

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9392 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 9396 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 9397 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 9398 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 9399 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 9400 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE A.C. RAO

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PRANIT HEM DESAI

Versus

ADDITIONAL DIRECTOR GENERAL & 1 other(s)

Appearance:

MR D K TRIVEDI(5283) for the Petitioner(s) No. 1,2

MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR.JUSTICE A.C. RAO

Date : 28/08/2019

ORAL COMMON JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1 Rule returnable forthwith. Mr. Ankit Shah, the learned counsel waives service of notice of rule for and on behalf of the respondents.

2 Since the issues raised in all the captioned writ applications are the same and the parties are also the same, those were heard analogously and are being disposed of by this common judgement and order.

3 For the sake of convenience, the Special Civil Application No.9392 of 2019 is treated as the lead matter.

4 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

“A. Your Lordships may be pleased to admit this petition.

B. Your Lordships may be pleased to allow this petition.

C. Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ directing the respondent No.01 to immediately remove attachment of following bank accounts belonging to petitioner No.02 company:

<i>Name of Bank</i>	<i>Branch of Bank</i>	<i>Current Account Number</i>
<i>Kalupur Commercial Co. Op. Bank Ltd.</i>	<i>Xaviers Road Branch, Navrangpura, Ahmedabad</i>	<i>820102455</i>

HDFC Bank Ltd.	Paldi Vasna Road Branch, Ahmedabad	12292000000743
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and that is how, debit may be allowed to be made from said account or any other account operated by petitioner No.02 company on PAN – AABCD4327M;

D. Pending admission, hearing and final disposal of the matter, Your Lordships may be pleased to grant an ex-parte, ad interim order in favour of the petitioner herein in terms of prayer clause 'C' hereinabove.

E. Your Lordships may be pleased to grant such other and further relief(s) that may be deemed fit and proper in the interest of justice in favor of the petitioner;'

5 The case of the writ applicants, in their own words, as pleaded in the memo of the writ application, is as under:

“5.1 The petitioner No. 02 herein is a company engaged in manufacture of Refractive Lining Material falling under Chapter 38 of the HSN (Harmonized System Nomenclature). The company is registered with the Goods & Service Tax (GST) department. It is having GST Certificate bearing No. 24AABCD4327M1ZP. The company is paying Goods & Service Tax regularly in regard to the supplies made by them from their factory.

5.2 It being so, said petitioner No. 02 company is eligible to avail Input Tax Credits (ITC) of the supplies received by them in accordance with Section 16 of the Central Goods & Service Tax Act, 2017. Therefore, it avails the same in accordance with law.

5.3 As per the scheme of Central Goods & Service Tax Act, 2017, in order to avoid cascading effect of tax, any manufacturer / supplier of any goods who pays GST in regard to the goods manufactured and supplied by them can claim ITC i.e. credit of GST paid by the supplier of inputs (raw material, etc.) in regard to the input received by the said manufacturer. Credit can be availed on the basis of invoices accompanying said inputs.

5.4 Right from the introduction of GST, i.e. w.e.f. 01/07/2017, petitioner No. 02 company is regularly doing business. They are regularly paying GST in regard to the goods supplied by them to various buyers. They are regularly filing returns under the said statute and they are regularly availing credits in regard to the input supplies received by them.

5.5 On 18/03/2019, the officers of Directorate General of Goods & Service Tax Intelligence (DGGI), had all of a sudden arrested petitioner No. 01 on the grounds that he is a Director/Partner/Owner of following companies :

- a. Desai Impex Pvt. Ltd.
- b. Desai Overseas Pvt. Ltd.
- c. Desai Metalinks Pvt. Ltd.
- d. Hem Desai Enterprises Ltd.
- e. PHD Trading Corporation Ltd.
- f. PHD Ferro Alloys Ltd

And that these companies had procured invoices of various goods and have passed on ITC (Input Tax Credit) fraudulently to the buyers, they have passed on ITC fraudulently without actual supply of goods to their buyers.

5.6 On perusing the said arrest memo, it may be found that it is mentioned therein that all the aforesaid six companies had passed on ITC to various buyers. Various sales and purchase invoices and inward / outward registers were seized under various panchnamas.

5.7 It is pertinent to note that although it is mentioned in the arrest memo that in the investigation conducted so far clearly reveals the offence of unutilization of ITC credit fraudulently to the extent of more than Rs.43.00 Crore including ITC involved in Circular trading within Desai Group entities by Desai Group of Companies, namely :

- a. Desai Impex Pvt. Ltd.
- b. Desai Metalinks Ltd.
- c. PHD Trading Corporation Ltd.
- d. PHD Ferro Alloys Ltd
- e. Desai Overseas Pvt. Ltd.
- f. Desai Enterprise

g. Desai Metalinks

No bifurcation of the alleged fake invoices issued or alleged transfer of illegal credits by particular companies individually is made.

5.8 Without leveling any specific allegation against petitioner No. 02 company or for that matter any particular company out of the Desai Group of Companies, arbitrarily and illegally Vide Form GST DRC-22 dtd. 03/04/2019 being issued to the Branch Manager, Kalupur Commercial Co. Op. Bank Ltd. Xaviers Road Branch, Akshar Arcade, Gr. Floor, Opp. Memnagar Fire Station, Navrangpura, Ahmedabad. The respondent No.01 has provisionally attached following bank accounts:

Sr. No.	Company Name	PAN	GSTIN	Current Account Number
'01	PHD Trading Corporation Ltd.	AAJCP1692F	24AACP1692F1ZE	'00820102736
'02	PHD Ferro Alloys Ltd	AAJCP1737H	24AAJCP1737H1ZG	'00820102737
'03	Desai Metalinks	AIPPD5602E	24AIPPD5602E1ZO	'00820102453
'04	Desai Metalinks Ltd	AAECD5863B	24AAECD5863B1ZY	'00820102508
'05	Desai Overseas Pvt Ltd.	AADCS0298Q	24ADCS0298Q1ZU	'00820101572
'06	Desai Impex Pvt Ltd	AABCD4327M	24AABCD4327M1Z P	'00820102455
'07	Desai Enterprises	AAPPD7736B	24AAPPD7736B1Z W	'00820102454

Likewise, vide From GST DRC-22 dtd. 03/04/2019 being issued to the Branch Manager, HDFC Bank Ltd., Shop NO.3-4, Haash Business Centre, Nr. Ankur School, Paldi Vasna Road, Ahmedabad – 380007, the respondent No.01 has provisionally attached following bank accounts:

