

GST: Where Competent Authority for recovery of dues of Rs. 14.62 crores had provisionally attached bank accounts of assessee, since assessee had already reversed input tax credit to tune of Rs. 13.28 crores, interest of revenue was sufficiently secured and, therefore, provisional attachment of bank accounts was no longer justified

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[2019] 103 taxmann.com 258 (Gujarat)

HIGH COURT OF GUJARAT

H.M. Industrial (P.) Ltd.

v.

Commissioner, CGST and Central Excise*

MS. HARSHA DEVANI AND DR. A.P. THAKER, JJ.
R/SPECIAL CIVIL APPLICATION NO. 1160 OF 2019
FEBRUARY 21, 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 dues of Rs. 14.62 crores had provisionally attached various bank accounts of assessee - Whether since assessee had already reversed input tax credit to tune of Rs. 13.28 crores, interest of revenue was sufficiently secured - Held, yes - Whether, therefore, provisional attachment of bank accounts of assessee was no longer justified - Held, yes - Whether Competent Authority was to be directed to forthwith release provisional attachment over bank accounts of assessee - Held, yes [Para 12][In favour of assessee]

(NR)

FACTS

- The Competent Authority for recovery of GST dues had provisionally attached various bank accounts of the assessee.
- The assessee filed a writ petition seeking directions to the Competent Authority to release all bank accounts.

HELD

- The impugned order of provisional attachment has been made in exercise of powers under section 83. Section 83 *inter alia* provides that where during the pendency of any proceedings under 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 an order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed. [Para 9]
- At the time when the impugned order under section 83 came to be passed, according to the Competent Authority, an amount of Rs. 14.62 crores would have been due and

payable by the assessee. [Para 10]

- Under section 83, the Commissioner is empowered to order provisional attachment for the purpose of protecting the interest of the Government revenue. In the facts of the instant case, while a liability of Rs. 14.62 crores had been estimated at the time when the order under section 83 came to be passed, the present estimate is Rs. 16.24 crores. Thus the assessee upon conclusion of any proceedings that may be taken pursuant to the proceedings under section 67 or section 73 or section 74 may be liable to pay such amount. Admittedly the assessee has already reversed input tax credit to the tune of Rs. 13.28 crores. Considering the amount paid by reversing input tax credit, the interest of the revenue is sufficiently secured. Therefore, the provisional attachment of the bank accounts of the assessee is no longer justified. [Para 11]

- In view of the aforesaid, the Competent Authority was to be directed to forthwith release the provisional attachment over the bank accounts of the assessee. [Para 12]

Anandodaya S. Mishra for the Petitioner. **Nirzar S. Desai** for the Respondent.

ORDER

Ms. Harsha Devani, J. - Rule. Mr. Nirzar Desai, learned Senior Standing Counsel, waives service of notice of rule on behalf of the respondent.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondent to release all the bank accounts of the petitioner, as shown in paragraph 12 of the memorandum of petition.

3. Vide order dated 06.02.2019, this Court had directed the respondent to forthwith release the attachment on the petitioner's cash credit account bearing No. 02950500012441 maintained with the Bank of Baroda, Kapadwanj Branch, Kaira.

4. Thereafter, by an order dated 07.02.2019, this Court had directed the bank accounts bearing No. 50100183156858, 07481000002985, 02950100018863, 02950200000513, 02950300028287, 02950100009696 and 02950600021500 to be released from attachment, as the attachment orders were without any authority of law. Accordingly, the attachment over all those bank accounts came to be lifted.

5. The petitioner now seeks a direction to the respondents to release the attachment over the remaining bank accounts being current accounts bearing No. 02950500013045, 02950200000772 maintained with the Bank of Baroda, Kapadwanj, accounts No. 917020026366404 and 917040037200382 maintained with the Axis Bank, Nadiad and accounts No. 50200024114832 and 50200033690085 maintained with HDFC Bank, Kapadwanj as well as accounts No. 02950600021450, 02950600021591, 02950600021899, 02950600022187, 02950300039429 and 02950300040500 maintained with the Bank of Baroda.

6. Heard Mr. A.S. Mishra, learned advocate for the petitioner and Mr. Nirzar Desai, learned Senior Standing Counsel for the respondent.

7. Mr. Mishra, learned advocate for the petitioner, has submitted that the petitioner had reversed the input tax credit of Rs. 12,99,32,058/, against the total input tax credit taken in respect of M/s. Om Enterprises, M/s. Shivay Enterprises and M/s. Avi Enterprises. It is further submitted that the petitioner has already paid the initial demand of GST to the tune of Rs. 7,51,01,066/. Thus, according to the learned advocate for the petitioner, in all, an amount of Rs. 13,52,00,000 stands reversed.

8. On the other hand, Mr. Nirzar Desai, learned Senior Standing Counsel, under instructions, states that, in all, a sum of Rs. 13,28,00,000 has been paid, either by way of reversal or otherwise. He, however, has submitted that as of now, the amount due and payable by the petitioner is Rs. 16.24 crores, out of which, on the day when the order under section 83 of the CGST Act was passed, the amount was Rs. 14.62 crores.

9. The impugned orders of provisional attachment have been made in exercise of powers under section 83 of the Central Goods and Service Tax Act, 2018 (hereinafter referred to as "the CGST Act"). Section 83 of the CGST Act inter alia provides that where during the pendency of any proceedings under section 67, 73 or 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 an order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

10. At the time when the impugned orders under section 83 of the CGST Act came to be passed, according to the respondent, an amount of Rs. 14.62 crores would have been due and payable by the petitioner upon conclusion of the proceedings that may be initiated pursuant to the proceedings under section 67, 73 or 74 of the Act.

11. Under section 83 of the CGST Act, the Commissioner is empowered to order provisional attachment for the purpose of protecting the interest of the Government revenue. In the facts of the present case, while a liability of Rs. 14.62 crores had been estimated at the time when the order under section 83 of the CGST Act came to be passed, the present estimate is Rs. 16.24 crores. Thus, the petitioner, upon conclusion of any proceedings that may be taken pursuant to the proceedings under section 67, 73 or 74 of the CGST Act, may be liable to pay such amount. Admittedly, the petitioner has already reversed input tax credit to the tune of Rs. 13,28,00,000. In the opinion of this Court, considering the amount paid by reversing input tax credit, the interest of the Revenue is sufficiently secured. Therefore, the provisional attachment of the above referred bank accounts of the petitioner is no longer justified.

12. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The respondent is directed to forthwith release the provisional attachment over the petitioners bank accounts being current accounts bearing No. 02950500013045, 02950200000772 maintained with the Bank of Baroda, Kapadwanj, accounts No. 917020026366404 and 917040037200382 maintained with the Axis Bank, Nadiad and accounts No. 50200024114832 and 50200033690085 maintained with HDFC Bank, Kapadwanj as well as accounts No. 02950600021450, 02950600021591, 02950600021899, 02950600022187, 02950300039429 and 02950300040500 maintained with the Bank of Baroda.

Rule is made absolute accordingly.

s.k. jain

*In favour of assessee.