

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17673 of 2019

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M/S KANAL ENTERPRISE

Versus

STATE OF GUJARAT

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Appearance:

MR. APURVA N MEHTA(7202) for the Petitioner(s) No. 1

VIJAY H PATEL(7361) for the Petitioner(s) No. 1

MR SOAHAM JOSHI, AGP for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 11/03/2020

ORAL ORDER

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

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a registered partnership firm through one of its partners has prayed for the following reliefs :

“(A) YOUR LORDSHIPS may be pleased to admit and allow this Petition.

(B) YOUR LORDSHIPS may kindly be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction and thereby be pleased to quash and set aside the order of provisional attachment of the stock of goods valued at Rs. 1,26,00,000 dated 30.07.2019 passed by the Respondent No.2.

(C) YOUR LORDSHIPS may kindly be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction and thereby be pleased to quash and set aside the order of provisional attachment of the

Petitioner's Current account bearing A/c No. 655305600366 maintained with ICICI Bank, Nirmala Convent Road Branch, Rajkot dated 30.07.2019 passed by the Respondent No.2.

(D) YOUR LORDSHIPS may kindly be pleased issue a writ of Mandamus or any other appropriate writ, order or direction and thereby be pleased to quash and set aside the action of blocking of input tax credit of Rs. 24,30,850 vide communication dated 20.07.2019 by the Respondent No.3.

(E) Pending admission, hearing and final disposal of the present Petition, Your Lordships may kindly be pleased to issue an appropriate writ, order or direction and thereby be pleased to stay the operation and implementation of the orders of provisional attachment dated 30.07.2019 passed by the Respondent No. 2 and action of blockage of input tax credit vide communication dated 20.07.2019 by the Respondent No.3.

(F) Ex-parte ad interim relief in terms of para 9 (E) may kindly be granted;

(G) Such other and further reliefs as may be deemed fit in the facts and circumstances of the case may kindly be granted.

2. A co-ordinate bench of this Court while issuing notice, passed the following order dated 10.10.2019:

"1. Mr. Tushar Hemani, Senior Advocate, learned counsel with Mr. Apurva Mehta and Mr. Vijay Patel, learned advocates for the petitioner submitted that in this case, the respondents have blocked the tax credit of the petitioner vide order dated 20.07.2019. It was submitted that there is no provision under the State Goods and Services Tax Act or Central Goods and Services Tax Act which empowers the respondent officers to block the input tax credit of a supplier.

2. Referring to the order dated 30.07.2019 of provisional attachment of property under section 83 of the CGST Act as well as the order of provisional attachment of stock of the petitioner, it was submitted that the same have been passed in relation to the proceedings launched under section 71(1) of the said Acts. Referring to the provisions of section 83 of the CGST Act, it was pointed out that the same can be invoked during the pendency of proceedings under sections 62, 63, 64, 67, 73 or 74 of the said Act, however, there is no power vested in the respondents to invoke the provisions of section 83 in the proceedings launched under section 71(1) of the said Act. It was submitted that, therefore, the provisional attachment of the bank account as well as the stock of the petitioner is without authority of law.

3. It was pointed out that subsequently, the assessment order has been framed on 16.09.2019, to submit that once the assessment is framed, the attachment under section 83 of the CGST Act would no longer survive.

4. Having regard to the submissions advanced by the learned counsel for the petitioner, issue **Notice**, returnable on **17th October 2019**. By way of ad-interim relief, the respondents are directed to forthwith release the attachment of the bank account of the petitioner bearing No. 655305600366 maintained with the ICICI Bank, Rajkot made vide order dated 20.07.2019 and unblock the credit of the petitioner of Rs.24,30,850/- available in the electronic credit ledger.

4.1 Direct service is permitted."

3. The learned counsel appearing for the writ applicant pointed out that by virtue of the ad-interim relief granted, the attachment of the Bank account came to be lifted.

4. However, according to him, the attachment over the goods continued to operate by virtue of the impugned order passed under Section 83 of the Act.

5. The short point falling for our consideration is whether the impugned order of attachment of property under Section 83 of the Act could have been passed on the ground of proceedings instituted under Section 71(1) of the Act. The plain reading of Section 83 of the Act would indicate that the powers can be invoked during the pendency of proceedings under Sections 62, 63, 64, 67, 73 and 74 of the Act. There is no power vested in the authorities to invoke the provisions of Section 83 during the pendency of the proceedings instituted under Section 71(1) of the Act.

6. In fact, there cannot be any proceedings, which could be instituted under Section 71 of the Act. Section 71 of the Act talks about access to the business premises.

7. In such circumstances, the impugned order of attachment under Section 83 of the Act is hereby quashed and set aside.

8. It is needless to clarify that the Appeal preferred by the writ-applicant against the final order of assessment shall be decided in accordance with law by the Appellate Authority.

9. With the above, this writ application stands disposed of. Direct service is permitted.

(J. B. PARDIWALA, J)

KUMAR ALOK

(BHARGAV D. KARIA, J)