Sr. No.	Company Name	PAN	GSTIN	Current Account Number
'01	PHD Trading Corporation Ltd.	AAJCP1692F	24AACP1692F1ZE	'502000357741 63
'02	Desai Metalinks	AIPPD5602E	24AIPPD5602E1ZO	'122920000007 60

'03	Desai Metalinks Ltd	AAECD5863B	24AAECD5863B1ZY	'502000196627 30
'04	Desai Impex Pvt Ltd	AABCD4327M	24AABCD4327M1Z P	'122920000007 43
'05	Desai Enterprises	AAPPD7736B	24AAPPD7736B1Z W	'122920000007 53

Likewise, vide Form GST DRC-22 dtd. 03/04/2019 being issued to the Branch Manager, Axis Bank Ltd., Ground Floor, Palladium Corporate Road, Prahlad Nagar, Ahmedabad – 380015, the respondent No.01 has provisionally attached following bank accounts:

Sr. No.	Company Name	PAN	GSTIN	Current Account Number
'01	PHD Trading Corporation Ltd.	AAJCP1692F	24AACP1692F1ZE	'918020012745 47
'02	Desai Metalinks	AIPPD5602E	24AIPPD5602E1ZO	'918020012189 203
'03	Desai Metalinks Ltd	AAECD5863B	24AAECD5863B1ZY	'918020043197 831
'04	PHD Ferro Alloys Ltd	AAJCP1737H	24AAJCP173H1ZG	918020014204 173

Likewise, vide Form GST DRC-22 dtd. 03/04/2019 being issued to the Branch Manager, State Bank of India, Ground Floor, Ashirwad Paras, Corporate Road, Satellite, Ahmedabad 380 015, Respondent No. 02 has provisionally attached Current Account No. 37329817472 of Desai Overseas Pvt. Ltd. and vide Form GST DRC-22 dtd. 03/04/2019 being issued to the Branch Manager, Oriental Bank of Commerce, G-2, Samedh, Nr. Associated Petrol Pump, C.G. Road, Ahmedabad 380 006, Respondent No. 02 has provisionally attached Current Account No. 10511131001097 of Desai Metalinks Ltd.

5.9 Copies of all the aforesaid form GST DRC-22 all dtd. 03/04/2019 were handed over to the respective companies of Desai Group of Companies vide respective letters dtd. 04/04/2019 being addressed to the respective Desai Group of Companies.

5.10 Upon receiving the respective form GST DRC-22, the accountant of the respective companies including the petitioner No. 02 company had personally visited the office of Respondent No. 01 on 05/04/2019 and had requested the officers of DGGI to kindly remove attachment from the

respective bank accounts. On the other hand, the petitioner No. 01 who is director of petitioner No. 02 company was arrested since 18/03/2019 and his application praying for regular bail being CRMA No. 6623 of 2019 is allowed by this Hon'ble High Court.

5.11 As the petitioner was aggrieved and dissatisfied by attachment of bank accounts, he had preferred SCA (Special Civil Application) No. 7321 of 2019, 7323 to 7327 of 2019 before Your Lordships. Vide Order dtd. 12/04/2019; Your Lordships had observed that in terms of the communication dtd. 04/04/2019 of Deputy Director, DGGI, AZU, if the petitioners file objections under Sub-Rule (5) of Rule 159 of Central Goods & Service Tax Rules, 2017, on or before 18/04/2019, the competent authority shall consider the same as having been filed within time. It was particularly observed by Your Lordships that competent authority shall duly consider all the observations raised by the petitioners including the objection with regard to attachment being without authority of law in view of the fact that no proceeding has been launched against the petitioners under section 74 of the Act, and decide such application as expeditiously as possible and latest by 30/04/2019. Your Lordships had also clearly observed that in case any adverse order is passed against the petitioners, it would be opened for petitioner to challenge the same before appropriate forum.

5.12 Subsequently, petitioners approached the Additional Director General, DGGI, vide appropriate objections dtd. 15/04/2019. All the submissions made in the aforesaid writ petitions were raised before the said authority vide said objection dtd. 15/04/2019. Hearing in the matter was also fixed before the said authority on 26/04/2019. Said intimation of hearing was given to the petitioner vide letter dtd. 22/04/2019. Petitioner appeared before the said authority through their advocate on 26/04/2019 itself. All the submissions were reiterated. It was particularly submitted in the aforesaid objection dtd. 15/04/2019 that although the order of provisional attachment issued u/s. 83 in each of the aforesaid cases wrongly mentioned that same was passed because proceedings u/s. 74 of Central Goods & Service Tax Act, 2017 were pending, it was submitted that as & matter of fact, no proceeding was u/s. 74 was even initiated. Arbitrarily, on the date of hearing, by way of corrigendum dtd. 26/04/2019, after considering the submissions made before this Hon'ble High Court in aforesaid Special Civil Applications as well as aforesaid objection dtd. 15/04/2019 submitted on 16/04/2019, deliberately the relevant portion of order u/s. 83 (supra) was amended by substituting section 67 with section 83.

5.13 During the course of hearing, it was particularly submitted that it was undisputed fact that no proceeding u/s. 74 (supra) were pending. It is

undisputed fact that in the order of attachment u/s. 83 (supra) it was wrongly mentioned that proceeding u/s. 74 (supra) were pending. Only after considering submissions of the petitioners, a corrigendum was issued. It was not permissible to issue corrigendum after receipt of objection/reply/submission of the petitioner. In support of said submission, petitioner had also relied upon judgement of Hon'ble Tribunal in the case of Mahindra & Mahindra Ltd V/s. Commissioner of Central Excise, Mumbai reported at 2006 (196) E.L.T. 62 (Tri.-Mumbai).

5.14 Having regard to all the submissions made before the aforesaid authority, it was expected that the order u/s. 83 (supra) would be vacated and the bank accounts which were provisionally attached would be released.

5.15 However, petitioner herein is shocked and surprised to find Order dtd. 30/04/2019 issued from F.No.DGGI/AZU/12(4)73/2018-19.”

6 Thus, it appears from the materials on record that the writ applicant is aggrieved by the orders of provisional attachment of his two bank accounts referred to in the prayer clause passed on 3rd April 2019 and 3rd April 2019 respectively. The two banks involved are the Kalupur Commercial Cooperative Bank Limited, Xavier Road Branch, Navrangpura, Ahmedabad and the HDFC Bank Limited, Paldi Vasna Road Branch, Ahmedabad. The order of provisional attachment, so far as the bank account maintained with the HDFC Bank Limited is concerned, reads as under:

“Form GST DRC-22
[See rule 159(1)]

Reference No.DGGI/AZU/12(4)73/2018-19

Date: 03.04.2019

To,
The Branch Manager,
HDFC Bank Ltd.,
Shop No.3-4, Haash Business Centre,
Near Ankur School,
Ahmedabad, Gujarat 380007.

