

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1160 of 2019**

=====

M/S H.M. INDUSTRIAL PVT. LTD

Versus

THE COMMISSIONER, CGST AND CENTRAL EXCISE

=====

Appearance:

ANANDODAYA S MISHRA(8038) for the PETITIONER(s) No. 1

MR NIRZAR S DESAI(2117) for the RESPONDENT(s) No. 1

=====

CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**

and

HONOURABLE DR.JUSTICE A. P. THAKER**Date : 07/02/2019****ORAL ORDER****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. By the impugned orders of provisional attachment of the property under section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act"), the respondent has, *inter alia*, attached the bank accounts of the directors of the petitioner-company. A perusal of the provisions of section 83 of the CGST Act shows that the same empowers the Commissioner, if the circumstances therein are satisfied, to attach provisionally any property, including bank account, belonging to the taxable person, in such manner as may be prescribed. The term "taxable person" has been defined under sub-section (107) of section 2 of the CGST Act to mean a person who is registered or liable to be registered under section 22 or section 24 of that Act. In the present case, it is the petitioner-company which is registered under the provisions of the CGST Act and is, therefore, the taxable person. Under the circumstances, if at all, the provisions of section 83 of the CGST Act could have been invoked against the petitioner herein, however, under no circumstances, the

same could have been invoked against the directors of the petitioner-company.

2. On behalf of the respondents, reliance has been placed upon the provisions of section 89 of the CGST Act to submit that the same permits recovery of the dues of the private company from its directors in case such amount cannot be recovered from the company. In the opinion of this court, reliance placed upon section 89 of the Act is thoroughly misconceived inasmuch the same relates to recovery of any tax, interest or penalty due from a private company in respect of supply of goods or services. Moreover, even if such amount cannot be recovered from the private company, the directors of the company do not *ipso facto* become liable to pay such amount and it is only if the director fails to prove that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, that the same can be invoked. However, in any case, at this stage, section 83 of the Act does not apply to the directors of the private company. Under the circumstances, the impugned orders of attachment, to the extent the same attach the bank accounts of the directors, as set out in the statement at page 8 and 9 of the petition, at serial No. 1, 2, 3, 4, 5, 10 and 11 are concerned, are totally without any authority of law. In these circumstances, the respondents are directed to forthwith release the attachment of the following bank accounts.

Account No.	Name of Bank	Name and Type of Account
50100183156858	HDFC	Jigar Kumar Pareshbhai Patel; Saving Account.

07481000002985	HDFC	Hardik kumar Paresh kumar Patel; Saving Account.
02950100018863	Bank of Baroda	Jigar Paresh Kumar Patel; Saving Account.
02950200000513	Bank of Baroda	Hardik Paresh bhai Patel; Current Account.
02950300028287	Bank of Baroda	Hardik Paresh bhai Patel; Term Deposit Account.
02950100009696	Bank of Baroda	Pareshkumar Hargovinddas Patel; Saving Account.
02950600021500	Bank of Baroda	Pareshkumar Hargovinddas Patel; Loan Account.

3. On request made by the learned advocate for the petitioner, stand over to 14.2.2019.

(HARSHA DEVANI, J)

R.S. MALEK

(A. P. THAKER, J)

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

WEB COPY