
[2021] 131 taxmann.com 133 (Andhra Pradesh)/[2021] 54 GSTL 129 (Andhra Pradesh)[16-06-2021]

GST : Where Competent Authority provisionally attached bank account of assessee and also freezed her locker, assessee was to be given liberty to approach Court of Special Judge for Economic Offences for appropriate relief

■ ■ ■

[2021] 131 taxmann.com 133 (Andhra Pradesh)

HIGH COURT OF Andhra Pradesh

Punnimti Usha Rani

v.

Union of India*

U. DURGA PRASAD RAO AND MS. J. UMA DEVI, JJ.
WRIT PETITION NOS. 9213 OF 2019 & 21402 OF 2020
JUNE 16, 2021

Section 83 of the Central Goods and Services Tax Act, 2017/Section 83 of the Telangana Goods and Services Tax Act, 2017 - Demands and recovery - Provisional attachment - Competent Authority by an order passed under section 83 dated 8-3-2019 provisionally attached bank account of assessee and also freezed her locker on ground that she was operating various fictitious/shell firms - Whether assessee was to be given liberty to approach Court of Special Judge for Economic Offences and file an application seeking appropriate relief, who shall consider same and pass an order in accordance with governing law - Held, yes [Para 7] [In favour of assessee]

ORDER

U. Durga Prasad Rao, J. - Both these writ petitions are filed by the same writ petitioners. Writ petition No.9213 of 2019 is filed challenging the proceedings in F.No.DGGI/VZU/INV/GST/13/2019, dated 8-3-2019 issued by the 3rd respondent provisionally attaching the bank account of the 1st petitioner and some others under section 83 of Central Goods and Services Tax Act, 2017 (for short 'CGST Act, 2017') and the notice in F.No.DGGI/VZU/INV/GST/13/2019/2246-48, dated 9-7-2019 issued by the Deputy Director on the approval of the 3rd respondent informing the 5th respondent - Branch Manager, Laxmi Vilas Bank, Guntur that on the request of the petitioners and one Vennapusa Venkata Subba Reddy, the date of opening of the bank lockers has been fixed as 24-7-2019, as illegal and contrary to the provisions of the CGST Act and its rules and violative of articles 14, 19(1)(g), 21 and 300(A) of the Constitution of India and also violative of principles of natural justice and consequently to *set aside* the aforesaid proceedings.

Whereas, the writ petition No.21402 of 2020 is filed challenging the proceedings in F.No.DGGSTII/VZU/INV/GST/13/2019, dated 6-3-2020 and the consequential letter in F.No.DGGI/VZU/INV/GST/13/2019/2044, dated 9-11-2020 issued by the Deputy Director on the approval of the 3rd respondent informing the 6th respondent - Branch Manager, Lakshmi Vilas Bank that 5th respondent is authorized to open bank locker of the 1st petitioner and her son P. Bhanu Prakash in their presence on 17-11-2020, as illegal, arbitrary and contrary to the provisions of the Central Goods and Services Tax Act, 2017 and its Rules, and violative of fundamental rights under articles 14, 19(1)(g), 21 and 300(A) of the Constitution of India and consequently to *set aside* the aforesaid proceedings.

