

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 76 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

MANISH SCRAP TRADERS
Versus
PRINCIPAL COMMISSIONER

Appearance:

MR AVINASH PODDAR, ADVOCATE for the Petitioner.

MR DEVANG VYAS, ADDL.SOLICITOR GENERAL OF INDIA with

MR.UTKARSH R SHARMA, AGP for the Respondent(s) Nos. 1,2.

NOTICE SERVED BY DS(5) for the Respondent(s) No. 3

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 12/01/2022

ORAL JUDGMENT

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

By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

“(a) To quash and set aside the order for provisional attachment of the bank account vide FORM GST DRC-22 dated 29.11.2021 issued by Respondent No.1 as the same is dehors the provisions of Section 83 of the CGST Act, 2017 and since the attachment of the cash credit account, not being the property of tax payer, is not permissible in law.

(b) To quash and set aside the order dated 27.12.2021 issued by the respondent no.1 on the ground of it being issued violating the principle, Power of Superintendence and that the order of jurisdictional High Court is binding on all subordinate courts, judicial as well as quasi judicial authorities.

(c) To direct the respondent no.3 to allow the petitioner operate his bank accounts.

(d) To issue a writ of mandamus or any other appropriate writ, order or direction, as an ad-interim relief,

(e) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon’ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

(f) To award costs of and incidental to this application be paid by the respondents;”

We need not delve much into the facts of this case as our order dated 5th January 2022 is self-explanatory. We quote the order thus :

“1. We have heard Dr. Avinash Poddar, the learned counsel appearing for the writ applicant.

2. We started with today’s board on a very sad note. The subject matter of challenge in the present writ application is to the order of provisional attachment of a cash credit account running in the name of the writ applicant, maintained with the Axis Bank at Vapi. The impugned order of provisional attachment of the cash credit account has been passed in the Form GST DRC-22 dated 29.11.2021. The order has been passed by the respondent No.1 in exercise of powers under the provisions of Section 83 of the CGST Act, 2017. The law as regards the provisional attachment of a cash credit account is no longer res integra. Way back in the year 2016, in the case of Kaneria Granito Ltd. vs. Assistant Commissioner of Income Tax, Special Civil Application No.14497 of 2014 decided on 27.06.2016, a Coordinate Bench of this Court took the view that a cash credit account cannot be provisionally attached.

3. The cash credit account in the case on hand, could be said to have been opened to enable the writ applicant to borrow the money from the Bank for the purpose of its business. Any money therefore, that the Bank may make available to the assessee would necessarily be in the nature of a loan or a cash credit facility. In either case, it would be in the nature of borrowing by the writ applicant from the Bank. In such circumstances, the Bank and the writ applicant therefore, do not have the debtor – creditor relationship. The decision of this Court in the case of

Kaneria Granito Ltd. has been followed in various other matters of the present type over a period of time. Various orders have been passed over a period of time condemning the action on the part of the department in provisionally attaching the cash credit account in exercise of powers under Section 83 of the Act.

4. To our shock and surprise, the settled position of law appears to have been very conveniently over-looked by the Principal Commissioner, CGST, Surat by observing in paragraphs 13, 13.1 and 14 respectively, as under:

“13. The taxpayer has placed reliance on the judgement in the case of M/s, Formative Tex Fab Versus State of Gujarat, wherein the Hon'ble Gujarat High Court held that cash credit account cannot be attached provisionally by virtue of power under Section 83 of the act. I observe that in the said case the FORM DRC 22 was issued by the Assistant Commissioner and not by the Pr. Commissioner/ Commissioner as required by Section 83 and the cash credit account was specifically attached.

13.1. In the instant case, however, the provisional attachment is done by the Pr. Commissioner and the cash credit account is not specifically attached but the account used for suspected transactions is provisionally attached. And all accounts based on same PAN are required to be attached as per FORM DRC, 22 mandated by CGST Rules, 2017. I also

observe that the Hon'ble High Court has not released any other accounts attached in the relied upon case. Hence, I find that the facts of the case are different and the cases are distinguishable.

14. The taxpayer has placed reliance on the judgement in the case of M/s. Vinodkumar Chechani Vs. State of Gujarat wherein Hon'ble Court directed that provisional attachment of cash credit account shall no, longer operate. I observe that in the said case the FORM DRC 22 was issued by the Additional Commissioner and not by the Pr. Commissioner/ Commissioner as required by Section 83, and the cash credit account was specifically attached.”

5. The Principal Commissioner says that the reliance placed by the writ applicant herein on one of the orders passed by this Court in the case of M/s. Formative Tex Fab vs. State of Gujarat is not binding to him as in the case of M/s. Formative Tex Fab (supra), the order of provisional attachment was passed by the Assistant Commissioner and not by the Principal Commissioner.

6. Prima facie, we are of the view that the Principal Commissioner, CGST, Surat is in contempt. He owes an explanation as to on what basis he has distinguished all the orders passed by this Court over a period of time taking the view that a cash credit account could not be provisionally attached in exercise of powers under Section 83 of the Act, 2017.

7. *Let Notice be issued to the respondents, returnable on 12.01.2022. Mr. Utkarsh Sharma, the learned Standing Counsel appearing for the department waives service of notice for and on behalf of the respondents Nos.1 and 2.*

8. *Direct service to respondent No.3 – Axis Bank is permitted.*

9. *On the returnable date, notify this matter on top of the Board.*

10. *On the next date of hearing, we want the Principal Commissioner, to explain in what circumstances the impugned order has been passed.”*

We have heard Mr.Poddar, the learned counsel appearing for the writ-applicant, and Mr.Devang Vyas, the learned Additional Solicitor General of India, assisted by Mr.Utkarsh Sharma, the learned standing counsel appearing for the respondents nos.1 and 2 respectively.

Mr.Vyas would submit that the view taken by the Principal Commissioner, CGST, could be said to be absolutely erroneous and such a thing would never ever occur in future.

Mr.Vyas, the learned Additional Solicitor General of India, has always come to the rescue of such irresponsible erring officers and every time he would persuade us to condone the lapse on their part. We expect the officers of the rank of the Principal Commissioner to be more cautious in future.

The law is well-settled that a cash credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.

In view of the aforesaid, this writ-application succeeds and is hereby allowed. The order of provisional attachment of the cash credit account of the writ-applicant is hereby quashed and set-aside.

Mr.Vyas made a request that paragraph-6 of the order passed by this Court dated 5th January 2022 be expunged.

Having regard to the fervent request made by Mr.Vyas, we expunge the paragraph-6 from the order passed by this Court dated 5th January 2022 with the hope and trust that the officers shall not act in an arbitrary manner and should respect the orders which are passed by this Court.

(J. B. PARDIWALA, J.)
THE HIGH COURT
OF GUJARAT

(NISHA M. THAKORE, J.)

/MOINUDDIN

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