

M/S H.M. Industrial Pvt. Ltd vs The Commissioner, Cgst And Central ... on 21 February, 2019

Author: Harsha Devani

Bench: Harsha Devani, A. P. Thaker

C/SCA/1160/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1160 of 2019

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M/S H.M. INDUSTRIAL PVT. LTD

Versus

THE COMMISSIONER, CGST AND CENTRAL EXCISE

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Appearance:

ANANDODAYA S MISHRA(8038) for the PETITIONER(s) No. 1

MR NIRZAR S DESAI(2117) for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE DR.JUSTICE A. P. THAKER

Date : 21/02/2019

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI) Rule. Mr. Nirzar Desai, learned Senior Standing Counsel, waives service of notice of rule on behalf of the respondent.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondent to release all the bank accounts of the petitioner, as shown in paragraph□2 of the memorandum of petition.

3. Vide order dated 06.02.2019, this Court had directed the respondent to forthwith release the attachment on the petitioner's cash credit account bearing No.02950500012441 maintained with the Bank of Baroda, Kapadvanj Branch, Kaira.

4. Thereafter, by an order dated 07.02.2019, this Court had directed the bank accounts bearing No. 50100183156858, 07481000002985, 02950100018863, 02950200000513, 02950300028287, 02950100009696 and 02950600021500 to be released from attachment, as the attachment orders

were without any authority of law. Accordingly, the attachment over all those bank accounts came to be lifted.

5. The petitioner now seeks a direction to the respondents to release the attachment over the remaining bank accounts being current accounts bearing No. 02950500013045, 02950200000772 maintained with the Bank of Baroda, Kapadwanj, accounts No. 917020026366404 and 917040037200382 maintained with the Axis Bank, Nadiad and accounts No. 50200024114832 and 50200033690085 maintained with HDFC Bank, Kapadwanj as well as accounts No. 02950600021450, 02950600021591, 02950600021899, 02950600022187, 02950300039429 and 02950300040500 maintained with the Bank of Baroda.

6. Heard Mr. A.S. Mishra, learned advocate for the petitioner and Mr. Nirzar Desai, learned Senior Standing Counsel for the respondent.

7. Mr. Mishra, learned advocate for the petitioner, has submitted that the petitioner had reversed the input tax credit of Rs.12,99,32,058/□ against the total input tax credit taken in respect of M/s. Om Enterprises, M/s. Shivay Enterprises and M/s. Avi Enterprises. It is further submitted that the petitioner has already paid the initial demand of GST to the tune of Rs.7,51,01,066/□ Thus, according to the learned advocate for the petitioner, in all, an amount of Rs.13,52,00,000/□ stands reversed.

8. On the other hand, Mr. Nirzar Desai, learned Senior Standing Counsel, under instructions, states that, in all, a sum of Rs.13,28,00,000/□ has been paid, either by way of reversal or otherwise. He, however, has submitted that as of now, the amount due and payable by the petitioner is Rs.16.24 crores, out of which, on the day when the order under section 83 of the CGST Act was passed, the amount was Rs.14.62 crores.

9. The impugned orders of provisional attachment have been made in exercise of powers under section 83 of the Central Goods and Service Tax Act, 2018 (hereinafter referred to as "the CGST Act"). Section 83 of the CGST Act inter alia provides that where during the pendency of any proceedings under sections 67, 73 or 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by an order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

10. At the time when the impugned orders under section 83 of the CGST Act came to be passed, according to the respondent, an amount of Rs.14.62 crores would have been due and payable by the petitioner upon conclusion of the proceedings that may be initiated pursuant to the proceedings under section 67, 73 or 74 of the Act.

11. Under section 83 of the CGST Act, the Commissioner is empowered to order provisional attachment for the purpose of protecting the interest of the Government revenue. In the facts of the present case, while a liability of Rs.14.62 crores had been estimated at the time when the order under section 83 of the CGST Act came to be passed, the present estimate is Rs.16.24 crores. Thus,

the petitioner, upon conclusion of any proceedings that may be taken pursuant to the proceedings under sections 67, 73 or 74 of the CGST Act, may be liable to pay such amount. Admittedly, the petitioner has already reversed input tax credit to the tune of Rs.13,28,00,000/□ In the opinion of this Court, considering the amount paid by reversing input tax credit, the interest of the Revenue is sufficiently secured. Therefore, the provisional attachment of the above referred bank accounts of the petitioner is no longer justified.

12. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The respondent is directed to forthwith release the provisional attachment over the petitioners bank accounts being current accounts bearing No. 02950500013045, 02950200000772 maintained with the Bank of Baroda, Kapadwanj, accounts No. 917020026366404 and 917040037200382 maintained with the Axis Bank, Nadiad and accounts No. 50200024114832 and 50200033690085 maintained with HDFC Bank, Kapadwanj as well as accounts No. 02950600021450, 02950600021591, 02950600021899, 02950600022187, 02950300039429 and 02950300040500 maintained with the Bank of Baroda.

Rule is made absolute accordingly.

(HARSHA DEVANI, J) (A. P. THAKER, J) PRAVIN KARUNAN