitioner is not justified. Impugned provisional attachment therefore cannot be justified. In so far other business entities belonging to the petitioner’s wife or son are concerned, it is contended

that those are distinct business entities having separate legal identity. Thereafter, petitioner has given details of his relationship with the entities referred to by the respondents as under:

"i. M/s. Prarush Impex – The entity is a proprietorship business of the Petitioner's son, Mr. Rushabh Satra and the Petitioner is unconnected to the business.

ii. Satra Retail Private Limited – The Petitioner is neither a shareholder nor a director in this entity as on date and even on the date of investigation being carried on 17.01.2020. In fact, the Petitioner had resigned as a Director on 16.12.2017 and had sold his shareholding on 11.07.2019. The Balance Sheet sought to be relied upon by the Respondents does not reflect the presently prevailing facts.

iii. Satra Properties (India) Ltd. - The Petitioner was a Director and is a shareholder of this entity, which is presently admitted to the Corporate Insolvency Resolution Proceedings by virtue of an order dated 3rd August 2020 passed by the National Company Law Tribunal, Mumbai Bench, which order has been assailed before the Hon'ble National Company Law Appellate Tribunal. The company is a separate and distinct legal entity and the Petitioner's personal bank accounts cannot be attached even if there was a default by the company. The contention of the Respondents is contrary to the settled principles of the limited liability of the company.

iv. Minaxi Satra Ventures – The entity is a proprietorship business of the Petitioner's wife, Mrs. Minaxi Satra and the Petitioner is unconnected to the business.

v. Bleu Noir Infrastructure Development Pvt. Ltd. - The Petitioner is neither a Director nor shareholder and is not connected to the entity in any manner since June 2013."

14. Both Mr. Pande, learned counsel for the petitioner and Ms. Chavan, learned AGP for the respondents/State have made elaborate submissions. While Mr. Pande has assailed the impugned provisional

attachment as being without jurisdiction as no proceeding under any of the sections mentioned in section 83 of the MGST Act was pending against the petitioner and that power under section 83 is to be exercised solely by the Commissioner and not by the Joint Commissioner as in the present case, Ms. Chavan on the other hand has supported the impugned action as being just, proper and valid. Further Ms. Chavan has produced one file stated to contain the relevant note sheets and documents from out of the entire original file for perusal by the Court. On 08.02.2021, the file was retained for perusal.

15. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

16. At the outset, it would be apposite to advert to the provisional attachment order which has been impugned since in this case we are only concerned with the legality and validity of the provisional attachment of bank account. Date of the order is 19.06.2020 which was however received by ICICI Bank Limited, Andheri West Branch on 23.06.2020. The provisional attachment order was issued under section 83 of the MGST Act and reads as under:

"It is to inform that M/s. Praful Nanji Satra, having principal place of business at 201, 2nd Floor, DEV PLAZA, S.V. Road, Vileparle (West), Mumbai-400 058 bearing registration number as GSTIN-27AHZPS4559A3ZO, PAN-AHZPS4559A3 is a registered taxable person under SGST/CGST Act. Proceedings have been launched against the aforesaid taxable person under section 67 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.001101218141 (INR).

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I Dr. Amit Saini, I.A.S., Joint Commissioner State Tax, INV-A, Mumbai, hereby provisionally attach the aforesaid account.

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.”

17. From the above what is discernible is that according to respondent no.3, petitioner is a registered taxable person and proceedings have been launched against the petitioner under section 67 of the MGST Act to determine the tax or any other amount due from the said person. In order to protect the interest of revenue and in exercise of the power conferred under section 83 of the MGST Act, account No.001101218141 of the petitioner maintained in the ICICI Bank, Andheri West Branch was provisionally attached clarifying that no debit shall be allowed to be made from the said account or from any other account operated by the petitioner without the prior permission of the GST department.

18. Since the impugned action has been under section 83 of the MGST Act, it would be appropriate to refer to said provision. Section 83 of the MGST Act reads as under:

“(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 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 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 order made under sub section (1).”

19. From a perusal of sub-section (1) of section 83, what is noticeable is that during pendency of any proceedings under sections 62 or 63 or 64 or 67 or 73 or 74, the Commissioner should be of the opinion that for the purpose of protecting the interest of the government revenue, it is necessary to provisionally attach any property including bank account belonging to the taxable person, he may do so by making an order in writing. On a proper analysis of the said provision, we find that the following conditions are essential to clothe jurisdiction upon the Commissioner for exercising power under section 83. These are :

1. Pendency of any proceedings under sections 62 or 63 or 64 or 67 or 73 or 74;
2. Commissioner should form an opinion that for protecting the interest of government revenue, it is necessary to provisionally attach any property including bank account belonging to the taxable person;
3. In such a case, Commissioner may do so by making an order in writing.

20. Reading the provisions of sub-section (1) of section 83 as a whole, what is further deducible is that the pending proceedings should be relatable to the taxable person because it is the property of the taxable person which is sought to be provisional attached.

21. Sub-section (2) of section 83 provides that such provisional

attachment shall cease to have effect after the expiry of a period of one year from the date of order made under sub-section (1).

22. Since the power under section 83 is vested in the Commissioner, it is necessary to refer to the definition of Commissioner in the MGST Act. Section 2 (24) of the MGST Act defines 'Commissioner' to mean the Commissioner of State Tax appointed under section 3 and includes the Principal Commissioner or Chief Commissioner of State Tax appointed under section 3. Though appointment of the Commissioner is made by the State Government under section 3, under sub-section (3) of section 5, the Commissioner may delegate his powers to any other officer who is subordinate to him, subject to such conditions and limitations as may be specified by him.