Subject : Provisional attachment of property under Section 83 of CGST Act, 2017

It is to inform you that following companies / firms are having principal place of business at 407, 4th floor, Sigma-Ceejay Legacy, Nr. Panjrapole Char Rasta, Ambawadi, Ahmedabad-380015. The details of the companies along with registration obtained by the as registered taxable person under the CGST Act, 2017 is mentioned in the table below:

Sr. No.	Company Name	PAN	GSTIN	Current Account Number
'01	PHD Trading Corporation Ltd.	AAJCP1692F	24AACPD1692F1ZE	'50200035774163
'02	Desai Metalinks	AIPPD5602E	24AIPPD5602E1ZO	'1292000000760
'03	Desai Metalinks Ltd	AAECD5863B	24AAECD5863B1ZY	'50200019662730
'04	Desai Impex Pvt Ltd	AABCD4327M	24AABCD4327M1ZP	'12292000000743
'05	Desai Enterprises	AAPPD7736B	24AAPPD7736B1ZW	'12292000000753

Proceedings have been launched against the aforesaid taxable person under section 74 of the said 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 powers conferred under section 83 of the Act, I, Vivek Prasad, Additional Director General, Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit, Ahmedabad, 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.

Sd/-
(Vivek Prasad)
Additional Director General
DGGI, AZU, Ahmedabad.”

7 So far as the order of provisional attachment of the bank account

maintained with the Kalupur Commercial Cooperative Bank Limited is concerned reads as under:

“Form GST DRC-22

[See rule 159(1)]

Reference No.DGGI/AZU/12(4)73/2018-19

Date: 03.04.2019

To,
The Branch Manager,
Kalupur Commercial Co.op Bank Ltd.
Xaviers College Branch,
Akshar Arcade Gr. Floor,
Opp, Memnagar Fire Station,
Navrangpura, Ahmedabad,

Subject : Provisional attachment of property under Section 83 of CGST Act, 2017

It is to inform you that following companies / firms are having principal place of business at 407, 4th floor, Sigma-Ceejay Legacy, Nr. Panjrapole Char Rasta, Ambawadi, Ahmedabad-380015. The details of the companies along with registration obtained by the as registered taxable person under the CGST Act, 2017 is mentioned in the table below:

Sr. No.	Company Name	PAN	GSTIN	Current Account Number
'01	PHD Trading Corporation Ltd.	AAJCP1692F	24AACP1692F1ZE	'00820102736
'02	PHD Ferro Alloys Limited	AAJCP1737H	24AAJCP1737H1ZG	'00820102737
'03	Desai Metalinks	AIPPD5602E	24AIPPD5602E1ZO	'00820102453
'04	Desai Metalinks Ltd	AAECD5863B	24AAECD5863B1ZY	'00820102508
'05	Desai Overseas Pvt Ltd	AADCS02980	24AADCS0298Q1Z U	'00820102572
'06	Desai Impex Pvt Ltd	AABCD4327M	24AABCD4327M1Z W	'00820102455
'07	Desai Enterprises	AAPPD7736B	24AAPPD7736B1Z W	'00820102454

Proceedings have been launched against the aforesaid taxable person under section 74 of the said 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 powers conferred under section 83 of the Act, I, Vivek Prasad, Additional Director General, Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit, Ahmedabad, 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.

*Sd/-
(Vivek Prasad)
Additional Director General
DGGI, AZU, Ahmedabad.”*

8 It also appears that this is a second round of litigation. First in point of time, the writ applicants came before this Court challenging the action on the part of the respondent No.1 in provisionally attaching the bank account by preferring in all six writ applications. All the six writ applications came to be disposed of by this Court with certain directions. The order passed by this Court dated 12th April 2019 reads as under:

“1. In all these petitions, the petitioners have challenged the orders of attachment of the bank accounts of the petitioners. A perusal of the notices dated 4.4.2019 issued by the Deputy Director, DGGI, AZU, it is evident that while attaching the bank accounts in exercise of powers under section 83 of the Central Goods and Services Tax Act, 2017, the said authority has brought to the notice of the petitioners, the provisions of sub-rule(5) of rule 159 of the Central Goods and Services Tax Rules, 2017 to the effect that it is open for the petitioners to file objection to the effect that the property attached was or is not liable to attachment, within seven days of attachment under sub-rule (1) of rule 159 of the Central Goods and Services Tax Rules, 2017 before the competent authority.

2. Mr. D. K. Trivedi, learned advocate for the petitioners has invited the attention of the court to the order dated 3.4.2019 in Form GST DRC-22 under rule 159 (1) of the Central Goods and Services Tax Rules, 2017, to point out that in terms of the said order, proceedings have been launched against the petitioners under section 74 of the CGST Act. It was submitted

that no proceeding under section 74 of the CGST Act has been initiated against the petitioners till date, and hence, the action under section 83 of the CGST Act, 2017 is without authority of law.

3. In the opinion of this court, when the communications dated 4.4.2019 of the Deputy Director, DGGI, AZU itself informs the petitioners that the petitioners have a remedy against the order of attachment by way of filing objection under sub-rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017, this court would be reluctant to entertain these petitions under Article 226 of the Constitution of India in view of the fact that the petitioners have an efficacious alternative remedy before the competent authority before whom all the contentions raised in the present petitions can be raised. This court is, therefore, not inclined to entertain these petitions.

4. In the above view of the matter, the petitions are dismissed as not entertained in the light of the availability of the efficacious alternative remedy under sub-rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017.

5. In terms of the communication dated 4.4.2019 of the Deputy Director, DGGI, AZU, the petitioners are required to file objections within seven days of attachment. Therefore, the petitioners were required to file the objections by 11th April, 2019. However, considering the fact that the petitioners were diligently prosecuting the proceedings before this court under Article 226 of the Constitution of India against the orders of attachment, if the petitioners file objections under sub-rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017 on or before 18th April, 2019, the competent authority shall consider the same as having been filed within time. The competent authority shall duly consider all the objections raised by the petitioners, including the objection with regard to the attachment being without authority of law in view of the fact no proceedings have been launched against the petitioners under section 74 of the Act, and decide such application as expeditiously as possible and latest by 30th April, 2019. Needless to state that in case any adverse order is passed against the petitioners, it would be open for the petitioners to challenge the same before the appropriate forum.

