

HC directed authorities to release attached bank accounts on furnishing of bank guarantee

March 14, 2019 | [\[2019\] 103 taxmann.com 67 \(Gujarat\)](#)

GST: Where Competent Authority for recovery of excise dues of Rs. 55 lakhs had provisionally attached bank accounts of assessee, said authority was directed to release attachment over bank accounts subject to assessee furnishing bank guarantee for Rs. 55 lakhs

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[2019] 103 taxmann.com 67 (Gujarat)

HIGH COURT OF GUJARAT

Perfect Boring (P.) Ltd.

v.

Union of India*

MS. HARSHA DEVANI AND DR. A.P. THAKER, JJ.
R/SPECIAL CIVIL APPLICATION NO. 1321 OF 2019
FEBRUARY 8, 2019

Section [83](#) of the Central Goods and Services Tax Act, 2017/Section [83](#) of the Gujarat Goods and Services Tax Act, 2017 - Demand and recovery - Provisional attachment - Competent Authority for recovery of excise dues of Rs. 55 lakhs had provisionally attached bank accounts of assessee - Whether Competent Authority was to be directed to release attachment over bank accounts subject to assessee furnishing bank guarantee for Rs. 55 lakhs - Held, yes [Para 8] [Partly in favour of assessee]

Circulars and Notifications : [Circular No. 996/3/2015-CX, dated 28-2-2015](#)

(NR)

FACTS

- The Competent Authority for recovery of excise dues of Rs. 55 lakhs had provisionally attached bank accounts of the assessee.
- On writ:

HELD

- Section 83 provides for provisional attachment to protect revenue in certain cases and *inter alia* provides that where during the pendency of any proceeding under section 67, 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. Thus the object of the provision is to protect the interest of the Government revenue. In the instant case, attachment of the bank accounts of the assessee has resulted into various hardships to the assessee which would adversely affect its business and which may result in loss of revenue to the Government, instead if the assessee provides for some security towards its outstanding dues, the interest of the assessee as well as the revenue can be protected. [Para 6]

- In view of the aforesaid, the interest of justice would be served if the assessee is permitted to pay the amount of Rs. 55 lakhs outstanding towards excise dues by way of equal monthly instalments within a period of eight months, subject to the assessee furnishing a bank guarantee for an equal amount towards security of such amount. [Para 7]
- The Competent Authority is directed to forthwith release the attachment over the bank accounts of the assessee.
- The assessee shall furnish a bank guarantee for a sum of Rs. 55 lakhs to the Competent Authority. It shall also file an undertaking before the Court undertaking to pay the balance amount of Rs. 55 lakhs in equal monthly instalments within a period of eight months. In case the bank guarantee is not furnished as directed, it would be open for the Competent Authority to resort to the provisions of section 83 and attach the bank accounts of the assessee. [Para 8]

Zubin F. Bharda for the Petitioner. **Ankit Shah** for the Respondent.

JUDGMENT

Ms. Harsha Devani, J. - Rule Mr. Ankit Shah, learned senior standing counsel waives service of notice of rule on behalf of the respondents.

2. Having regard to the controversy involved in the present petition, which lies in a very narrow compass, with the consent of the learned advocates for the respective parties, the same was taken up for hearing.

3. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of provisional attachment dated 15.5.2018 passed by the respondent No.2 in exercise of powers under section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act) whereby the bank account of the petitioner bearing No.200020110000901 maintained with the Bank of India, Ahmedabad Main, Bhadra has been ordered to be attached. It is the case of the petitioner that pursuant to the said order, not only the above bank account has been attached but eight bank accounts maintained by the petitioner with different banks as enlisted at Annexure-C to the petition have been attached.

