

**Court No. - 40**

**Case :-** WRIT TAX No. - 2300 of 2024

**Petitioner :-** M/S Rajat Infra Developers Private Ltd

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Ashish Srivastava, Atul Srivastava

**Counsel for Respondent :-** A.S.G.I., Abrar Ahmad, Dhananjay Awasthi, Parv Agarwal, R.V. Pandey

**Hon'ble Shekhar B. Saraf, J.**

**Hon'ble Vipin Chandra Dixit, J.**

1. Heard Sri Sitaram Yadav, learned counsel appearing on behalf of the petitioner; Sri Abrar Ahmad, learned counsel appearing on behalf of respondent no.1; Sri Dhananjay Awasthi, learned counsel appearing on behalf of respondent nos.2, 3 and 5 and Sri R.V. Pandey, learned counsel appearing on behalf of respondent no.4.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by orders dated July 8, 2024 and October 30, 2024 passed by the respondent authorities.

3. The first order dated July 8, 2024 is an order whereby provisional attachment was made of the bank account of the petitioner. Subsequent to passing of this provisional attachment order under Section 83 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act') the petitioner approached the High Court and the coordinate Bench of this Court vide order dated October 15, 2024 had directed the authorities to consider the objections of the petitioner, and thereafter, pass a reasoned order in accordance with law. Subsequent to the same, objections were filed by the petitioner and after granting opportunity of hearing to the petitioner order dated October 30, 2024 was passed.

4. Upon perusal of the said order it appears that the said order is a reasoned order that clearly indicates the factual matrix of the petitioner having received the Service Tax from the persons to whom he provided services, but failed to deposit the same with the Service Tax Department.

5. It is to be noted that subsequent to the order of provisional attachment dated July 8, 2024, a show cause notice was issued by the department on July 24, 2024. The proceedings under the said show cause notice has also culminated into an order passed under Section 74 of the Act dated December 30, 2024. The relevant portion of said order is provided below :-

*"43. In view of the above discussion and findings, I pass the following order:*

**ORDER**

**[A]**

*(i) I confirm the demand of CGST amounting to Rs.2,23,73,267/-(Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) not paid by M/s Rajat Infra Developers Pvt. Ltd., (GSTIN- 09AAFCR7861J2ZR). 545, Lakhanpur, Khyora Bangar, Vikas Nagar, Kanpur Nagar-208001 during the period from July, 2017 to September, 2023 and order to recover the same from them under Section 74(1) of the CGST Act, 2017 as discussed in the foregoing paras.*

*(ii) I confirm the demand of SGST amounting to Rs.2,23,73,267/-(Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) not paid by M/s Rajat Infra Developers Pvt. Ltd., (GSTIN- 09AAFCR7861J2ZR) 545, Lakhanpur, Khyora Bangar, Vikas Nagar, Kanpur Nagar 208001 during the period from July, 2017 to September, 2023 and order to recover the same from them under Section 74(1) of the UPGST Act, 2017 as discussed in the foregoing paras.*

*(iii) I order to recover interest from them at applicable rates under the provisions of Section 50 of the CGST Act, 2017 and the corresponding provisions of the UPGST Act, 2017, on the GST demanded as mentioned in para (i) and para (ii) above and discussed in the forgoing paras.*

*(iv) I impose a penalty amounting to Rs.2,23,73,267/- (Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) under Section 74 of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017, upon them in respect of various contraventions of the CGST Act, 2017 as discussed in the foregoing paras.*

*(v) I impose a penalty amounting to Rs.2,23,73,267/- (Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) under Section 74 of the UPGST Act, 2017 read with Section 122(2)(b) of the UPGST Act, 2017, upon them in respect of various contraventions of the UPGST Act, 2017 as discussed in the foregoing paras.*

*(vi) I impose a penalty amounting to Rs.25,000/- (Rupees Twenty Five Thousand only) upon them Section 125 of the CGST Act, 2017 upon them in respect of various*