23. Since provisional attachment of the bank account of the petitioner has been made on the ground that proceedings have been launched against M/s. Praful Nanji Satra under section 67 of the MGST Act to determine the tax or any other amount due from the said person, it may be useful to briefly dilate on section 67 of the MGST Act. Sub-section (1) is the essence of section 67 and it says that where the proper officer not below the rank of Joint Commissioner has reasons to believe that (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand or has claimed input tax credit in excess of his entitlement under the MGST Act or has indulged in contravention of any of the provisions of the MGST Act or the rules made thereunder to evade tax under the MGST Act or (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods

which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under the MGST Act, he may authorise in writing any other officer of State tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

24. Having noticed the above, we may now peruse the record produced by the learned AGP.

25. As per note sheet, we find that premises of M/s. Prarush Impex was visited by the investigation team from 17.01.2020 to 21.01.2020. During the course of investigation and search, 5 other firms were found in the same premises including that of the petitioner i.e. M/s. Praful Nanji Satra. The record contains Form GST INS-1 which is an authorization for inspection or search. The authorization was given by the Deputy Commissioner of State Tax (GST INV-E-02), INV-A, Mumbai to Smt. Poonam Ombase, Assistant Commissioner of State Tax and Shri Uttam K. Bodhgire, Assistant Commissioner of State Tax to visit the premises of M/s. Prarush Impex on 17.01.2020. This authorization is dated 16.01.2020. There is one summons to witness issued by Smt. Poonam Ombase, Assistant Commissioner of State Tax on 21.01.2020 summoning the petitioner Shri Praful Nanji Satra (Director), M/s. Satra Retail Private Limited to give evidence and to produce documents before the Assistant Commissioner of State Tax (Investigation)-08, Mumbai immediately in proceedings of investigation under section 67 of the MGST Act and section 64 of Maharashtra Value Added Tax Act, 2002 in the case of M/s. Satra Retail Private Limited for the period from 01.07.2017 to

till date. This summons to witness was issued under section 70 of the MGST Act read with the section 14 of the Maharashtra Value Added Tax Act, 2002 and section 30 of the Civil Procedure Code, 1908.

26. From the above, it is evident that the search and resultant investigation was carried out in respect of M/s. Prarush Impex. Authorization under section 67 was given in respect of M/s. Prarush Impex, that too by an officer of the rank of Deputy Commissioner though as per section 67 such authorization should be by a proper officer not below the rank of Joint Commissioner. There is no such authorization under section 67 of the MGST Act in respect of M/s. Praful Nanji Satra. Shri Praful Nanji Satra was summoned under section 70 of the MGST Act to tender evidence as a witness in connection with proceedings under section 67 of the MGST Act and section 64 of the Maharashtra Value Added Tax Act, 2002 in the case of M/s. Satra Retail Private Limited which *prima-facie* is a different business entity distinct from M/s. Praful Nanji Satra. Thus, it is evident that there was no proceeding against M/s. Praful Nanji Satra or against Shri Praful Nanji Satra under section 67 of the MGST Act. If that be so, then invocation of power under section 83 of the MGST Act against the petitioner would not be justified. On this ground alone, the impugned provisional attachment of the bank account of the petitioner is liable to be interfered with.

27. However, there is one more aspect which we would like to deal with before parting with the record. Under section 83 of the MGST Act, it is the Commissioner which has the competence to carry out provisional attachment of property including bank account subject to fulfillment of the preconditions of section 83. As we have already noticed,

the word 'Commissioner' is a defined expression under section 2(24) of the MGST Act meaning a Commissioner of State Tax appointed under section 3 which includes Principal Commissioner or Chief Commissioner of State Tax appointed under section 3. The impugned provisional attachment has been carried out by respondent no.3 i.e. Joint Commissioner of State Tax. The record does not disclose any authorization by the Commissioner to the Joint Commissioner to carry out provisional attachment. There is also no averment to that effect in the reply affidavit of the respondents. That apart, section 83 does not provide for such delegation or authorization. The opinion contemplated under section 83 of the MGST Act that to protect the interest of government revenue, it is necessary to provisionally attach any property including bank account has to be necessarily that of the Commissioner. No such opinion of the Commissioner is discernible from the record. Attachment of property including bank account of a person even if provisional is a serious intrusion into the private space of a person. Therefore, section 83 of the MGST Act has to be strictly interpreted.

28. Since the impugned attachment of bank account has been found to be without jurisdiction, availability of alternative remedy in the form of filing objection under rule 159(5) of the MGST Rules would be no bar to the petitioner from seeking relief under writ jurisdiction. Even here also it is doubtful whether the Joint Commissioner to whom the representation dated 01.07.2020 was addressed could have at all exercised power under rule 159(5) of the MGST Rules when the authority to do so is the Commissioner.

29. Consequently and in the light of the above, we are of the

opinion that the impugned provisional attachment order dated 19.06.2020 cannot be sustained. The same is hereby set aside and quashed. Consequently, respondents are directed to forthwith withdraw the provisional attachment of bank account of the petitioner bearing account No.001101218141 maintained with ICICI Bank Limited, Andheri West Branch, Mumbai.

30. Writ petition is accordingly allowed. However, there shall be no order as to costs.

31. Record produced be returned back.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]

Mujaheed//