2. The case of the respondent department as can be seen from their counter is thus:

- (a) One Vennapusa Venkata Subba Reddy with the assistance of his business accomplices including the 1st petitioner who is the proprietor of Sri Hanuman Enterprises, passed fake Input Tax Credit (ITC) invoices on large scale in the name of different fictitious/shell firms within the States of Andhra Pradesh and Telangana during the period July, 2017 to February, 2019 without actual supply of goods in violation of CGST Act, 2017 and Rules. The investigation initiated by the Officers of Director General of GST (Intelligence), Visakhapatnam Zonal Unit revealed the said fact and they conducted searches in some of the premises of those fictitious/shell firms operated by V.V Subba Reddy and the 1st petitioner. The searches were conducted in the places like Guntur, Vijayawada, Narsaraopeta, Hyderabad etc., and they revealed that no business firms have operated from those premises and the CGST registrations were taken fraudulently in the names of different firms using wrong credentials/addresses with a view to passing of ITC by issuing fake tax invoices without actual supply of goods. Investigation further revealed that around 90 different firms are operated by V.V Subba Reddy for the purpose of claiming ITC by issue of fake tax invoices during the period and these firms operated in a network so as to conceal evasion. Some of the fictitious/shell firms, where searches were conducted, have admittedly purchased the fake tax invoices without actual receipt of goods from the firms operated by V.V Subba Reddy. Investigation is still under progress.
- (b) The respondent officials have arrested Vennapusa Venkata Subba Reddy on 11-3-2019 for violation of section 132(1)(b) and section 132(1)(c) of CGST Act, 2017 and fraudulently passing on ITC by issuing fake tax invoices without actual supply of goods in the name of different fictitious firms. Learned Judge of Economic Offences Court, Visakhapatnam remanded Vennapusa Venkata Subba Reddy to judicial custody on 12-3-2019 and later conditional bail was granted to him on 18-6-2019 with a direction to appear before the Investigating Officer once in a week.
- (c) As a part of investigation, the registered business premises of M/s Sri Hanuman Enterprise of the 1st petitioner located at Guntur was searched under Panchanama on 12-7-2019. The search proceedings revealed that the address is an open vacant land without any premises and no business firm including firm created in the name of M/s. Hanuman Enterprise (with 1st petitioner as proprietor) has ever operated from the premises. As a part of investigation, the officials have also searched premises of M/s Sree Kaveri Enterprises on 12-7-2019 and noticed that the said firm never operated from the premises. The statement of Jaluri Sai Babu, the proprietor of the said enterprise was recorded on 13-7-2019 wherein it was stated that he has given his credentials for opening business firm to the 1st petitioner and that all documents for creation of the firm including the opening of the bank account in Lakshmi Vilas Bank were handed over to one Sri Nalla Venkataiah at the request of 1st petitioner. He has further stated that the firm opened in the name of M/s. Sree Kaveri Enterprise including the bank account in the firm name was created and operated by the 1st petitioner and he was not aware about the taking of the CGST Registration in the name of the firm and he requested the 1st petitioner to close the firm and the bank account but she has not informed about the details of the business operations. Thus, from the statement of the Jaluri Sai Babu, it is clear that the 1st petitioner is one of the business accomplices of Vennapusa Venkata Subba Reddy in creation of fictitious firms by collecting credentials from different individuals for the purpose of issue of fake tax invoices for fraudulent passing on ITC. In this background, the bank accounts of the fictitious firms were provisionally attached in the interest of protecting the Government revenue. As a part of it, the bank account numbers 408351939 and 408335789 and Locker No.8 standing in the name of the 1st petitioner were also ordered for provisional attachment on 8-3-2019 in the interest of Government revenue and with a reasonable belief that some incriminating documents/records relating to the case under investigation and cash might be secreted in those lockers.
- (d) Subsequent to the release of Vennapusa Venkata Subba Reddy on bail on 18-6-2019, the 3rd respondent addressed a letter dated 2-7-2019 to the Branch Manager, Lakshmi Vilas Bank, Guntur and sent a copy to the 1st petitioner *inter alia* intimating that the authorization was given to Sri Bhaskar Prasad/the 4th respondent in W.P.No.9213 of 2019 to open and search the bank locker No.8 standing in the name of the 1st petitioner. However, on the request of the 1st petitioner to postpone the date of opening of the locker, the same was postponed to 24-7-2019. In the meanwhile the petitioners filed the present writ petitions.
- (e) The contention of the respondents is that the bank accounts were attached and lockers were sought to be opened as a part of the investigation and by following the CGST Act and Rules and therefore,

the petitioners cannot claim any violation of their rights.

3. Heard Sri V.V. Lakshmi Narayana, learned counsel for petitioners Sri M.V.J.K. Kumar Senior Standing Counsel for Central Excise, Customs and Service Tax representing respondent Nos.1 to 4 and 6.

4. The main contention of the learned counsel for petitioners is that while attaching the bank account of the petitioners *vide* impugned proceedings F.No.DGGI/VZU/INV/GST/13/2019 dated 8-3-2019, no show cause notice was served on the petitioners to offer their explanation. So also the bank locker number-8 of the petitioners was frozen and no opportunity was given to the petitioners to submit their explanation. Due to attachment of the accounts and freezing of locker, the petitioners are suffering a lot. The petitioners submitted representation dated 9-7-2019 through e-mail but the 3rd respondent did not consider the same. Hence, principles of natural justice were infringed. Learned counsel vehemently argued that the petitioners have nothing to do with Vennapusa Venkata Subba Reddy and they are not shell companies or the accomplice of the said Vennapusa Venkata Subba Reddy. He thus, prayed to allow the writ petitions.

