IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13132 of 2019

FOR APPROVAL AND SIGNATURE:

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

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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

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VALERIUS INDUSTRIES
Versus
UNION OF INDIA

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Appearance:
MR DEVEN PARIKH, SENIOR COUNSEL WITH MR NISARG N JAIN(8807) ADVOCATE for the Petitioner(s) No. 1
MS MAITHILI MEHTA, AGP(1) for the Respondent(s) No. 2,3,4
SERVED BY RPAD (R)(66) for the Respondent(s) No. 1

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

Date : 28/08/2019

ORAL JUDGMENT

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

1 Rule returnable forthwith. Ms. Maithili Mehta, the learned

Assistant Government Pleader waives service of notice of rule for and on behalf of the respondents.

2 By this writ application under Article 226 of the Constitution of India, the writ applicant – a partnership has prayed for the following reliefs:

> *"(A) Your Lordships may kindly be pleased to issue a writ of certiorari or an appropriate writ, orders, directions and thereby be pleased to quash and set aside the order dated 17.06.2019, passed by the respondent No.4 – Commercial Tax Officer at Vadodara, Gujarat in reference No.ZA2406190010233 whereby the petitioner is demanded to pay the total amount of Rs.1,60,79,302/-;*
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> *(B) Your Lordships may kindly be pleased to issue a writ of certiorari or an appropriate writ, orders, directions and thereby be pleased to quash and set aside the orders of provisional attachment of the stock of goods, amounting Rs.1,60,00,000/- dated 27.11.2018 and the orders of provisional attachment of the petitioner's current account bearing A/C No.01880200001055 and FD/RD CC A/c No.01880500000081, registered at Bank of Baroda, Alkapuri Branch, Vadodara dated 20.11.2018 and the blockage of Input Tax Credit dated 13.2.2019 passed by the respondent No.3 – State Tax Officer at Vadodara, Gujarat.*
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> *(C) Pending hearing and final disposal of the present petition, Your Lordships may kindly be pleased to issue an appropriate writ, orders, directions and thereby be pleased to stay the operation and implementation of the orders dated 17.06.2019 passed by the respondent No.4 and the orders of provisional attachment dated 27.11.2018 dated 20.11.2018 and the orders of blockage of input tax credit of the petitioner.*
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> *(D) Ex-parte ad-interim relief in terms of para 6(C) may kindly be granted.*
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> *(E) To grant any other such relief in the nature of case may require."*

3 The writ applicant seeks to challenge the order dated 17th June 2019 (Annexure : 'A' to this writ application) passed by the respondent No.4 – Commercial Tax Officer at Vadodara, State of Gujarat in the Reference No.ZA2406190010233 whereby a demand has been raised of the total amount of Rs.1,60,79,302/- (One Crore Sixty Lakh Seventy

Nine Thousand Three Hundred Two only) (tax + interest + penalty) under the provisions of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 (for short, "the GST Act, 2017). The writ applicant also seeks to challenge the action of blockage of the input tax credit passed whereby the input tax credit of the writ applicant is blocked under the provisions of the GST Act, 2017. The writ applicant also seeks to challenge the order of provisional attachment of the stock of goods valued at Rs.1,60,00,000/- (Rupees One Crore Sixty Lakh only) dated 27th November 2018 and the order of provisional attachment of the writ applicant's current account being Account No.01880200001055 and FD/RD CC Account No.01880500000081 registered at the Bank of Baroda, Alkapuri Branch, Vadodara dated 20th November 2018 passed by the respondent No.3, State Tax Officer, Vadodara. The State Tax Officer – 1, Unit 44, Vadodara has provisionally attached the aforementioned accounts in exercise of powers under Section 83 of the GST Act, 2017.

4 The case of the writ applicant, as pleaded in the writ application, is as follows:

> *"2.1 The petitioner is a partnership firm and therefore the present petition is filed by its partner, who has been authorized to be the legal representative of the firm to perform and act all the legal representation, who is the national and citizen of India and hence he is entitled to the fundamental and civil rights guaranteed under the Constitution of India.*
>
> *2.2 The petitioner respectfully states that the petitioner firm is engaged in the business of purchasing and selling the material of copper whereby the scrap material of copper is purchased by the firm and the same is being melted and converted into the copper pipes before selling it into the market. The petitioner firm is registered with the GST department with GSTIN No. 24AANFV4191NIZH.*

2.3. The petitioner respectfully states that according to the business practice, the petitioner firm has purchased the copper scrap material from the Various firms/companies, which is volumed as 291538.38 kilograms, amounting Rs.15,51,00,399/- in the tax year of 2017-18. That out of the said amount of volume, the following limited amount of material was purchased from the below mentioned firm:

Name of the firm / company	***Amount of volume (In Rs.)***	***Central and State GST***
Adideva Enterprize	*64,88,624/-*	*11,67,954/-*
Laxmiraj Enterprize	*1,42,84,362/-*	*25,71,183/-*
Radhesh Traders	*33,87,911/-*	*06,09,823/-*
Raghav Traders	*1,79,15,638/-*	*32,35,614/-*
Total	*4,21,36,534/-*	*75,84,575/-*
Total	*4,97,21,109/-*	

2.4 The petitioner respectfully states that the payment of Rs.2,60,16,769/- for the aforementioned purchases was disbursed by the petitioner's firm by RTGS/cheque mode to the respective firms/companies into their bank account. Further, the goods and service tax was credited by the aforementioned firms into their GST/R2A and the same is reflected in it.

2.5 The petitioner respectfully states that the aforementioned firms/companies have not remitted the amount of GST tax though the tax amount is already credited into their GST-R2A.

2.6 *The petitioner respectfully states that the rest of the consideration payment of Rs.2,37,04,340/- for the aforementioned purchase of goods was made by selling the goods of copper pipes to the aforementioned firms/companies, and the petitioner firm has also paid the GST tax of Rs.36,15,918/- to the GST department for the aforementioned*

transactions.