Direct service is permitted today.”

9 It appears that no sooner it was pointed out to the respondent No.2 that he could have invoked Section 74 of the Act for the purpose of passing an order of provisional attachment under Section 83 of the Act,

then having realized its mistake, the respondent No.2 tried to correct the same by issuing a corrigendum dated 26th April 2019. The corrigendum reads thus:

“CORRIGENDUM

Your attention is invited to Form GST DRC-22 dated 03.04.2019 regarding the provisional attachment of property under Section 83 of CGST Act, 2017.

In para 2 of the said Form GST DRC-22 dated 03.04.2019, the words/sentence

“Proceedings have been launched against the aforesaid taxable persons under section 74 of the said Act to determine the tax or any other amount due from the said person”

may be read as:

“Proceedings have been launched against the aforesaid taxable persons under section 67 which shall culminate into action under section 74 of the said Act to determine the tax or any other amount due from the said person.”

10 As in the earlier round of litigation, this Court had directed the writ applicants to file his objections to the action taken under Section 83 of the Act by availing the provision under sub-section (5) Rule 159 of the Rules. Such objections were filed and ultimately, the order came to be passed by the respondent No.2, which reads as under:

“19. Further, I would like to emphasize that any action under Section 83 of the “Act is only & provisional measure to protect the interest of Revenue when during the investigations the collected evidences overwhelmingly indicate substantial evasion of tax and the assessee despite having admitted the liability refrains from making good the loss suffered by the Government exchequer on account of his/their fraudulent acts.

20. The provisions under Section 83 of CGST Act, 2017 read as under

“83. (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”.

21. I would like to add that the investigation in the subject case are still going on under Section 67 of the Act and on conclusion of investigations in terms of provisions under Section 74 of the Act, & detailed Demand cum Show Cause. Notice incorporating the specific allegations and evidences in support thereof shall be given to the assessee and applicant will get sufficient opportunity to contest the allegations. Such detailed account of evidences collected during the investigation so far, enumerating the specific allegations and contraventions cannot be given to the applicants at this stage when investigation under Section 67 of the Act are still going on. In fact, it will also be prejudicial to the ongoing investigation.

In view of the above, I find that the action taken under Section 83 of CGST Act, 2017 to protect the interest of Revenue as provisional measures to serve the object of provisions under Section 83 is proper and justified.

22. Another contention of the applicants is that order under Section 83 of CGST Act, 2017 are unjustified as no proceedings under Section 74 have been initiated against them. In this regards I have perused the order stated dated 03.04.2019 issued under Section 83 of CGST Act, 2017 and observe that it does make a reference to proceedings under Section 74 of CGST, 2017, whereas, as a matter of fact proceedings under Section 67 not Section 74 of the Act, are in progress against the applicant. The provisions under Section 83 of CGST Act, 2017, read as under;

83. (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.”

Thus, I observe that action under Section 83 of the CGST Act, 2017 can be lawfully initiated even when proceedings under Section 67 are going on against the concerned registered person and perusal of records reveal that reference to the proceedings under Section 74 of the CGST Act, 2017 has been made in the order dated 03.04.2019 inadvertently instead of a

reference being made to proceedings under Section 67 of the CGST Act, 2017.

23. Now the moot point to be decided here is whether quoting of a wrong provision i.e. reference Section 74 instead of Section 67 of the CGST Act in the orders under the Section 83 of the Act shall make the proceedings under Section 83 of the CGST Act, 2017, invalid.

In this regard I find that it is a well settled proposition of the law that if the exercise of a power can be traced to a legitimate source, quoting of wrong provision shall not vitiate the proceedings. In the instant case, it is a fact on record that proceedings under Section 67 of CGST Act, 2017 are going on against the applicant and evidences collected so far fairly indicate substantial liability on the part of applicant which stands admitted but remains unpaid. Therefore, action under Section 83 of the Act, when proceedings are going on under Section 67 of the Act to protect the interest of Revenue is clearly within the powers given under the said provisions of the Act. I, thus, find that powers under Section 83 of CGST Act, 2017 has been duly exercised as prescribed by law and since the power has been exercised legitimately, without exceeding the jurisdiction prescribed under Section 83 of the Act, merely quoting of wrong provision i.e. Section 74 instead of Section 67, when proceedings under Section 67 are also covered by the provisions under Section 83, shall not make the proceedings invalid.

In this regard I place reliance on ratio of judgment of Hon'ble Apex Court in the case of;

(1) *Afzal Ullah v. State of U.P.* 1964 AIR 264, 1964 SCR (4) 991.

(ii) *B. Balakotaiah V. Union of India* 1958, AIR 232, 1958 SCR 1052.

(iii) *J .K. Steel Ltd V. Union of India* 1970 AIR 1173, 1969 SCR (2) 481.

24. I also find that during the Personal Hearing, applicants have objected to the issuance of corrigendum dated 26.04.2019, issued by undersigned to rectify the inadvertent error by referring to proceedings under Section 67 instead of proceedings under Section 74 in the order dated 03. 04. 2019 issued under Section 83 of the CGST Act, 2017. They have referred to the Judgment of Hon'ble CESTAT Mumbai in case of "Mahindra & Mahindra

Ltd Vs Commissioner of C. Ex., Mumbai “2006 (196) E.L.T. 62 (Tri-Mumbai), wherein the Tribunal has observed that issuance of corrigendum/addendum to Show Cause Notice cannot be issued after receipt of reply of the noticee and that they had already filed their reply on 15.04.2019 saying that proceedings under Section 74 are not yet initiated in their case and therefore, action under Section 83 is improper.

25. I find that the case law referred by the applicant is not applicable in the instant case as the above case law refers to corrigendum to & Show Cause Notice which was issued after conclusion of the investigation which is akin to a Notice which shall be issued under Section 74 of the CGST Act, 2017, whereas in the instance case corrigendum has been issued with reference to action taken under Section 83 which & provisional measure, in order to rectify the inadvertent error in the said order. Further in the case of “Mahindra & Mahindra Ltd Vs Commissioner of C. Ex., Mumbai“2006 (196) E.L.T. 62 (TriMumbai) cited by the applicants, the corrigendum issued was to alter the scope of Show Cause Notice by trying to invoke provisions under Rule 173Q of the Central Excise or Rule 210-of Central Excise Rules 1944 in place of Rule 25 and 27 of the Central Excise (No. 2) Rules 2001. I also observe that not only in & subsequent order in the case of CCE Vs Konark Industries [2011 (270)ELT 673, Tri-Kol], the CESTAT has held issuance of a corrigendum to Show Cause Notice as valid but in the case of Uma Laminate Products (P) Ltd. [1997 (94)ELT A.153(SC)], the corrigendum to Show Cause Notice issued was held to be valid and the appeal filed by the assessee was dismissed by the Hon’ble Supreme Court as withdrawn.