(a) Per contra, Sri M.V.J.K. Kumar, representing respondents vehemently opposed the writ petitions arguing that the accused Vennapusa Venkata Subba Reddy opened around 90 shell companies and created fake invoices without actual supply of goods and thus cheated Government. He would submit that the investigation is in the prime stage and department reasonably believes that opening of the lockers of the petitioners and other shell companies will provide necessary documents and money *etc.*, connected to the case. He thus prayed to dismiss the writ petitions.

5. The point for consideration is whether there are merits in the writ petitions to allow.

6. We gave our anxious consideration to the above respective submissions. A perusal of the remand report, a copy of which is filed along with the material papers by the petitioners would show that the Senior Intelligence Officer levelled allegations against Vennapusa Venkata Subba Reddy that he was indulged in issue of fake GST invoices in the name of more than 70 fictitious/non-operating firms created by him at different locations in the States of Andhra Pradesh and Telangana without actual supply of goods to facilitate availment of irregular input tax credit and thereby defrauded the Government's tax revenue. It is further alleged that search operations were conducted in the registered office premises of different enterprises and also the premises of the Accountant of Vennapusa Venkata Subba Reddy and incriminating documents were recovered. Scrutiny of the documents revealed that Vennapusa Venkata Subba Reddy created 70 different fictitious/shell firms in Andhra Pradesh and Telangana for taking GST registrations. The *modus operandi* of the said Vennapusa Venkata Subba Reddy was that he opened the fictitious firms only on paper to issue fake GST invoices showing supply of iron and steel goods, chemicals, battery scrap, led *etc.* This fictitious firms generally operated in three levels. The firms operating at first level in the chain, will issue fake invoices without actual supply of goods in the name of firms operating at second level without any corresponding purchases and thus first level firms will neither pay GST nor file monthly GSTR -3B returns. The second level companies issue GST invoices in the name of firms operating at third level basing on the fake GST invoices issued by the 1st level firms and these second level firms show payment of GST utilizing irregular input tax credit taken basing on the invoice issued by the first level firms and accordingly, file monthly GSTR-3B returns. In turn, the firms operating at third level issue fake GST invoices without actual supply of goods to different business firms/companies in consideration for commission and the firms operating at third level show payment of GST utilizing the irregularly generated ITC basing on the invoices issued by the second level firms and accordingly file monthly returns. Thus, there will be no money, bank transactions at the first and second levels. However, bank accounts are opened with Lakshmi Vilas Bank in the name of firms operating at third level showing receipt of sale consideration through banking channels from different business firms/companies in whose name fake GST invoices are issued for passing on ITC. In this process, Vennapusa Venkata Subba Reddy has issued fake GST invoices with a total turnover of Rs. 397,28,11,944/- without supply of goods to different business firms/companies by passing on a total fraudulent input tax credit of Rs. 61,30,33,274/- in respect of 21 firms, out of more than 70 firms created by him and thus caused huge loss to the Government exchequer. The investigation is stated to be pending.

(a) In furtherance of investigation, the Senior Intelligence Officer has attached the bank accounts and lockers of some of the companies on the apprehension that they are operating as shell companies for Vennapusa Venkata Subba Reddy. It is alleged that the petitioners' firm is one such shell companies. Therefore, their bank accounts were attached and locker No.8 of the 1st petitioner was frozen under section 83 of CGST Act, 2017 and decided to open through the authorized Officer.

- (b) Having regard to the above facts and circumstance and also in view of the fact that the matter has been seized by the learned Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam and also considering that the investigation is in crucial stage, we deem it not apposite to consider the prayer of the writ petitioners. On the other hand, without expressing any opinion on merits of petitioners' case, we consider it apt to direct the petitioners to approach Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam for appropriate relief.

7. Accordingly, the writ petitions are disposed of giving liberty to the petitioners to approach the Court of Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam and file an application seeking appropriate relief, in which case, the said Court shall consider the same and after hearing both parties, pass an appropriate order in accordance with governing law and rules expeditiously. No costs.

As a sequel, interlocutory applications, if any, pending for consideration shall stand closed.

S.K. JAIN

*In favour of assessee.