2.7 That on 20.11.2018, the respondent NO.3 had raided the premises of the petitioner firm and informed that there is a huge conspiracy and creation of bogus bills by the aforementioned firms and therefore they are investigating the entire case. Further, without giving an opportunity of hearing and explaining, the executives of the petitioner's firm were served with the order of provisional attachment of the petitioner's current account bearing' A/C No. 01880200001055 and FD/RD CC A/C No. 01880500000081, registered at Bank of Baroda, Alkapuri Branch, Vadodara, passed kar the State Tax Officer at Vadodara, Gujarat in reference No. AC/U-44/STo-1/Va1erius/2018-19, whereby the aforementioned accounts are provisionally attached under the provisions of Gujarat GST Act, 2017 and the transactions of the accounts are completely restrained. However, the bank has denied the attachment of the CC A/C No. 01880500000081 as it is not the asset of the petitioner firm.

2.8 That on 27.11.2018, the respondent No. 13 had again raided the premises of the petitioner firm and seized the sales and purchase register and files and Bank/RTGS files. Further, on the very same day, the petitioner firm was served with summons under Section 70 of Central GST Act, 2017 whereby the legal representative of the firm was directed to remain present on 18.12.2018. However, he was not allowed to explain to aforementioned transaction of sales and purchases and the credit of GST tax into the account of afore-stated 4 firms. Further it was also instructed by the authority that the petitioner will receive the show-cause notice from the department as an opportunity of explanation and they are concerned with the statement presently.

2.9. That on 13.02.2019, the present legal representative partner of the firm has received the e-mail on his mail id i.e. kotharidinesh57@gmail.com from mail id donotreply@gst.gov.in, wherein

it was mentioned that the input tax credit amounting to Rs.30,55,680/- has been blocked. That though the present partner had issued the e-mail, questioning existence of the order as no order was served to him either personally or on his e-mail, the same request is disrespected and kept unheard till today."

5 Mr. Deven Parikh, the learned senior counsel appearing for the writ applicant vehemently submitted that the order of provisional attachment of property under Section 83 of the GST Act, 2017 is without jurisdiction and not tenable in law. Mr. Parikh submitted that the power to order provisional attachment with a view to protect revenue under Section 83 of the Act has been conferred upon the Commissioner. Mr. Parikh pointed out that in case on hand, the impugned order of provisional attachment under Section 83 of the Act, 2017 has been passed by the State Tax Officer – 1, Unit 44, Vadodara. The same is *per se* illegal. Mr. Parikh submitted that the action on the part of the respondent No.3 in blocking the credit balance of Rs.30,55,680/- (Rupees Thirty Lakh Fifty Five Thousand Six Hundred Eighty only) by a computer entry could also be termed as absolutely illegal and not tenable in law. Mr. Parikh further submitted that the order passed by the respondent No.4 dated 17th June 2019 is also illegal, arbitrary, unjust and contrary to the provisions of Section 74 of the Act, 2017. According to Mr. Parikh, the impugned order dated 17th June 2019 came to be passed without affording any opportunity of hearing to the writ applicant. The same is violative of the principles of natural justice. Mr. Parikh submitted that all the three impugned orders dated 20th November 2018, 27th November 2018 and 13th February 2019 are illegal and contrary to the provisions of Section 83 of the GST Act. According to Mr. Parikh, the action on the part of the respondent No.3 in seizing the input tax credit without issue of any show cause notice is illegal and contrary to Section 74 of the GST Act.

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

6 Ms. Mehta, the learned A.G.P. has vehemently opposed this writ application. She submitted that no error, not to speak of any error of law could be said to have been committed by the respondents Nos.3 and 4 in passing the impugned orders. Ms. Mehta submitted that Section 83 of the Act, 2017 undoubtedly provides that during the pendency of any proceeding under Sections 62, 63, 64, 67 and 73 or Section 74, as the case may be, the Commissioner has the power to pass an order of provisional attachment if he is of the opinion that it is necessary to do so for the purpose of protecting the interest of the government revenue. Ms. Mehta submitted that although the power has been conferred by the statute upon the Commissioner and the satisfaction has to be of the Commissioner, yet, by order dated 15th January 2018 bearing No.GSL-S-5(1)-S-83-B-14, the Commissioner of State Tax, Gujarat State, Ahmedabad has delegated his power under Section 83 conferred upon him by the statute to : (1) Deputy Commissioner (2) Assistant Commissioner and (3) State Tax Officer. In view of such order delegating the power, the State Tax Officer could be said to be empowered to pass the impugned order of provisional attachment of property under Section 83 of the Act. According to Ms. Mehta, it cannot be argued that the impugned order of provisional attachment passed by the State Tax Officer is without jurisdiction. Ms. Mehta further submitted that in the same manner, the State Tax Officer could be said to have been empowered to order provisional attachment of the bank accounts also.

7 Ms. Mehta placed strong reliance on the following averments made in the affidavit-in-reply filed on behalf of the respondent No.3 duly affirmed by one Devendrakumar Dahyabhai Chauhan, State Tax Officer 1, Unit 6, Vadodara:

"6 It is submitted that, raid was carried on the premises of the present petitioner being & factory premises on 20.11.2018 thereafter, on 20.11.2018 during the raid it was found that the petitioner herein had entered into bogus billing transaction/only papers trails from four enterprises namely Adideva Enterprise, Laxmiraj Enterprise, Raghav Traders, Radhesh Traders.