Moreover, the instant case is not a case where by way of corrigendum either the scope of the order dated 03.04.2019 has been altered or an attempt has been made to lend legality to an otherwise illegal order. The corrigendum has been issued merely to rectify an inadvertent error in the order dated 26.04.2019 by quoting the correct legal provisions.

26. In view of the above discussion in para 23 hereinabove, the Order dated 03.04.2019 issued under Section 83 of the CGST Act, 2017 remains valid irrespective of corrigendum issued thereto, as powers have been exercised legitimately in terms of provisions under Section 83 of the CGST Act, 2017.

27. Finally in view of the above facts that the applicant have substantial liability to pay to the Government exchequer which stands admitted by them and. In view of overwhelming evidences collected during the investigations, I find that the request of the applicants to withdraw orders issued under Section 83 is devoid of any merit and deserves to be rejected.

Any such order to withdraw the action initiated under Section 83 of the Act shall be against the very object of the legislation, which is to protect the interest of the Revenue during the investigations in terms of Section 67 of the CGST Act, 2017. I accordingly pass the following order.

ORDER

The representations dated 15.04.2019 made by (I) M/s Desai Impex Pvt. Ltd; (ii) M/s Desai Metalinks Ltd, (iii) M/s PHD Trading Corporation Ltd, (iv) M / s PHD Ferro Alloys Ltd, (v) M / s Desai Overseas Pvt Ltd, and (vi) M/s Desai Metalinks to withdraw orders for attachment of the bank accounts is hereby rejected.”

11 Being dissatisfied with the aforesaid order passed by the respondent No.1, the writ applicants are here before this Court with the present writ applications.

● **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANTS:**

12 Mr. D.K. Trivedi, the learned counsel appearing for the writ applicants vehemently submitted that for the purpose of passing an order of provisional attachment under Section 83 of the Act, the pendency of the proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 is a must. In the absence of any such pending proceeding, there cannot be any order of provisional attachment under Section 83 of the Act. Mr. Trivedi submitted that for the purpose of passing an order of provisional attachment under Section 83 of the Act, it was earlier shown that the proceedings under Section 74 of the Act had been initiated and those were pending. According to Mr. Trivedi, the same was altogether not correct. Mr. Trivedi submitted that as soon as it was brought to the respondent No.1 that no proceedings under Section 74 had been initiated, and therefore, there could not have been any provisional attachment under Section 83 of the Act instead of passing an appropriate order lifting the provisional attachment, the

respondent No.1 went to the extent of correcting its mistake by issuing a corrigendum. By issuing a corrigendum, the respondent No.1 clarified that instead of Section 74, Section 67 should be read. According to Mr. Trivedi, this is not permissible in law. To put it in other words, according to Mr. Trivedi, such corrigendum is not tenable in law.

13 The second submission of Mr. Trivedi is that it is only the Commissioner who can pass an order of provisional attachment under Section 83 of the Act. In the case at hand, the impugned order of provisional attachment under Section 83 has been passed by the Additional Director General DGGI AZU, Ahmedabad.

14 Mr. Trivedi further submitted that even if the corrigendum is held to be legal and valid, no proceedings under Section 67 of the Act were pending as on the date the order of provisional attachment under Section 83 of the Act came to be passed. Mr. Trivedi tried to develop this argument further by submitting that no goods were seized from the premises of the writ applicants. The proceedings under Section 67 of the Act could be said to be pending only if the goods are seized from the premises of the writ applicants.

15 Mr. Trivedi, in the last, submitted that Section 83 of the Act can be invoked for the purpose of passing a provisional attachment provided the Commissioner is subjectively satisfied on the basis of the materials on record that it is necessary to do so to protect the interest of the government revenue. Therefore, the subjective satisfaction that the interest of the government revenue needs to be protected is of prime importance. Mr. Trivedi submitted that having regard to the materials on record, the interest of the government revenue could be said to be completely secured. Mr. Trivedi submitted that the allegations levelled

against his clients are that without physical receipt and supply of goods, the writ applicants availed credit on the basis of the invoices issued by the input supplier and thereafter, they paid credits (GST) on the basis of the output invoices without physical supply of the goods to the buyers. To put it in other words, although the goods were supplied, yet the tax was paid for the purpose of passing the credit. This is suggestive of the fact that indisputably, no GST was payable, yet the same was paid. He submitted that Section 9 of the Act, 2017, which is the charging section, contemplates that the GST is payable only when the goods are supplied. He submitted that the statement of “output liability and input credit” pertinent to the companies would indicate that for the period between July 2017 and May 2019, the total input credit availed of by all the companies aggregates to Rs.59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One Hundred Three only). Whereas, the total tax paid during the said period aggregates to Rs.63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only). The same is indicative of the fact that against the availment of credit of Rs.59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One Hundred Three only), the tax amount to the tune of Rs.63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only) came to be paid. Thus, Rs.4,13,23,422/- (Rupees Four Crore Thirteen Lakh Twenty Three Thousand Four Hundred Twenty Two only) has been paid in excess than the amount of credit availed of. If that be so, then there was no question of arriving at the satisfaction that the interest of the revenue goods are protected.

16 Mr. Trivedi submitted that assuming for the moment that all the allegations are true and correct and the credits were wrongly availed of, still the tax has been paid though it was not liable to be paid in light of

the fact that there was no supply of goods. He submitted that the availment of credits can be justified on two counts: (1) It is a revenue neutral satisfaction (2) the payment of tax although not payable yet is to be treated as if unavailable credits are reversed after they are wrongly availed.

17 Mr. Trivedi, in support of his aforesaid submissions, has placed reliance on the following case laws:

[i] Commissioner of Customs, Bangalore vs. Kesar Marble and Granites reported in 2012 (278) ELT 42 (Kar)

[ii] Century Laminating Co Ltd vs. Commissioner of Central Excise, Meerut – II, reported in 2009 (236) ELT 182 (Tri. Del).

[iii] Chawla Trading Co. vs. Commissioner of Customs (export), Nhava Sheva reported in 2015 (330) ELT 470 (Tri. Mumbai)

[iv] Mahindra & Mahindra Ltd vs. Commissioner of Central Excise Mumbai -V reported in 2006 (196) ELT 62 (Tri. Mumbai).

● **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

18 Ms. Mehta, the learned standing counsel appearing for the Union of India has vehemently opposed all the six writ applicants. She submitted that no error, not to speak of any error of law could be said to have been committed by the respondent No.1 in passing the order of provisional attachment in exercise of its powers under Section 83 of the Act as well as the order overruling the objections raised by the writ applicants.

19 Ms. Mehta submitted that there is no merit in the submission canvassed on behalf of the writ applicant for the mistake earlier committed by the respondent No.1 could not have been corrected by way of a corrigendum. Ms. Mehta submitted that having realized that the proceedings under Section 67 of the Act were pending and not under Section 74, the corrigendum was immediately issued. No fault can be found with such a corrigendum.

20 Ms. Mehta further submitted that the respondent No.1 is equal in rank with the Commissioner, and therefore, it cannot be argued that the Additional Director General DGGI AZU had no authority to invoke Section 83 of the Act. The third submission of Ms. Mehta is that cogent reasons have been assigned by the respondent No.1 in the order overruling the objections dated 30th April 2019.

21 Ms. Mehta has also placed reliance on the following submissions made in the affidavit-in-reply filed on behalf of the respondents:

“22 It is to submit before Hon’ble Court that statement dated 05.03.2019 of Shri Pranit Hem Desai, Director of M / s Desai Group of Companies was recorded under Section 70 of the CGST Act, 2017, wherein in response to the evidences regarding fraudulent availment of ITC shown to him, he in response to Question No. 14 clearly admitted that the firms and Companies together owe a liability of these Rs. 26.02 / crores on account of availment of ITC without having received the goods, availment of ITC in excess of ITC credit in their account and availment of ITC without making payment to their major suppliers in spite of lapse of more than 180 days from the date of issuance of invoices in contravention of the provisions under section 16 of the CGST Act; out of which the liability of M / s Desai Impex Pvt Ltd. comes to the tune of Rs. 6,60,02,079/-.

23 Further, the evidences collected during investigation also indicated shortage of stock to the tune of Rs. 18,32,94,291/involving ITC of Rs. 3,29,92,972/availed by M / s Desai Impex Pvt Ltd in respect of Which

authorized person Shri Pranit Hem Desai has clearly admitted that they are not having stock of Rs. 18,32,94,291/involving ITC of Rs. 3,29,92,972/in his statement dated 05.03.2019.

24 Any action under Section 83 of the Act is only a provisional measure to protect the interest of Government Revenue when during the investigations the collected evidences overwhelmingly indicate substantial evasion of tax and the Petitioner despite having admitted the liability refrains from making good the loss suffered by the Government exchequer on account of his/their fraudulent acts. Therefore, contention raised by the Petitioner is devoid of any truth and does not hold any merit. Action taken under Section 83 of the Act is legal and valid to safeguard interest of the Government revenue .

The orders issued under Section 83 are only a provisional measure to protect Government Revenue. Investigations under Section 67 of CGST Act, 2017 are in progress against the Petitioner. On conclusion of investigations, Demand-Cum-Show Cause Notice shall be issued under Section 74 of the CGST Act within the prescribed time limit.

25 It is to submit before Hon'ble Court, that any action under ' Section 83 of the Act is only a provisional measure to protect the interest of Government Revenue when during the investigations the collected evidences overwhelmingly indicate substantial evasion of tax and the Petitioner despite having admitted the tax liability, refrains from making good the loss suffered by the Government exchequer on account of his/their fraudulent acts.

Further it is to submit that the investigations in the subject case are still going on under Section 67 of the Act and on conclusion of investigations in terms of provisions under Section 74 of the Act, a detailed Demand cum Show Cause Notice incorporating the specific allegations and evidences in support thereof shall be given to the assessee and applicant will get sufficient opportunity to contest the allegations.

Adjudication of proceedings initiates after issuance of Demand cum Show Cause Notice which have been issued after conclusion of investigations in terms of provisions under Section 74 of CGST Act 2017. Petitioner will get sufficient opportunity to contest the allegations during proceedings of Adjudication and Appeal. Therefore, provisional attachment of bank accounts are legal and valid.

Reply to Para 6M and 6N:

26. The action taken under Section 83 of CGST Act 2017 and action under Section 79 of CGST Act 2017 are independent proceedings. Provisional attachment is to protect Government revenue in certain cases when during the investigations the collected evidences overwhelmingly indicate substantial evasion of tax and the assessee despite having admitted the tax liability refrains from making good the loss suffered by the Government exchequer on account of his/their fraudulent acts. The maximum period prescribed for such action to protect the interest of Government revenue under Section 83 of CGST Act is one year. Action under Section 79 of CGST Act 2017 is for 'recovery of tax' in the cases after confirmation of the demand, where any amount becomes payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount.

The provisions for filing of appeal against payment of 10% of the confirmed demand shall be available to the Petitioner after issuance of show cause notice and its adjudication by the proper Officer. This provision is irrelevant in the context of action under Section 83 of the CGST Act. Reply to Para 60: Action under Section 83 against the Petitioner is legal and proper which has been issued by lawful exercise of power under Section 83 of the CGST Act in view of the submissions made hereinabove.

Reply to Para 6P:

27. It is to submit before the Hon'ble Court that the statements of Various suppliers and buyers have been recorded under Section 70 Of the CGST Act, 2017. The Petitioner shall get full opportunity to defend themselves at the time of adjudication. The action under Section 83 is only a provisional measure to protect Government Revenue.

Reply to Para 6Q:

The submissions made in response to Para 61 and 6J hereinabove are reiterated.

Reply to Para 6R:

28. Regarding the plea of the petitioner that no weighment of goods has been done during the stock verification, it is to submit before the Hon'ble Court that Panchnama was drawn at the premises of M / s PHD Trading Corporation Ltd, M /s Desai Impex Pvt Limited and M /s Desai Metalinks Limited wherein physical stock verification was done in presence and to

the satisfaction of Shri Pranit Hem Desai, Director of Desai Group of Companies/Petitioner and responsible person of the Desai Group of firms / companies. The weighment of stock lying there in the factory premises of M/s PHD Trading Corporation Ltd, M/s Desai Impex Pvt Ltd and M / s Desai Metalinks Ltd was ascertained under the panchnama proceedings in continuous presence of Shri Pranit Hem Desai/ responsible person of the Desai Group of firms/companies. On being satisfied of the physical verification of stock lying in these premises, Shri Pranit Hem Desai/ responsible person of the Desai Group of firms/companies put his dated Signature on the panchnama drawn at the above referred factory cum godown premises. Therefore, the plea made by the Petitioner that no stock verification was carried out is false and baseless.

