

Watermelon Management Services ... vs The Commissioner, Central Tax, Gst ... on 29 May, 2020

Author: Manmohan

Bench: Manmohan, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 3274/2020

WATERMELON MANAGEMENT
SERVICES PRIVATE LIMITEDPetitioner
Through: Mr. Sunil Upadhyay, Advocate.

versus

THE COMMISSIONER, CENTRAL TAX,
GST DELHI (EAST) & ANR.Respondents
Through: Mr. Harpreet Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 29.05.2020 The writ petition filed under Article 226 of the Constitution has been listed before this Bench by the Registry in view of the urgency expressed therein.

The matter has been heard by way of video conferencing. Present writ petition has been filed by the petitioner challenging the provisional attachment order dated 05th March, 2020 issued by respondent No.1 to the petitioner's bankers.

Learned counsel for petitioner states that in the absence of any notice issued under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'Act, 2017'), no order of attachment under Section 83 of the Act, 2017 could have been passed by the respondents.

Issue notice.

Mr. Harpreet Singh, learned counsel accepts notice on behalf of the respondents.

Having heard the learned counsel for parties, this Court is of the view that Rule 159(5) of the Central Goods and Services Tax Rules, 2017 is squarely applicable to the facts of the present case. The Rule

159(5) of the Central Goods and Services Tax Rules, 2017 reads as under:-

"159. Provisional attachment of property.--

xxx xxx xxx (5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23."

A Division Bench of High Court of Gujarat in *Pranit Hem Desai vs. Additional Director General*, C/SCA/7321/2019 dated 12 th April, 2019 has held as under:-

"1. In all these petitions, the petitioners have challenged the orders of attachment of the bank accounts of the petitioners. A perusal of the notices dated 4.4.2019 issued by the Deputy Director, DGGI, AZU, it is evident that while attaching the bank accounts in exercise of powers under section 83 of the Central Goods and Services Tax Act, 2017, the said authority has brought to the notice of the petitioners, the provisions of sub- rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017 to the effect that it is open for the petitioners to C/SCA/7321/2019 ORDER file objection to the effect that the property attached was or is not liable to attachment, within seven days of attachment under sub-rule (1) of rule 159 of the Central Goods and Services Tax Rules, 2017 before the competent authority.

2. Mr. D. K. Trivedi, learned advocate for the petitioners has invited the attention of the court to the order dated 3.4.2019 in Form GST DRC-22 under rule 159 (1) of the Central Goods and Services Tax Rules, 2017, to point out that in terms of the said order, proceedings have been launched against the petitioners under section 74 of the CGST Act. It was submitted that no proceeding under section 74 of the CGST Act has been initiated against the petitioners till date, and hence, the action under section 83 of the CGST Act, 2017 is without authority of law.

3. In the opinion of this court, when the communications dated 4.4.2019 of the Deputy Director, DGGI, AZU itself informs the petitioners that the petitioners have a remedy against the order of attachment by way of filing objection under sub-rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017, this court would be reluctant to entertain these petitions under Article 226 of the Constitution of India in view of the fact that the petitioners have an efficacious alternative remedy before the competent authority before whom all the contentions raised in the present petitions can be raised. This court is, therefore, not inclined to entertain these petitions.

4. In the above view of the matter, the petitions are dismissed as not entertained in the light of the availability of the efficacious alternative remedy under sub-rule (5) of rule C/SCA/7321/2019 ORDER 159 of the Central Goods and Services Tax Rules,

2017.

5. In terms of the communication dated 4.4.2019 of the Deputy Director, DGGI, AZU, the petitioners are required to file objections within seven days of attachment. Therefore, the petitioners were required to file the objections by 11th April, 2019. However, considering the fact that the petitioners were diligently prosecuting the proceedings before this court under Article 226 of the Constitution of India against the orders of attachment, if the petitioners file objections under sub-rule (5) of rule 159 of the Central Goods and Services Tax Rules, 2017 on or before 18th April, 2019, the competent authority shall consider the same as having been filed within time. The competent authority shall duly consider all the objections raised by the petitioners, including the objection with regard to the attachment being without authority of law in view of the fact no proceedings have been launched against the petitioners under section 74 of the Act, and decide such application as expeditiously as possible and latest by 30th April, 2019. Needless to state that in case any adverse order is passed against the petitioners, it would be open for the petitioners to challenge the same before the appropriate forum Direct service is permitted today.

Keeping in view the similarity of circumstances as obtained in the above case, we deem it appropriate to direct the respondent No.1 to treat the present writ petition as an objection under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 and decide the same within three working days.

With the aforesaid direction, present writ petition stands disposed of. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J SANJEEV NARULA, J MAY 29, 2020 js