7 It is respectfully submitted that, the raid was carried on for a period of seven days from 20.11.2018 to 27.11.2018 and the summon was issued on 27.11.2018 and the hearing was kept on 18.12.2018, the authority issued herewith and marked as ANNEXURE-R-I (Colly) are the copies of the INS-O1 and INS-O2. The said INS-O1 and INS-02 was issued as prescribed under rule 139(1) of the GGST/CGST Act. It is respectfully submitted that, upon perusal of the Rule 139 which reads as nomenclature as inspection search and seizure. Where it is mentioned that for the purpose of inspection, search or seizure in accordance with the provision of section 67 INS-O1 is required to be issued authorizing any other Officer subordinate to him i.e. joint Commissioner to conduct the inspection or search or as the case may be seizure of goods, documents book or things liable to confiscation. Thereafter, seizure order is required to be given in form INS 02.

8 It is respectfully submitted that, upon perusal of the order of seizure in form GST INS-Oz dated 27.11.2018. It is categorically mentioned that as per rule-56(12), the details of raw material or service used in manufacture and quantitative details of the goods shown manufacture including the waste and by products thereof, the petitioner herein has not maintained such books of account and therefore, there is contravention to the provisions of the CGST/GGST Act, 2017 with an intention to evade payment of tax. It is also respectfully submitted that, upon perusal of the form GST INS-OZ in paragraph no.2 of the said order of seizure. It is categorically mentioned that the petitioner has not received any physical goods as per the said invoices and the petitioner has availed credit fraudulently. It is further observed in the seizure order that, some of the transactions shown in the books as well as return of the petitioners are found fictitious and only billing activities/papers trails without entering into Physical transactions of goods has been undertaken.

9 It is respectfully submitted that, the summon was issued on 27.11.2018, and the bearing Was kept on 18.12.2018, the petitioner had Visited the office and the statement was recorded on 18.12.2018 . Upon perusal of the said statement in question no.20, 21 and 29. It is categorically mentioned that upon asking of the bills as well as the existence of the dealers with whom billing transactions was done, the

petitioner herein was not in a position to answer affirmatively and therefore, there is subjective satisfaction on behalf of the respondent authorities to believe that the said transaction was fictitious transactions and with an intention to evade payment of tax as well as with an intention to fraudulently avail Input Tax Credit. Annexed herewith and marked as ANNEXURE-II is the copy of the statement dated 18.12.2018. It is further respectfully submitted that, one dealer namely Mr. Sunny Pravinchand Nagar Statement was recorded on 20.03.2019, since stated that he has incorporated/registered fourteen fictitious entities/dealers and the present petitioner namely Valerius Industries is also part of the said fourteen fictitious entities/dealers. Annexed herewith and marked as Annexure-R-III is the copy of such statement dated 23.01.2019.

10 It is respectfully submitted that, the bank account was provisionally attached under rule 159(1) of the GGST/CGST rule, on 20.11.2018 and the ITC Input Tax Credit was blocked on 11.02.2019 under section 17 (5) of the GGST/CGST Act. Annexed herewith and marked as ANNEXURE-R-IV is the copy of the letter dated 11.02.2019.

11 It is respectfully submitted that, the order Passed under DRC, 07 has attained finality and the petitioner has alternative statutory remedy and the petitioner may be relegated to prefer appeal under section 107 of GGST/CGST Act."

8 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 State Tax Officer 1, Unit 44, Vadodara could have exercised powers under Section 83 of the GST Act, 2017 for the purpose of provisional attachment of the property owned by the writ applicant.

9 Before adverting to the rival submissions canvassed on either side, we must look into the few relevant provisions of the Act, 2017. Section 62 of the Act, 2017 reads as follows:

*"62. **Assessment of non-filers of returns.***
(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person

to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue."

10 Section 63 of the Act, 2017 reads as follows:

"63. ***Assessment of unregistered persons.***

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard."

11 Section 64 of the Act, 2017 reads as follows:

"64. Summary assessment in certain special cases.

(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this

section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74."

12 Section 67 of the Act, 2017 reads as follows:

"67. ***Power of inspection, search and seizure.***

(1) 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 this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this 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 this 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.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of State tax to search and seize or may himself search and seize such goods, documents or books or things: Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be

retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as

may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

13 Section 73 of the Act, 2017 reads as follows:

"73. ***Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.***

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for

issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

14 Section 74 of the Act, 2017 reads as follows:

"74. ***Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.***

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any

notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.– *For the purposes of section 73 and this section, -*
(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—*For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

15 Section 83 of the Act, 2017, which is relevant for our purpose, reads as under:

> *"83.* ***Provisional attachment to protect revenue in certain cases.***
>
> *(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 the order made under sub-section (1)."*

16 The plain reading of Section 83 of the Act referred to above makes it clear that the powers have been conferred by the legislature upon the Commissioner. The subjective satisfaction that for the purpose of protecting the interest of the government revenue, it is necessary that the goods should be provisionally attached should be that of the Commissioner. The Commissioner has been conferred with the power to pass an order in writing for the purpose of attaching provisionally any property including the bank account belonging to the taxable person. Indisputably, in the case on hand, the order of provisional attachment of the bank account as well as the goods has not been passed by the Commissioner, the same has been passed by the State Tax Officer i.e. the respondent No.3 herein.

17 The order of provisional attachment of property under Section 83 in form NO.GST DRC-22 in accordance with Rule 159(1) of the Rules reads as follows:

FORM GST DRC – 22
[See rule 159(1)]

Reference NO.AC/U-44/STO-1/Valerius/2018-19 dated : 20/11/2018

To,
The Manager
Bank of Baroda
Alkapuri Branch
Vadodara

Provisional attachment of property under Section 83

It is to inform that M/s. Valerius Industries, having principal place of business at 26/1 GIDC Industrial Estate bearing registration number as 24AANFV4191N12H (GSTIN/ID), PAN: AANFV4191N is a registered taxable person under the Gujarat Goods and Services Tax Act 2017 & Central Goods and Services tax Act 2017. 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 Current Account No 01880200001055 FD RD & CC Account No.01880500000081 account in your bank. In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, R R Bhatiya, State Tax Officer 1, Unit-44, Vadodara, hereby provisionally attach the aforesaid account / property.