Reply to Para 6S:

29. Further, it is to submit that it has been conclusively established during investigations that M /s Desai Impex Pvt Ltd has availed and utilized excess ITC of Rs. 3.16 crores Without even having balance in ITC credit ledgers during the period August 2017 to January 2018` The same has been reversed/paid after initiation of the inquiry. Another group company namely M /s PHD Trading Corporation Ltd has wrongly availed and utilised excess ITC of 1.75 crores without having the same as balance in their ITC credit ledgers during the period July 2017 to December 2017 . The same has been reversed / paid after lapse of more than 20 months Further the validity of payment of any amount out of ITC shown in the books of account by the Petitioner itself is & matter of investigation as they do not seem to be entitled to such credit. The Petitioner has not paid interest and penalty on the wrongful availment and utilisation of excess Input Tax Credit. An undertaking submitted before the Hon'ble High Court in the Criminal Misc. Application no. 6623 of 2019 is related to granting of regular bail to Petitioner, this is not based on the merit of the case.

Reply to Para GT:

Action under Section 83 against the Petitioner is legal and proper which has been issued by lawful exercise of power under Section 83 of the CGST Act.

Reply to Para GU:

30. In the instant case, there is no violation of rights under Article 14,19(1)(g) and SOOA under the Constitution of India in as much as the Petitioner is free to carry on their supply of Goods and Services (Business Activity) as per applicable CGST Act, 2017 and rules made under it, the

levy of GST is imposed on all suppliers and does not interfere with the right of the Supplier/Petitioner to practice any profession, or to carry on any occupation, trade or business. Accordingly as per Section 16 of CSGT Act, 2017 ITC is available but with certain conditions, which are applicable to all registered persons engaged in supply of goods, but as discussed in above para's, the Petitioners in this case has availed ITC without any actual supply and receipt of goods in violation of conditions of the law as stipulated under Section 16(2)(b) of CGST Act, 2017. Therefore, the doubt raised by the Petitioner about legality and Validity of orders for attachment of the bank accounts dated 30.04.2019 is without any legal basis and the same has been issued With full authority and jurisdiction in law.

Reply to Para 7, 8 and 9:

No Comments. However, it is to submit before Hon'ble Court that this Hon'ble Court had an occasion to consider the provision under Section 83 of CGST Act, 2017 in the case of Special Civil Application No. 1041 of 2019 filed by M/s Nandeshwari Steel Limited for release of their bank accounts and the Hon'ble High Court of Gujarat vide order dated 06.02.2019 had ordered as under:

"In the light of the above, by way of interim arrangement, the respondent No. 1 is directed to release the attachment over the bank accounts of the petitioner referred to hereinabove, subject to Shri Ashwinkumar Jayantibhai Patel and Shn' Jashvantkumar Jayantibhai Patel father and uncle of Shri Mitesh Ashwinkumar Patel, one of the Directors of the company, permitting attachment of the property described hereinabove for release of the bank accounts. Shri Ashwinkumar Jayantibhai Patel and Shi Jashvantkumar Jayantibhai Patel shall also file an undertaking before the court in respect of the property which has been offered by them for attachment for release of the bank accounts of M/s Nandeshwari Steel Limited within a period of one week from today. To secure the interest of the revenue, the petitioner shall also maintain an amount of Rs. 50, 00, 000/ in its Current Account No. 916020018310340 maintained with the Axis Bank Limited, Asarwa Branch, Ahmedabad".

Thus the Hon'ble Court has not found any illegality in respect of provisions under Section 83 of CGST Act, 2017 (Copy enclosed)

31 In light of above facts, the respondents humbly pray that the Honorable Court may reject the captioned SCA summarily with Specific direction to the Petitioner to cooperate with answering respondent; to present the facts to the Respondent Authority as the present case is at & crucial Investigation Stage; and to pay legitimate tax liability along with interest and penalty as due.

32 In view of the above facts and circumstances as described herein above, it is humbly prayed before the Hon'ble Court that the request of the applicant to remove the attachment of following Bank accounts may be rejected.

Name of the Bank	Branch of the Bank	Current Account Number	Closing balance (in Rs.) as on 03.04.2019
Kalupur Commercial Co. Op. Bank Ltd.	Xaviers Road Branch, Navragpura, Ahmedabad	'00820102455	7,45,513
HDFC Bank Ltd	Paldi Vasna Road Branch, Ahmedabad	12292000000743	1,43,847

● **ANALYSIS:**

22 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the respondent No.1 was justified in invoking Section 83 of the Act for the purpose of passing an order of attachment of the bank accounts.

23 Without entering into any other controversy, we are inclined to allow all the six writ applications on the short ground that during the period between July 2017 and May 2019, the total input tax credit availed by the writ applicants aggregates to Rs.59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One Hundred Three only), whereas the total tax paid during this period aggregates to Rs.63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only). The same is indicative of the fact that against the availment of credit of Rs.59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One

Hundred Three only), an amount of Rs. 63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only) came to be paid by way of tax. It appears that an amount of Rs.4,13,23,422/- (Rupees Four Crore Thirteen Lakh Twenty Three Thousand Four Hundred Twenty Two only) has been paid in excess than the amount of credit availed. In such circumstances, it cannot be said that the interest of the government revenue is at a stake.

24 We are at one with Mr. Trivedi that even if it is assumed that the allegations as levelled by the department are correct and the credits though not available were wrongly availed since the tax had been paid, though it was not payable having regard to the fact that there was no supply of goods, the availment of credits could be said to be justified on two counts: (1) it is a revenue neutral satisfaction and (2) payment of tax although not payable yet is to be treated if unavailable credits are reversed if they were wrongly paid.