*contraventions of the CGST Act, 2017 as discussed in the foregoing paras.*

*(vii) I impose a penalty amounting to Rs.25,000/- (Rupees Twenty Five Thousand only) upon them Section 125 of the UPGST Act, 2017 upon them in respect of various contraventions of the UPGST Act, 2017 as discussed in the foregoing paras.*

*[B] (i) I impose a penalty of Rs.2,23,73,267/- (Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) upon Shri Prabhakant Shri Ram Yadav, Director of M/s Rajat Infra Developers Private Limited (GSTIN-09AAFCR7861J2ZR), 545, Lakhanpur Khyora Bangar, Vikas Nagar, Kanpur Nagar, 208001 (UP) under Section 122 (1A), (Section 122 (3), Section 125 read with Section 127 of the CGST Act, 2017.*

*(ii) I impose a penalty of Rs. 2,23,73,267/- (Rupees Two Crores Twenty Three Lakhs Seventy Three Thousand Two Hundred and Sixty Seven only) upon Shri Prabhakant Shri Ram Yadav, Director of M/s Rajat Infra Developers Private Limited (GSTIN-09AAFCR7861J2ZR), 545, Lakhanpur Khyora Bangar, Vikas Nagar, Kanpur Nagar, 208001 (UP) under Section 122 (1A), Section 122 (3), Section 125 read with Section 127 of the UPGST Act, 2017."*

6. Learned counsel appearing on behalf of the petitioner submits that the petitioner is in the process of taking recourse of filing an appeal against the order passed under Section 74 of the Act.

7. Learned counsel appearing on behalf of the petitioner has once again raised objection with regard to the arbitrary action resorting to provisional attachment under Section 83 of the Act. He relies on the judgement of **M/s Radha Krishan Industries v. State of Himanchal Pradesh** reported in **AIR 2021 Supreme Court 2114** wherein the Supreme Court had categorically stated that the power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. In fact, the Supreme Court went on to say that the attachment of bank account and trading assets should be resorted to only as a last resort or measure. In the said Supreme Court judgement, the provisional attachment was held to be bad in law as the respondent authorities had not granted an opportunity to the petitioner therein to file objections and had not heard the petitioner. Accordingly, the Supreme Court held that the same was a breach of the mandatory requirement of Rule 159(5) of the Himanchal Pradesh Goods and

Service Tax Rules, 2017.

8. The present case is distinguishable on facts to the factual matrix based on which the order was passed in **M/s Radha Krishan Industries (supra)**. In the present case, subsequent to the provisional attachment, the petitioner had approached this Court and the coordinate Bench of this Court had directed the respondent authorities to consider the objection filed by the petitioner and grant an opportunity of hearing. The petitioner availed of the said opportunity and filed his objections and was heard by the respondents authorities, which culminated subsequently in the order dated October 30, 2024 wherein the objections of the petitioner were rejected by the respondent authorities. Furthermore, in the present the case show cause notice issued under Section 74 of the Act has also been adjudicated upon and a final order passed under Section 74 of the Act as provided above.

9. In light of the above facts and circumstances of the case, we are of the view that the objections of the petitioner were dealt with by the respondent authorities and the provisional attachment was justified under Section 83 of the Act for a period of one year. The said period would only come to an end on July 7, 2025. In the meantime, since show cause notice has already been adjudicated upon and order was passed under Section 74 of the Act, the petitioner has the statutory alternative remedy under the law to file an appeal against the same.

10. We have also examined and perused in great detail the order passed on October 30, 2024 that is indicating the reasons for provisional attachment and the manner in which petitioner has avoided paying the Goods and Service Tax dues to the coffers of the Government.

11. In light of the same, this writ petition is dismissed with liberty granted to the petitioner to approach the appellate authority in accordance with law.

**Order Date :- 27.2.2025**

Dev/-

**(Vipin Chandra Dixit,J.)      (Shekhar B. Saraf,J.)**