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. The property mentioned above shall not be allowed to be disposed of without the prior permission of this department.

Sd/-
(R.R. Bhatiya)
State Tax Officer -1,
Unit 44, Vadodara."

18 The order of provisional attachment of the goods valued at Rs.1,60,00,000/- reads as under:

"Details of goods seized:

M/s Valerius Industries 26/1 G.I.D.C. Industrial Estate, Kalol, Dist: Panchamahal GSTN:24AANFV4191N1ZH

The process of site inspection was held at your business premises from 20/11/18. In this connection, it has come to the notice during this inspection and the site inspection of the business premises of the other dealers conducted by the concerned officers that, out of the purchases shown in the books of accounts by you, following dealers have been prima facie found to be engaged only in the billing activity.

STATEMENT OF PURCHASE SHOWN IN BOOKS WITHOUT TAKING PHYSICAL DELIVERY OF GOODS.

SR. NO	*TAX PAYER NAME*	*GST NO.*	*TOTAL VALUE OF PURCHASES SHOWN*	*CGST + SGST*
1	*ADIDEV ENTERPRISE*	*24HEGPS2435C1ZN*	*6488624*	*1167954*
2	*LAXMIRAJ ENTERPRISE*	*24GTXPS2601K1Z3*	*14284362*	*2571183*
3	*RADHESH TRADERS*	*24DFNPP9188F1ZR*	*3387911*	*609823*
4	*RAGHAV TRADERS*	*24APHPY6226N1Z8*	*17975638*	*3235614*
TOTAL			*42136534*	*7584575*

Thus, the tax credit of purchases made by you from the above mentioned dealers is liable to be rejected and tax, interest and penalty are liable to be levied. For the security of the government tax, you have to maintain goods stock of Rs.1,60,00,000/- against the proposed dues from the spot goods stock of Rs.2,48,59,485 as produced by you during the site inspection. The said stock of goods has been provisionally attached.

Place: Kalol
Date: 27/11/2018

Sd/-
(R.R.Bhatiya)
State Tax Officer-1
Unit-6, Vadodara"

19 We shall now look into the order passed by the Commissioner of State Tax delegating his power of provisional attachment under Section 83 of the Act to : (1) Deputy Commissioner (2) Assistant Commissioner and (3) State Tax Officer. The order reads as under:

ORDER
By the Commissioner of State Tax,
Gujarat State, Ahmedabad

Dated the 15 January, 2018

No.GSL/S.5(1)/S.83/B.14

Specification of proper officers under the Gujarat Goods and Services Tax Act, 2017

In exercise of the power conferred upon me by sub-section of section 5 read with clause (91) of section 2 of the Gujarat Goods and Services Tax Act, 2017 and the rules framed thereunder, I do hereby assign the functions to be performed under this Act by a proper officer as defined in clause (91) of section 2 under different sections of the said Act mentioned in the entry in column (2) of the Schedule below and described in the corresponding entry at column (3) of the said Schedule to the Proper Officers specified in the corresponding entry in column (4) thereof, subject to the condition that the functions hereby assigned shall be performed only within their jurisdiction unless specific jurisdiction is mentioned there against.

SCHEDULE – A

SI No.	*Section*	*Functions assigned*	*Designation of proper officer*
'(1)	*'(2)*	*'(3)*	*'(4)*
1	*83*	*Provisional attachment to protect revenue in certain cases*	*Deputy Commissioner, Assistant Commissioner, State Tax Officer*

Sd/-
(P D Vaghela)
Commissioner of State Tax
Gujarat State, Ahmedabad."

20 The first and the foremost question that needs to be answered is whether the Commissioner could have delegated his power by virtue of the aforesaid order. Ms. Mehta, the learned A.G.P. seeks to rely upon Section 5 of the Act, 2017. Section 5 of the State GST Act reads as under:

*"5. **Powers of Officers***

(1) Subject to such conditions and limitations as the Commissioner may

impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act and discharge the duties conferred or imposed on him under this Act.

(2) An Officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other Officer of State tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other Officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other Officer of State tax."

21 According to Ms. Mehta, by virtue of Section 5(3) of the Act, the Commissioner is empowered to delegate his power to any other officer who is subordinate to him.

22 Ms. Mehta, thereafter, invited the attention of this Court to two definitions of "Commissioner" and "Commissioner in the Board" as defined under Sections 2(24) and 2(25) respectively of the Gujarat Goods and Services Tax Act, 2017. The two definitions read as under:

"2(24). Commissioner" means the Commissioner of State tax appointed under section 3 and includes the Chief Commissioner or Principal Commissioner of State tax appointed under section 3;"

"2(25). "Commissioner in the Board" means the Commissioner referred to in section 168 of the Central Goods and Services Tax Act;"

23 Ms. Mehta, thereafter, invited the attention of this Court to Section 167 of the Gujarat Goods and Services Tax Act, 2017 (fort short, 'the GGST Act, 2017), which is with regard to the delegation of powers. Section 167 of the GGST Act, 2017 reads as under:

> *"The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification."*

24 In the last, Ms. Mehta invited the attention of this Court to Section 168 of the GGST 2017. Section 168 of the GGST, 2017 reads as under:

> ***"168. Power to issue instructions or directions.*** *The Commissioner may, if he considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the State tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

25 Ms. Mehta submitted that by virtue of the aforesaid provisions of the State GST Act, the Commissioner State Tax could be said to be empowered to delegate his powers of provisional attachment under Section 83 of the State GST Act.