4. Mr. Zubin Bharda, learned advocate for the petitioner has submitted that the proceedings under section 67 of the CGST Act came to be initiated against the petitioner as excise dues of Rs. 1,05,27,185/- had become outstanding whereas the petitioner had continued to deposit the GST as well as CGST dues. It was pointed out that despite the bank accounts of the petitioner having been attached, the petitioner has continued to deposit the GST and CGST dues upto September, 2018, and out of dues of Rs. 90,30,711, the petitioner has deposited Rs. 90,62,495/-. It was further submitted that for the month of October, the petitioner has paid Rs. 18,24,000/- towards GST dues. It was further submitted that out of the outstanding excise dues of Rs. 1,05,27,185/-, the petitioner has cleared Rs. 49,51,000/- from April 2018 till date and has been continuously paying the outstanding central excise dues. It was submitted that in spite of various hardships suffered by the petitioner, the petitioner has been regularly paying the central excise dues. The petitioner has, therefore, requested the respondents to permit the petitioner to pay the central excise dues in installments; however, there is no response thereto. It was submitted that as the respondents have attached the bank accounts maintained by the petitioner, the petitioner is not able to deposit the employees' provident fund as required to be deposited with the office of Employees Provident Fund Organisation in respect of which a show cause notice has been issued to the petitioner. It is further pointed out that the Bank of India has also issued a notice dated 2.1.2019 calling upon the petitioner to make interest payment which is overdue, failing which its account shall be classified as Non Performing Asset. It was submitted that on account of the attachment over the bank accounts, the petitioner is unable to run its day-to-day affairs smoothly, which is adversely affecting its business. It was urged that the petitioner is not denying its liability to pay the central excise dues and in fact, is ready and willing to pay the same and that the petitioner's request is that the petitioner may be permitted to pay the same in installments and in the meanwhile, the attachment of the bank accounts of the petitioner may be released.

5. On the other hand, Mr. Ankit Shah, learned senior standing counsel for the respondents has submitted that the bank accounts of the petitioner have been attached to safeguard the interest of the Government revenue and that the second respondent is duly empowered under section 83 of the CGST Act to pass such order. It was submitted that insofar as granting of installments under Circular No.996/3/2015-CX dated 28.2.2015 is concerned, since the petitioner is a habitual defaulter, it is not entitled to the benefit of the said circular. It was further pointed out that the petitioner is permitted to operate the bank accounts insofar as payment towards GST, excise, service tax liability is concerned. It was further submitted that the petitioner had vide letter dated 29.5.2018 committed to pay Rs. 25,00,000/- every month towards the central excise liability; however despite giving assurance, the petitioner had failed to do so and, therefore, the attachment over the bank accounts of the petitioner could not be lifted. It was, accordingly, urged that the respondent having exercised powers under section 83 of the CGST Act in accordance with law, there is no warrant for intervention by this court.

6. Section 83 of the CGST Act provides for provisional attachment to protect revenue in certain cases and inter-alia, provides that where during the pendency of any proceeding under section 67, 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. Thus, the object of the provision is to protect the interest of the Government revenue. In the facts of the present case, attachment of the bank accounts of the petitioner has resulted into various hardships to the petitioner which would adversely affect its business and which may result in loss of revenue to the Government, instead if the petitioner provides for some security towards its outstanding dues, the interest of the petitioner as well as the revenue can be protected.

7. In the light of the facts and circumstances noted hereinabove and the rival contentions advanced by the learned advocates for the respective parties, the court is of the view that the interest of justice would be served if the petitioner is permitted to pay the amount of Rs. 55,00,000/- outstanding towards excise dues by way of equal monthly installments within a period of eight months, subject to the petitioner furnishing a bank guarantee for an equal amount towards security of such amount within a period of one month from today.

8. In the light of the above, the petition partly succeeds and is, accordingly, allowed to the following extent:

The respondents are directed to forthwith release the attachment over the following bank accounts of the petitioner:—

<i>Sl. No.</i>	<i>Bank</i>	<i>Branch</i>	<i>Account No.</i>	<i>Type</i>
1	Bank of India	Main Branch, Bhadra, Ahmedabad	200030100170219	Cash Credit
2	Bank of India	Main Branch, Bhadra, Ahmedabad	200020110000901	Current
3	Bank of Baroda	Vatva I.E.	15960200000442	Current
4	HDFC Bank Ltd.	Vatva i.e.	50200005903692	Current
5	ICICI Bank Ltd.	Vatva i.e.	2312055000050	Current
6	AXIS Bank Ltd.	Vastral BR.	914020036149120	Current
7	State Bank of India	Ex. Highway Jn. Br.	34752992814	Current
8	Kotak Bank	Ghantakarna Market	500011048318	Current

The petitioner shall furnish a bank guarantee for a sum of Rs. 55,00,000/- to the second respondent within a period of one month from today. The petitioner shall also file an

undertaking before this court within a period of one week from today undertaking to pay the balance amount of Rs. 55,00,000/- in equal monthly installments within a period of eight months from today. The first installment shall be paid on or before 10th March, 2019 and the remaining seven installments shall be paid on or before the 10th of each succeeding month. In case the bank guarantee is not furnished as directed, it would be open for the respondents to resort to the provisions of section 83 of the CGST Act and attach the bank accounts of the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs

Direct service is permitted.

s.k. jain

*Partly in favour of assessee.