

Court No. - 39

Case :- WRIT TAX No. - 699 of 2024

Petitioner :- M/S Rd Enterprises

Respondent :- Union Of India Through Director General
Directorate And 2 Others

Counsel for Petitioner :- Srijan Pandey, Swetashwa Agarwal

Counsel for Respondent :- A.S.G.I., Parv Agarwal

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Swetashwa Agarwal, learned counsel for the petitioner and Shri Parv Agarwal, learned counsel for the revenue.

2. Present petition has been pressed primarily for the following relief :

"Issue an appropriate writ, order or direction in the nature of Mandamus commanding the Respondent no. 2 - Additional Director, Directorate General of Goods and Services Tax Intelligence, Zonal Unit Meerut to release/restore the provisionally attached bank account no. 069363300003066 of the Petitioner Firm maintained at the Karol Bagh Branch, YES Bank, New Delhi, in view of provision of Section 83(2) CGST Act."

3. On 29.4.2024, we passed the below quoted order :

"1. The provisional attachment of the bank account of the petitioner firm is described to have expired on 15.02.2024 in view of the provisions of Section 83(2) of the CGST Act, 2017. Yet, the provisional attachment continues.

2. Shri Parv Agarwal, learned counsel for the revenue prays for and is granted three days' time to complete his instructions.

3. Put up as fresh on 6.5.2024."

4. Today, Shri Parv Agarwal, learned counsel for the revenue has

produced written instructions received by him. Copy of the same has been marked as 'X' and retained on record.

5. The said instructions issued by the Additional Director General, Directorate General of Goods & Services Tax Intelligence Meerut Zonal Unit reads as below :

"F. No. DGGI/INT/INTL/226/2023/249(SIL)

Date: 01.05.2024

DIN- 202405 DNN 40000 611136.

To,
The Branch Manager,
YES Bank, Ground Floor & Basement,
3380, Christian Colony,
D. B. Gupta Road, Karol Bagh, New Delhi-110005

Sub: Provisional attachment of property under section 83 of CGST Act, 2017-m/r

Please refer to DRC-22 dated 16-02-2023 (CBIC-DIN:: 202302DNN40000278282) issued by this office. As per said DRC-22 (copy enclosed herewith for ready reference), the bank account no. 069363300003066 belonging to M/s RD Enterprises, 5131/2, Krishna Nagar, Delhi-05 bearing GSTIN: 07ABRFM0225B1ZM, PANABRFM0225B, was attached provisionally.

2. Now, in this connection, your kind attention is invited toward Section 83(2) of CGST Act 2017; which is reproduced as below: -

83(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 subsection (1)."

3. Since one year has passed, the provisional attachment of the said account has ceased. Necessary action in this regard may please be taken.

Encl: As above

(Satyendra Mathuria)

Additional Director General"

6. Thus, the cause of action does not appear to exist, insofar as the revenue authorities have realised that provisional attachment order dated 16.2.2023 does not survive.

7. On the strength of such instructions, Shri Parv Agarwal further states that provisional attachment order would stand lifted allowing the petitioner to utilise the bank account, as before. We find such occurrences are becoming common. Frequently, petitions are being filed for similar relief. It appears to be a common mistake being caused by revenue authorities where provisional attachment orders may never continue for more than one year are allowed to exist beyond that end date. Such error on the part of the revenue authorities leaves the assessee with no option but to approach this Court for effective direction on the revenue authorities to actually lift the provisional attachment.

8. In face of the statutory provision being unequivocally clear, the revenue authorities when called upon by this Court, take a stand as has been noted in the present facts. Thus, the provisional attachment orders are actually lifted only upon the revenue authorities being questioned about the illegality of their action, by this Court.

9. Such a course is wholly undesirable. Once the statutory law admits of no doubt and the revenue authorities do offer correction to the error committed by them upon being pointed out by this Court, we find such litigation whenever it arises to be wholly avoidable.

10. Without reaching any further conclusion as to the intent and purpose of the individual revenue officers in committing such errors, we **dispose of** the writ petition with the following directions
:

(i) Let a copy of this order be communicated to the Central Board of Indirect Taxes and Customs for taking corrective and necessary

(ii) Since the provisions of the Act and the litigation arising therefrom are similar, both under the Central Act and the State Act, we also require, a copy of this order be made available to Shri Nimai Dass, learned Additional Chief Standing Counsel for the State for its onward communication to the Commissioner, Commercial Tax, U.P. for his notice and also remedial action.

Order Date :- 6.5.2024
SA

(Donadi Ramesh, J.) (S.D. Singh, J.)