26 At this stage, it is necessary to look into few provisions of the Central GST Act, 2017. Section 2(24) of the CGST Act, 2017 defines "Commissioner" as under:

> *""Commissioner" means the Commissioner of State tax appointed under section 3 and includes the Chief Commissioner or Principal Commissioner of State tax appointed under section 3;"*

27 Section 2(25) of the CGST Act defines "Commissioner in the Board" as under:

> *"2(25) "Commissioner in the Board" means the Commissioner referred to in section 168;"*

28 Section 83 of the CGST Act is *pari materia* to Section 83 of the State GST Act. Section 167 of the CGST Act with regard to the delegation of powers reads as under:

> *"167. **Delegation of powers.-** The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification."*

29 Section 168 of the CGST Act, 2017 reads as under:

> *" 168. (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*
>
> *(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board."*

30 The comparison of the provisions of the State GST Act and the CGST would indicate that there is a vast difference between the two. Section 168(2) of the CGST Act clarifies that the Commissioner specified in sub-section (3) of Section 5 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said section with the approval of the Board. Thus, the distinguishing feature is that so far as the CGST Act is concerned, the power of delegation under Section 5(3) of the Act

therein is with the Commissioner in the Board and not the Commissioner of the Central Tax. Whereas, so far as Section 5(3) of the State GST Act is concerned, the Commissioner would be the Commissioner of the State Tax. If the provisions of the CGST Act would have been applicable to the facts of the present case, then there would have been no difficulty at all in quashing the order passed by the Commissioner of the State Tax delegating his power of Section 83 to the subordinate officers on the ground that the same is without jurisdiction. However, it appears that so far as the State GST Act is concerned, the Commissioner, in Section 5(3) of the Act, would be the Commissioner of the State Tax and in the same manner, the Commissioner, in Sections 167 and 168 of the Act respectively, shall also be the Commissioner of the State Tax.

31 Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as "the act of entrusting another with authority by the empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself". Justice Mathew in **Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others [1974 (4) SCC 98]**, has succinctly discussed the concept of delegation. Paragraph 37 reads as follows:

> *"37. … Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of*

a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced."

32 As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, *delegatus non potest delegare*. The naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him and there is a presumption that he is required to do the act himself and cannot re-delegate his authority. As a general rule, "if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited. Normally, a discretion entrusted by the Parliament to an administrative organ must be exercised by that organ itself. At the same time, it is settled position of law that the maxim *"delegatus non-potest delegare*" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. *Prima facie,* a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. However, the intention may be negatived by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted."

33 At this stage, in the aforesaid context, we may deal with the

submission canvassed by Ms. Mehta that in the case on hand, the order of provisional attachment under Section 83 of the Act came to be passed because of the pendency of proceedings under Section 67 of the Act. The submission of Ms. Mehta is that Section 67 of the Act confers power of inspection, search and seizure. Where the proper officer not below the rank of Joint Commissioner has reasons to believe that 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 indulged in contravention of any of the provisions of the Act or the rules made thereunder to evade tax under the Act 2017, then such proper officer not below the rank of Joint Commissioner may authorize in writing any other officer of the 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. According Ms. Mehta, if, ultimately, the entire exercise of inspection, search and seizure is undertaken by an authorized person, then such authorized officer can always be delegated with the power to pass an order of provisional attachment under Section 83 if the authorized officer who is of the opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue. We are afraid we are not in a position to accept this argument.

34 The first and the foremost thing which needs to be noted is that even for the purpose of Section 67, the satisfaction has to be of the proper officer not below the rank of the Joint Commissioner. If the proper officer not below the rank of the Joint Commissioner has reasons to believe that a taxable person has indulged in contravention of any of the provisions of the Act, 2017 or the rules, then in such circumstances, he may authorize in writing any other officer to carry out the inspection, search and seizure. Therefore, when an authorized officer

carries out an inspection, search and seizure, the same is merely on the basis of the satisfaction recorded or arrived at by the proper officer not below the rank of the Joint Commissioner. The authorized officer is merely executing or implementing the order that may be passed by the proper officer not below the rank of the Joint Commissioner for the purpose of Section 67 of the Act, 2017.

35 In the case on hand, Section 83 makes it abundantly clear that it is the Commissioner's opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of the order dated 15th January 2018 passed in exercise of power under sub-section (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed thereunder. In our opinion, the answer has to be in the negative. Although there is no specific challenge to the order dated 15th January 2015 passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, we are of the view that by virtue of such order, such impugned order of provisional attachment cannot be defended.

36 We now propose to examine the matter from a different angle. Let us for the time being proceed on the footing that it was within the powers of the Commissioner to delegate his power of provisional attachment under Section 83 of the Act upon the three subordinate officers by virtue of sub-section (3) of Section 5 read with clause 91 of Section 2 of the Act, 2017. Section 83 talks about the opinion which is necessary to be formed for the purpose of protecting the interest of the government revenue. Any opinion of the authority to be formed is not subject to objective test. The language leaves no room for the relevance

of an official examination as to the sufficiency of the ground on which the authority may act in forming its opinion. But, at the same time, there must be material based on which alone the authority could form its opinion that it has become necessary to order provisional attachment of the goods or the bank account to protect the interest of the government revenue. The existence of relevant material is a pre-condition to the formation of opinion. The use of the word "may" indicates not only the discretion, but an obligation to consider that a necessity has arisen to pass an order of provisional attachment with a view to protect the interest of the government revenue. Therefore, the opinion to be formed by the Commissioner or take a case by the delegated authority cannot be on imaginary ground, wishful thinking, howsoever laudable that may be. Such a course is impermissible in law. At the cost of repetition, the formation of the opinion, though subjective, must be based on some credible material disclosing that is necessary to provisionally attach the goods or the bank account for the purpose of protecting the interest of the government revenue. The statutory requirement of reasonable belief is to safeguard the citizen from vexatious proceedings. "Belief" is a mental operation of accepting a fact as true, so, without any fact, no belief can be formed. It is equally true that it is not necessary for the authority under the Act to state reasons for its belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed, as it has been held by the Supreme Court in **Sheonath Singh's case [AIR 1971 SC 2451],** that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court. In the case at hand, Ms. Mehta, the learned A.G.P. appearing for the respondents very fairly submitted that not only the impugned order of provisional attachment is bereft of any reason,

