

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO. 167 OF 2020***

M/s. Gehna Trading LLP ... Petitioner

V/s.

Union of India and Ors. ... Respondents.

Mr. Brijesh Pathak for the Petitioner

Mr. J.B. Mishra for the Respondents.

***CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.***

DATE : 30 JANUARY 2020.

P.C. :-

By this Petition the Petitioner has challenged the action of the Respondents in provisionally attaching the bank account of the Petitioner.

2. On 6 December 2019 the Deputy Commissioner, Central Goods and Service Tax (CGST) informed the Branch Manager where the Petitioner holds a bank account that in view of the proceedings filed against one Yusuf Fauzdar Shaikh, proprietor

of M/s. Fashion Creations, proceedings have been launched against the said taxable person and the Respondents were of the belief that amounts were being transferred to various persons, including the Petitioner. Hence, a direction was issued to the bank not to allow any debit.

3. Though the order does not refer to any provision of law, the learned Counsel for the Petitioner points out that the power for provisionally attaching the bank account is under Section 83 of the Central Goods and Services Tax (CGST) Act, 2017. The learned Counsel for the Petitioner submitted that there are no proceedings under Sections 62, 63, 64, 67, 73 and 74 against the Petitioner as mentioned under Section 83 of CGST Act, which is necessary if attachment under Section 83 is to be levied. The learned Counsel for the Petitioner relies upon the decision of this Court dated 17 January 2020 in Writ Petition No. 3145 of 2019 (*Kaish Impex Pvt. Ltd. v/s. Union of India & Ors.*) wherein this Court has observed thus :-

“13. Primary defence of the Respondents is that even if section 62, 63, 64, 67, 73 and 74 mentioned in section 83 of the Act are not referable to the case of the Petitioner, since a summons is issued to the Petitioner in pursuant to the inquiry initiated against M/s. Maps Global under section 67 of the Act, by the issuance of summons the proceedings get extended to the Petitioner also.

14. *The analysis of section 83 of the Act will show that such interpretation is not permissible and not contemplated by the legislature. Section 83 read with Rule 159(1), and the form GST DRC-22, lay down a scheme as to how provisional attachment in certain cases is to be levied. Section 83 though uses the phrase 'pendency of any proceedings', the proceedings are referable to section 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions. Section 83 read with section 159(2), and the form GST DRC-22 show that a proceeding has to be initiated against a specific taxable person, an opinion has to be formed that to protect the interest of Revenue an order of provisional attachment is necessary. The format of the order, i.e. the form GST DRC-22 also specifies the particulars of a registered taxable person and which proceedings have been launched against the aforesaid taxable person indicating a nexus between the proceedings to be initiated against a taxable person and provisional attachment of bank account of such taxable person.*

15. *Power to provisionally attach bank accounts is a drastic power. Considering the consequences that ensue from provisional attachment of bank accounts, the Courts have repeatedly emphasized that this power is not to be routinely exercised. Under Section 83, the legislature has no doubt conferred power on the authorities to provisionally attach bank accounts to safeguard government revenue, but the same is within well-defined ambit. Only upon contingencies provided therein that the power under section 83 can be*

exercised. This power is to be used in only limited circumstances and it is not an omnibus power.

16. It is therefore not possible to accept the submission of the Respondents that even though specified proceedings have been launched against one taxable person, bank account of another taxable person can be provisionally attached merely based on the summons issued under section 70 to him.”

The facts of the present case are identical to that of the case of *Kaish Impex Pvt. Ltd.*

4. The Petitioner is entitled to succeed. Accordingly the Writ Petition is allowed. The order passed by the Respondent dated 6 December 2019 attaching the bank account of the Petitioner, details of which have been given in the Petition is quashed and set aside.

M.S. KARNIK, J.

NITIN JAMDAR, J.