25 In the aforesaid context, we may refer to and rely upon a decision of this Court in the case of **H M Industrial Pvt Ltd vs. Commissioner, CGST and Central Excise [Special Civil Application No.1160 of 2019 decided on 21st February 2019]**, wherein this Court observed as under:

“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 sections 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 sections 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.”*

26 We may remind the respondents of the observations made by a Coordinate Bench of this Court in the case of **M/s Patran Steel Rolling Mill vs Assistant Commissioner of State Tax, Unit 2** rendered in the **Special Civil Application No.16931 of 218 decided on 20th December 2018**. We quote the observations as follows:

“6 From the facts as emerging on record, it appears that the tax liability of the petitioner in terms of the goods seized as well as the transporter’s statement, the same would not exceed Rs.13,00,000/-. The petitioner has already deposited a sum of Rs.17,00,000/- with the respondent. Insofar as the amount assessed towards the penalty is concerned, in the absence of any proceedings having been undertaken under the provisions of the GGST Act as well as any penalty having been imposed, in the opinion of this court, the respondent authorities were not justified in resorting to such a drastic coercive measure of attachment of the bank accounts and seizure of goods, which results in bringing the business of the petitioner to a grinding halt.

7 Sub-section (1) of section 83 of the GGST Act provides that where 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. On a plain reading of the said provision, it is evident that before resorting to such drastic action, the Commissioner is required to form an opinion that it is necessary to do so to protect the interest of the revenue. For the purpose of arriving at such an opinion, the Commissioner should first form an opinion that the petitioner would not be in a position to pay the tax dues after the assessment proceedings are over. In the facts of the present case, the petitioner firm is a going business and the petitioner has readily deposited a sum of Rs.17,00,00/- which covers more than the tax liability that may be assessed. It is not the case of the respondents that the petitioner is a fly by night operator or that it does not have the means to pay the dues that might to assessed at the end of assessment proceedings, which at present have not even been commenced. There is nothing to show that the respondents would not be in a position to recover any amount that the petitioner may ultimately be held liable to pay. In these circumstances, without recording any such satisfaction, the respondent could not have formed the opinion that it was necessary to resort to provisional attachment to protect the interest of the Government revenue. The impugned order of attachment, therefore, cannot be sustained. It is clarified that the fact that the petitioner has deposited a sum of

Rs.17,00,000/- during the course of the search proceedings shall not be construed as an admission of such dues on the part of the petitioner.

8 Before parting, the court deems it fit to caution the concerned authorities that while exercising powers under section 83 of The GGST Act, the authorities should try to balance the interest of the Government revenue as well as a dealer to ensure that while the interest of the revenue is safeguarded, the dealer is also in a position to continue with his business, because it is only if the dealer continues with the business that he would generate more revenue. The authorities should keep in mind that bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue. Therefore, while taking action under section 83 or 67(2) of the GGST Act, the concerned authorities should take care to ensure that equities are maintained and while securing the interest of the revenue, they should attempt to see that the dealer is in a position to continue with the business. This court does not intend to lay down any absolute proposition that in no case drastic action should be taken, but that the respondents should consider the background and history of the dealer as well as his financial position to ascertain as to whether or not he would otherwise be in a position to pay the dues that may be assessed upon the culmination of any assessment proceedings that may be initiated. If the dealer is a fly by night operator or a habitual offender or does not have sufficient means to pay the dues that may arise upon assessment, such action may be justified. Such drastic powers under section 83 of the Act should not be exercised as a matter of course, but only after due application of mind to the relevant factors.”

27 This Court had the occasion to consider Section 83 of the State GST Act, 2017 at length in the case of **Valerius Industries vs Union of India [Special Civil Application No.13132 of 2019 decided on 28th August 2019]**. This Court, after an exhaustive discussions on the subject, summarized its final conclusions as under:

“52 Our final conclusions may be summarized as under:

[1] *The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or farfetching, which would warrant the formation of the belief.*

[2] *The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and farreaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.*

[3] *The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.*

[4] *The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his / her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.*

[5] *The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.*

[6] *The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.*

[7] *The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things: (I) whether it is a revenue neutral situation (ii) the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.”*

28 Section 83 of the State GST Act empowers the Assessing Authority to make a provisional attachment of any property of the assessee during the pendency of any proceeding for the assessment or reassessment of any turnover, even though there is no demand outstanding against the

assessee, if he is of the opinion that it is necessary to do so to protect the interest of the revenue. This provision has been made, in our opinion, in order to protect the interest of the revenue in cases where the raising of demand is likely to take time because of the investigations and there is apprehension that the assessee may default the ultimate collection of the demand. In other words, Section 83 gives a power to be exercised during the pendency of any proceeding for assessment or reassessment, so that the assessee may not fritter away or secrete his resources out of the reach of the Commercial Tax department when the assessment or reassessment is completed. The expression "for the purpose of protecting the interest of the revenue" occurring in Section 83 of the Act is very wide in its meaning. Further, the orders of provisional attachment must be in writing. There must be some material on record to indicate that the Assessing Authority had formed an opinion on the basis thereof that it was necessary to attach the property in order to protect the interest of the revenue. The provisional attachment provided under section 83 is more like an attachment before judgment under the Code of Civil Procedure. It is a liability on the property. However, the power conferred upon the Assessing Authority under Section 83 is very drastic, far-reaching power and that power has to be used sparingly and only on substantive weighty grounds and for valid reasons. To ensure that this power is not misused, no safeguards have been provided in the Section 83. One thing is clear that this power should be exercised by the Authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and circumspection. It should not be exercised unless there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of his property with a view to thwarting the ultimate collection of the demand. Moreover, attachment should be made of the properties and to

the extent it is required to achieve the above object. It should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

29 The Bombay High Court in **Gandhi Trading v. Asst. CIT 3** reported in **(1999) 239 ITR 337 Bom.** has opined that the attachment should be made, as far as possible, of the immovable properties if that can protect the Revenue. The attachment of bank accounts and trading assets should be resorted to only as a last resort because, the attachment of the bank accounts of the assessee would paralyse the functions and business of the assessee. The Authority, therefore, should exercise the power conferred upon him under Section 83 of the Act with circumspection and fairly and reasonably. No hard and fast rule can be laid down as to how and under what circumstances the power under Section 83 can be invoked by the Authority. The discretion conferred on the Authority shall be brought to bear having regard to the facts and circumstances of each case. It is not permissible for the Authority to equate the provisional attachment envisaged under Section 83 of the Act with attachment in the course of the recovery proceedings.

30 In the result, all the six writ applications succeed and are hereby allowed. The orders of provisional attachment of the bank accounts of the writ applicants are hereby quashed and set aside. Rule is made absolute.

(J. B. PARDIWALA, J)

(A. C. RAO, J)

CHANDRESH