but there is nothing on the original file on the basis of which this Court may be in a position to ascertain the genuineness of the belief formed by the authority. The word "necessary" means indispensable, requisite; indispensably requisite, useful, incidental or conducive; essential; unavoidable; impossible to be otherwise; not to be avoided; inevitable. The word "necessary" must be construed in the connection in which it is used. The formation of the opinion by the authority should reflect intense application of mind with reference to the material available on record that it had become necessary to order provisional attachment of the goods or the bank account or other articles which may be useful or relevant to any proceedings under the Act. [see: **Bhikhubhai Vithlabhai Patel and others vs. State of Gujarat AIR 2008 SCC 1771]**.

37 In **J. Jayalalitha vs. U.O.I. [AIR 1999 SC 1912],** the Supreme Court while construing the expression "as may be necessary" employed in Section 3 (1) of the Prevention of Corruption Act, 1988 which conferred the discretion upon the State Government to appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases to try the offences punishable under the Act, observed :

> *"The legislature had to leave it to the discretion of the Government as it would be in a better position to know the requirement. Further, the discretion conferred upon the Government is not absolute. It is in "The nature of a statutory obligation or duty. It is the requirement which would necessitate exercise of power by the Government. When a necessity would arise and of what type being uncertain the legislature could not have laid down any other guideline except the guidance of "necessity". It is really for that reason that the legislature while conferring discretion upon the Government has provided that the Government shall appoint as many Special Judges as may be necessary. The words "as may be necessary" in our opinion is the guideline according to which the Government has to exercise its discretion to achieve the object of speedy trial. The term "necessary" means what is indispensable, needful or essential."*

38 In **Barium Chemicals Ltd. vs. Company Law Board [AIR 1967 SC 295],** the Supreme Court pointed out, on consideration of several English and Indian authorities that the expressions "is satisfied", "is of the opinion" and "has reason to believe" are indicative of subjective satisfaction, though it is true that the nature of the power has to be determined on a totality of consideration of all the relevant provisions. The Supreme Court while construing Section 237 of the Companies Act, 1956 held :

> *"64. The object of S. 237 is to safeguard the interests of those dealing with a company by providing for an investigation where the management is so conducted as to jeopardize those interests or where a company is floated for a fraudulent or an unlawful object. Clause (a) does not create any difficulty as investigation is instituted either at the wishes of the company itself expressed through a special resolution or through an order of the court where a judicial process intervenes. Clause (b), on the other hand, leaves directing an investigation to the subjective opinion of the government or the Board. Since the legislature enacted S. 637 (i) (a) it knew that government would entrust to the Board its power under S. 237 (b). Could the legislature have left without any restraints or limitations the entire power of ordering an investigation to the subjective decision of the Government or the Board? There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The legislature no doubt has used the expression "circumstances suggesting". But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the legislature could have left to the subjective*

process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process. These analysis finds support in Gower's Modern Company Law (2nd Ed.) p. 547 where the learned author, while dealing with S. 165(b) of the English Act observes that "the Board of Trade will always exercise its discretionary power in the light of specified grounds for an appointment on their own motion" and that "they may be trusted not to appoint unless the circumstances warrant it but they will test the need on the basis of public and commercial morality." There must therefore exist circumstances which in the opinion of the Authority suggest what has been set out in sub-clauses (i), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

39 The Supreme Court while expressly referring to the expressions such as "reason to believe", "in the opinion" of observed :

"Therefore, the words, "reason to believe" or "in the opinion of do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective to process not lending itself even to a limited scrutiny by the court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

40 In the **Income-tax Officer, Calcutta and Ors. vs. Lakhmani Mewal Das [AIR 1976 SC 1753],** the Supreme Court construed the expression "reason to believe" employed in Section 147 of the Income-Tax Act, 1961 and observed: the reasons for the formation of the belief must have a rational connection with or relevant bearing on the

formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully or truly all material facts. It is not any or every material, howsoever vague and indefinite or distant which would warrant the formation of the belief relating to the escapement of the income of the assessee from assessment. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

41 In **Bhikhubhai Vithalabhai Patel (supra)**, the Supreme Court observed in paras 32 and 33 as under:

> *"32. We are of the view that the construction placed on the expression "reason to believe" will equally be applicable to the expression "is of opinion" employed in the proviso to Section 17 (1) (a) (ii) of the Act. The expression "is of opinion", that substantial modifications in the draft development plan and regulations, "are necessary", in our considered opinion, does not confer any unlimited discretion on the Government. The discretion, if any, conferred upon the State Government to make substantial modifications in the draft development plan is not unfettered. There is nothing like absolute or unfettered discretion and at any rate in the case of statutory powers. The basic principles in this regard are clearly expressed and explained by Prof. Sir William Wade in Administrative Law (Ninth Edn.) in the chapter entitled 'abuse of discretion' and under the general heading the principle of reasonableness' which read as under :*
>
> *"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and*

meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependents, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed."

33. The Court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The Court is entitled particularly, in the event, when the formation of the opinion is challenged to determine whether the formation of opinion is arbitrary, capricious or whimsical. It is always open to the court to examine the question whether reasons for formation of opinion have rational connection or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute."

