

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 457 of 2021**

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SKJ FINVEST ADVISORY PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1

NOTICE SERVED(4) for the Respondent(s) No. 2,3,4

UNSERVED WANT OF TIM(31) for the Respondent(s) No. 1

MR CHINTAN DAVE for the Respondent(s) No.2

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 19/02/2021

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 has prayed for the following reliefs:-

*35(a) To issue a writ of certiorari or a writ in the nature of certiorari or mandamus or any other writ order or direction under Article 226 of the Constitution of India to quash and set aside the orders dated 22.09.2020 issued by Respondent No.4 under Section 83 of the CGST Act, 2017 to provisionally attach the bank account of the petitioner as specified herein-above;*

*(b) Pending the hearing and final disposal of this petition, stay the operation of the orders dated 22.09.2020 passed by the Respondent No.4 and allow the petitioners to operate the subject bank account;*

*(c) For costs of the petition;*

*(d) For such further and other relief, as the nature and circumstances of the case may warrant as deemed fit by this Hon'ble Court.*

2. We need not delve much into the facts of this case as this writ-application can be disposed of on a short ground.

3. The order passed by this Court dated 17<sup>th</sup> February 2021 is quite self-explanatory. The same reads thus:-

*“1 We have heard Mr. Anand Nainawati, the learned counsel appearing for the writ applicant and Mr. Chintan Dave, the learned A.G.P. Appearing for the State respondent.*

*2 The subject matter of challenge in the present writ application is to the order of attachment of bank account in exercise of power under Section 83 of the GST Act, 2017.*

*3 It appears from the materials on record that the impugned order of attachment came to be passed pending the search proceedings under Section 67 of the Act. According to the department, the liability incurred by the writ applicant towards tax is to the tune of Rs.86,92,950/inclusive of penalty and interest.*

*4 Mr. Dave, the learned A.G.P. Submitted that the inquiry is still in progress. At the end of the inquiry, the concerned authority shall take the final call whether to issue any show cause notice under Section 73 or Section 74 of the Act, as the case may be.*

*5 On the other hand, Mr. Nainawati, his client has not incurred liability. It is submitted that the attachment of the bank account is creating a lot of difficulties for the smooth conduct of the business of the company.*

*6 We are prima facie of the view that if the writ applicant is ready and willing to furnish any other tangible security equivalent to the amount referred to above, then we may consider passing an order that the attachment of the bank account may be lifted.*

7 *Mr. Nainawati, the learned counsel prays for a day's time to inquiry with his client whether any tangible security can be offered or not.*

8 *Post this matter on 19<sup>th</sup> February 2021 on top of the Board."*

4. Today, when the matter is taken up for further hearing, Mr. Nainawati, the learned counsel appearing for the writ-applicant submits that his client shall maintain the minimum balance of Rs.22 lac in the bank account which has been attached by the department. According to Mr. Nainawati, at the time of attachment of the bank account, the balance available was Rs.22 lac. He has instructions from his client to make a statement that if he is permitted to operate the bank account, he shall maintain the minimum balance of Rs.22 lac in the same so as to protect the interest of the revenue pending the inquiry.

5. Mr. Chintan Dave, the learned AGP appearing for the respondents would submit that the proposal would forward by the learned counsel appearing for the writ-applicant is quite reasonable. According to Mr. Dave, the writ-applicant should be asked to file an undertaking before this Court on oath that he shall maintain the minimum balance of Rs.22 lac in his bank account.

6. We dispose of this writ-application directing the writ-applicant that he shall maintain the minimum balance of Rs.22 lac in the bank account in question up to 21<sup>st</sup> September 2021. On this condition, we permit the writ-applicant to operate his bank account. The respondents shall intimate the bank concerned about this order and permit the writ-applicant to operate his bank account. The writ-applicant shall file his undertaking in this regard on oath in writing before the concerned

department as well as placed the same undertaking on the record of this case also. The inquiry, if any, initiated, shall proceed further in accordance with law.

7. With the above, this writ-application stands disposed of.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA

