

IN THE HIGH COURT OF KERALA AT ERNAKULAM**PRESENT****THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS****Friday, the 1st day of October 2021 / 9th Aswina, 1943****WP(C) NO. 20945 OF 2021****PETITIONER:**

KERALA COMMUNICATORS CABLE LIMITED 142-HA, FIRST FLOOR, COA BHAVAN, THOUNDAYIL ROAD, PANAMPILLY NAGAR, ERNAKULAM-682 036, (REPRESENTED BY ITS MANAGING DIRECTOR, MR. SURESH KUMAR.P.P)

RESPONDENT:

- 1. THE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, OFFICE OF THE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, KOCHI COMMISSIONERATE, CENTRAL REVENUE BUILDING, IS PRESS ROAD, KACHIERIPADI, KOCHI-682 018**
- 2. THE ADDITIONAL DIRECTOR GENERAL, DIRECTORATE GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE, KOCHI ZONAL UNIT, 1ST FLOOR, CENTRAL EXCISE BHAVAN, KATHRIKADAVU, KOCHI-682 017**
- 3. UNION OF INDIA, (REPRESENTED BY SECRETARY, FINANCE DEPARTMENT, DELHI), DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110 001**

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of Ext P9,P9A and Ext. P9B attachment orders issued by the 1st respondent under Sec 83 of CGST Act 2017 and permit the petitioner to operate its bank accounts.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M.P.SHAMEEM AHAMED, CYRIAC TOM Advocates for the petitioners ,SRI. SREELAL N. WARRIAR,Advocate for R1 and R2 and of ASSISTANT SOLICITOR GENERAL OF INDIA for R3,the court passed the following:

BECHU KURIAN THOMAS, J.

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Dated this the 1st day of October, 2021

ORDER

Admit.

2. Adv. Sreelal N. Warriar takes notice on behalf of respondents 1 and 2. The learned Assistant Solicitor General of India takes notice on behalf of third respondent.

3. In this writ petition, the petitioner is challenging Exts.P9, P9(a) and P9(b) orders of the provisional attachments of property under Section 86 of the Central Goods and Service Tax Act, 2017. As per the impugned orders, as many as seven accounts of the petitioner have been provisionally attached in purported exercise of powers under Section 83 of CGST Act.

4. This Court's attention is drawn to Ext. P5 order of the learned Single Judge of this Court in W.P.(C)No.5063 of 2021, wherein in a similar situation earlier, the second respondent had invoked the powers under Section 83 of the CGST Act and ordered provisional attachment of the bank accounts of the petitioner. Subsequently, the said order was modified, permitting the

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petitioner to furnish a bank guarantee of Rs. 30 Crores in lieu of releasing the provisional attachment over the bank accounts. When the petitioner challenged the said order directing furnishing of bank guarantee, this Court, by Ext.P5 order, stayed the condition of furnishing a bank guarantee however, directed the petitioner to furnish by way of an affidavit an undertaking that it shall not alienate any of its fixed assets, plant, property and equipment shown in the balance sheet dated 31.03.2020.

5. The first respondent in that writ petition challenged the order of the learned Single Judge before the Division Bench in WA.No.745 of 2021. After hearing the parties therein the Division Bench refused to interfere by its order dated 04.08.2021.

6. Within eight weeks thereafter, Ext. P9 series is seen to be issued, once again invoking the powers under section 83 of the CGST Act and ordering the provisional attachments of 7 accounts through Ext.P9, Ext.P9(A), and Ext.P9(B).

7. In the decision in **Radha Krishan Industries v. State of Himachal Pradesh and Ors. [AIR 2021 SC 2114]**, the Hon'ble Supreme Court had occasion to consider the exercise of powers under Section 83 of the CGST Act and after elaborate consideration, laid down the manner and mode in which the

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powers are to be exercised. Condition No.4, 5, 6 and 7 are relevant and the same is extracted as below:

(iv) The power of order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the status for a valid exercise of the power must be strictly fulfilled;

(v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the Assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

(vi) The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;

(vii) The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering

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a provisional attachment for the purpose of protecting the interest of the government revenue;

8. On a reading of Exts. P9, P9(A) and P9(B) orders, I am *prima facie* satisfied that none of the stipulations specified in para 72 of the aforesaid judgment are evident in the orders impugned in this writ petition. I am *prima facie* satisfied that there is non-application of mind to the purport of power exercisable by the second respondent under Section 83 of the CGST Act.

9. In this context, I also bear in mind that the crippling effect an order of provisional attachment, on the bank accounts of a running establishment can have. Petitioner asserts that it is a running establishment and the annual audited reports, a copy of which is produced as Ext.P8 shows that the petitioner is a running establishment

In view of all the circumstances, mentioned above both legal and factual, I am *prima facie* satisfied that the order impugned are liable to be stayed. Accordingly there will be a stay of operation of Exts.P9, P9(A) and P9(B) attachment order for a period of 8 weeks.

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Needless to mention in view of this stay that there is no prohibition in the petitioner operating the respective bank accounts during the continuance of this order.

Handover.

Sd/-
BECHU KURIAN THOMAS
JUDGE

AJ/01.10.2021



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- Exhibit P5** COPY OF THE INTERIM ORDER DATED 24.03.2021 IN WP 15842/2021
- Exhibit P8** COPY OF THE AUDITED FINANCIAL STATEMENT OF THE PETITIONER FOR THE YEAR ENDING MARCH 2021
- Exhibit P9** COPY OF THE FORM DRC 22 (DIN 20210958T10000333A4C) DATED 30.09.2021 ISSUED TO BE MANAGER , FEDERAL BANK, PANAMBILLY NAGAR, ERNAKULAM
- Exhibit P9A** COPY OF THE FORM DRC 22 (DIN 20210958T000000D9FC) DATED 30.09.2021 ISSUED TO BE MANAGER, STATE BANK OF INDIA, PUDUKKAD BRANCH
- Exhibit P9B** COPY OF THE FORM DRC 22 (DIN 20210958T1000094932) DATED 30.09.2021 ISSUED TO BE MANAGER, FEDERAL BANK, PANAMBILLY NAGAR, ERNAKULAM