42 In the absence of any cogent or credible material, if the subjective satisfaction is arrived at by the authority concerned for the purpose of passing an order of provisional attachment under Section 83 of the Act, then such action amounts to malice in law. Malice in its legal sense means such malice as may be assumed from the doing of a wrongful act intentionally but also without just cause or excuse or for want of reasonable or probably cause. Any use of discretionary power exercised for an unauthorized purpose amounts to malice in law. It is immaterial whether the authority acted in good faith or bad faith. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of **Smt. S.R. Venkatraman vs. Union of India** reported in **(1979) ILLJ 25(SC)** where it had been held:

"There will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstances. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience and as things go, they may well be said to run into one another. The influence of extraneous matters will be undoubtedly there where the authority making the order has admitted their influence. An administrative order which is based on reasons of fact which do not exist must be held to be infected with an abuse of power."

We may also refer to and rely upon a decision of the Supreme Court in the case of **ITO Calcutta vs. Lakhmani Mewal Das** reported in [**(1976) 103 ITR 437 (SC)]** wherein it had been held as under:

"The reasons for the formation of the belief contemplated by Section 147(a) of the Income-tax Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the I.T.O. and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the I.T.O. on the point as to whether action should be initiated for reopening the assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

43 There is one another pertinent feature of this matter. When the search of the industrial premises of the writ applicant was undertaken, the further inquiry in that regard revealed that there were no goods

involved, but there were only billing transactions. At the time of the search, goods worth Rs.2,48,59,485/- were found stored at the industrial premises of the writ applicant. The authority came to the conclusion that the tax liability which may be determined in future under Section 74 of the Act may be to the tune of Rs.1,60,00,000/- (Rupees One Crore Sixty Lakh only), and in such circumstances, thought fit to provisionally attach the goods worth only Rs.1,60,00,000/- from the total goods worth Rs.2,48,59,485/- (Rupees Two Crore Forty Eight Lakh Fifty Nine Thousand Four Hundred Eighty Five only).

44 We would like to add something more to what we have stated above. It would be a big mistake on the part of the respondents to understand that the reasons to believe necessary for the purpose of carrying out inspection, search and seizure under Section 67 of the Act, 2017 would be sufficient enough for the purpose of formation of the opinion that it is necessary to provisionally attach the goods or other articles for the purpose of protecting the interest of the government revenue. In our opinion, Section 83 of the Act stands altogether on a different footing. The considerations also are quite different for the purpose of exercising the power of provisional attachment under Section 83 of the Act. Just because, some proceedings are initiated under Section 67 by itself would not be sufficient to arrive at the satisfaction that it is necessary to provisionally attach the property for the purpose of protecting the interest of the government revenue. The power has been specifically conferred upon the Commissioner to form such an opinion. The legislature was quite alive to the fact that an order of provisional attachment cannot be as a matter of course. It is one of the drastic measures which the authority may be compelled to take if the situation demands for the purpose of protecting the interest of the government revenue. Under Section 67 of the Act, 2017, the legislature has thought

fit to use the words "proper officer not below the rank of Joint Commissioner". In Section 83, even that discretion is taken away and it is only the Commissioner who has been empowered to act under Section 83 of the Act. In our opinion, therefore, the subjective satisfaction, which is required for the purpose of Section 83 of the Act, is not dependent on Section 67 of the Act or to put it in other words, just because, a search has been undertaken resulting in seizure of goods by itself may not be sufficient to arrive at the subjective satisfaction that it is necessary to pass an order of provisional attachment to protect government revenue.

45 In the case on hand, the challenge is also to the order in form GST DRC – 07 (Rule 142(5) of the Rules. This order dated 17th June 2019 [Annexure : 'A' to this writ application) is an assessment order purported to have been passed under Section 74 of the Act. Section 74 reads as under:

> *"74.* ***Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.***
>
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*
>
> *(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*
>
> *(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly*

availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.– *For the purposes of section 73 and this section, -*
(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—*For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

46 Thus, Section 74 provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of fact. The case of the department is very specific.

47 Rule 142(5) of the Rules 2017 reads as under:

"142. ***Miscellaneous transitional provisions.***

(5) Notwithstanding anything to the contrary contained in this Act, any amount of input tax credit reversed prior to the appointed day shall not be admissible as input tax credit under this Act."

48 It appears from the materials on record that without issue of any show cause notice, the tax liability came to be determined under Section 74 of the Act. Section 74 makes it abundantly clear that the defaulter should be called upon to show cause as to why he should not be paid the amount specified in the notice along with the interest payable thereon. There could not have been any assessment under Section 74 of the Act without giving any opportunity of hearing to the writ applicant. In such

circumstances, the order is not tenable in law and deserves to be quashed and set aside. We also fail to understand as to on what basis the input tax credit could have been blocked by way of computer entry. At the most, the same could have been ordered to be provisionally attached, but how could the same have been blocked. Such action is also not sustainable in law.

49 Section 83 of the Act, 2017 is in *pari materia* with the provisions of Section 281B of the Income Tax Act, 1961. Section 281B of the Act, 1961 also provides for a provisional attachment of the property of an assessee pending the adjudication an assessment / reassessment proceedings where the income tax department believes that such attachment is necessary to protect the interest of the revenue. The provisions of Section 281B of the Act, 1961 is extracted below for the sake of completion and to demonstrate that the provisions of Section 83 have been framed along identical lines as Section 281B:

> *"1) Where during the pendency of any proceeding (or the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, by order in writing, attach provisionally any property belonging to the essessee in the manner provided in the Income-Tax Act, 1961.*
>
> *(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under head (1).*
>
> *However, the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing. extend the aforesaid period by such further period or periods as he thinks fit. so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order*

of assessment or reassessment. whichever is later.

(3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached under head (1) the Assessing Officer shall, by an order in writing, revoke such attachment.

However where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

(4) The Assessing Officer may, for the purposes of determining the value of the property provisionally attached under head (1), make a reference to the Valuation Officer referred to in the provision of the lncome-Tax Act, 1961 who shall estimate the fair market value of the property in the manner provided under that provision and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

(5) An order revoking the provisional attachment under head (3) shall be made

(a) within forty-five days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made under head (4); or (b) within fifteen days from the date of receipt of guarantee in any other cases.

(6) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified In the notice of demand, the Assessing Officer may invoke the guarantee furnished under head (3) wholly or in part, to recover the amount.

(7) The Assessmg Officer shall. In the interests of the revenue. invoke the bank guarantee, if the assessee falls to renew the guarantee referred to in head (3), or falls to furnish a new guarantee from & scheduled bank for an equal amount. fifteen days before the expiry of the guarantee referred to in head (3).

(8) The amount realised by invoking the guarantee referred to ln head (3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its

subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section (1) of section 45 of the Reserve Bank of India Act, 1934 at the place where the office of the Principal Commissioner or Commissioner is situate.

(9) Where the Assessing Officer is satisfied that the guarantee referred to in head (3) is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

For the purposes of this provision13. the expression "scheduled bank" shall mean a bank included in the Second Schedule to the Reserve Bank of India Act, 1934."

50 **In the aforesaid context, we may quote:**

"***Halbury's Laws of India (Direct Tax II, Vol 32), 2nd Edn. Halsbury's Laws of India (Direct Tax II, Vol 32) 2nd edn. 7. Miscellaneous***

This provision relating to making an attachment before judgment, ie, before assessment order is made, is legal if assessing authority is of opinion that it is necessary to protect interests of revenue and same is supported by supervening factor. It gives guidelines for making provisional attachment and is, thus, constitutionally valid. The power conferred upon the Assessing Officer under this provision is a very drastic far-reaching power and that power has to be used sparingly and only on substantive weighty grounds and reasons. To ensure that this power is not misused, a number of safeguards have been provided in the provision itself. This power should be exercised by the Assessing Officer 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. Moreover, power under this provision is to be exercised only if there is sufficient material on record to justify satisfaction that assessee is about to dispose of whole or any part of his property with a view to thwarting ultimate collection of demand and in order to achieve said objective attachment should be of properties and to extent it is required to achieve this 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. Attachment of bank accounts and trading assets should be resorted to only as a last resort. In any event, attachment under this provision should not be equated with attachment in the course of recovery proceedings. In the event the revenue is adequately protected by attachment, there is no justification for Assessing Officer for making an order of demand directing assessee to deposit entire demand within seven

days of order of assessment. Further, provisional attachment can be levied even in cases where proceedings under provisions of the Income-Tax Act, 1961 dealing with search and Seizure are yet to be initiated. Therefore, invoking this provision and issuing notice under the provision of the lncome-Tax Act, 1961 dealing with assessment in case of search or requisition on same day would not effect validity of order passed under this provision.

Where on facts Assessing Officer was satisfied that it was necessary to attach properties of assessee in order to protect interest of revenue and due approval was taken from concerned Commissioner who opined that it was üt case for provisional attachment, order passed under this provision in respect of certain properties of assessee would not warrant judicial review. It is for assessing authority to decide as to which of assets could be liquidated without difficulty for realization of tax assessed. Moreover. an assessee cannot compel Assessing Officer to attach any particular property. Since this provision provides for attachment of property of assessee only and, therefore. an order directing attachment of fixed deposits of assessee would be illegal. However this provision does not contain requirement of hearing before passing order of provisional attachment of assessee's bank account. Application of the assessee pending before Assistant Commissioner for release of assets attached must be disposed of the earliest for the ends of justice.

An order for provisional attachment passed under this provision is valid only for a period of six months and ceases to have effect after the expiry of six months from the date of the order. However, time can be extended for a further period of six month. Appropriate order for extension of period of provisional attachment would only be passed upon satisfaction of the criteria listed out. An injunction/stay order passed during pendency of assessment proceedings does not on its own or by deeming fiction. extend period stipulated in order. Upon the expiry of the period stipulated in the order demanding provisional attachment, assessee is entitled to encash his money minus any tax due. An extension of provisional attachment without recording any reasons, such order must be taken to be illegal and non est. When assessee has filed an appeal challenging order of assessment within time period prescribed under the provision of the Income-Tax Act, 1961 dealing with appealable orders along with a stay application, Assessing Officer cannot not pass an order of attachment in terms of this provision during pendency of said appeal. When property, which' is subject matter of provisional attachment, is sufficient to satisfy tax liability and safeguard interest of revenue, petitioner can seek release of provisional attachment in respect of other properties and amounts due from debtors and depositors."

51 Thus, although the provisions of Section 281B of the Income Tax Act is *pari materia* to Section 83 of the State GST Act, yet one pertinent feature of Section 281B of the Income Tax Act is that it gives guidelines for making the provisional attachment. Such guidelines are missing so far as Section 83 of the State GST Act is concerned.

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 far-fetching, 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 far-reaching 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.

53 In the overall view of the matter, we are convinced that the respondents have not acted in accordance with law.

54 In such circumstances referred to above, this writ application succeeds and is hereby allowed. The assessment order dated 17th June 2019 passed by the respondent No.4 – Commercial Tax Officer at Vadodara demanding total amount of Rs.1,60,79,302/- towards tax, penalty and interest is hereby quashed and set aside. However, it is clarified that if the authority wants to proceed against the writ applicant under Section 74 of the Act, then it shall be open for the authority to do so after issuing appropriate show cause notice and give an opportunity of hearing to the writ applicant.

55 The order of provisional attachment of the stock of goods amounting to Rs.1,60,00,000/- dated 27th November 2018 as well as the order of provisional attachment of the writ applicant's current account bearing account No.01880200001055 and FD/RD CC account No.01880500000081 registered at the Bank of Baroda, Alkapuri Branch, Vadodara dated 20th November 2018 is hereby quashed and set aside. The blockage of input tax credit dated 13th February 2019 by way of computer entry is also held to be illegal and is ordered to be released forthwith. Rule is made absolute.

(J. B. PARDIWALA, J)

(A. C. RAO, J)

CHANDRESH