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WP No.20967 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2025

PRONOUNCED ON : 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.20967 of 2024
and
W.M.P.Nos.22928 and 22930 of 2024

Kesar Jewellers
Rep. by its Sole Proprietor Rajesh Kathri,
4th Floor, 224/116, Tarus Towers,
NSC Bose Road, Sowcarpet,
Chennai 600 079.

... Petitioner

V.

1. The Additional Director General
Directorate General of Goods and Services Tax
Intelligence,
Chennai Zonal Unit, 5th Floor, Tower-II,
BSNL Building, No16, Greams Road,
Chennai 600 006.

2. The Branch Manager,
Corporate Banking Branch,
Axis Bank Limited,
No.192, Ground Floor,
Kurumuthu Nilayam, Anna Salai,
Chennai 600 002.

... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling upon the records of the impugned order in Form DRC 22 in F.No.DGGI/INV/GST/2801/2023-Gr.M/907 dated 13.02.2024 on the file of the 1st respondent and quash the same and consequently direct the respondents to defreeze Bank Accounts bearing Nos.923040075206057, 920050037258081, 913030056400120, 913020052838685, 922020064571217, 923040075206057, 920040037513892, 920050037258081 and 920060053712247 operated by the petitioner in the same PAN Number, held with the 2nd respondent Bank Branch.

For Petitioner : Mr.Arun C Mohan
assisted by Mr.K.Venkatesan

For R1 : Mr.Rajnish Pathiyil
Senior Panel Counsel

For R2 : Mr.V.Manohar

ORDER

The present writ petition is filed challenging the impugned order of provisional attachment of property under Section 83 of the CGST Act, 2017 vide FORM GST DRC-22 dated 13.02.2024, on the premise that it suffers from manifest arbitrariness and in excess of the respondent's



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jurisdiction under Section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the Act” or “the CGST Act”).

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2. Brief Facts:

2.1. The petitioner is a proprietary concern. The petitioner is engaged in trading of Gold Bullion and Gold Jewellery. The petitioner has been in the above business since 2008. It is submitted by the petitioner that bullion was predominantly procured from M/s.LABH, Ahmedabad and a few other suppliers including M/s.SS Bullion, Chennai, M/s.Shiv Sahay Bullion, Chennai. The sales of such bullion was made primarily to M/s.Silver CZ Jewellers, Chennai, M/s.Vijay Bullion, M/s. Suresh Jewellery. The petitioner is registered as a taxable person under the GST Act. It is submitted that the petitioner had filed its returns and paid appropriate taxes under the GST Act.

2.2. While so, on 26.06.2023 the Senior Intelligence Officer, Directorate General of Goods and Service Tax, Intelligence (DGGI), attached to the 1st respondent issued summons to the petitioner under Section 70 of the CGST Act, calling upon the petitioner to be present at



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their office in connection with an investigation. Thereafter, the petitioner's place of business was searched on 30.06.2023. During the course of such search, certain documents such as purchase / sale invoices, mobile phone, pen drive along with files containing certain papers were seized. The Mahazar dated 30.06.2023 records the material seized. After about 6 months, thereafter there was another search of the petitioner's place of business on 18.01.2024. During the course of the said search Gold bars along with computer, mobile phones, loose cash, documents were seized and duly recorded in the Mahazar dated 18.01.2024. Yet another summon came to be issued under Section 70 of the CGST Act, calling upon the petitioners to appear for an enquiry.

2.3. Thereafter, an arrest memo with grounds for arrest was issued on 19.01.2024. The petitioner was arrested on 19.01.2024 and remanded to judicial custody till 02.02.2024. The petitioner preferred a bail petition / application before the Sessions Court, Chennai, vide Crl.M.P.No.3894 of 2024. Bail was granted by the Sessions Court, Chennai on 13.02.2024.

2.4. The impugned order in Form DRC-22 dated 13.02.2024 came to be issued i.e., on the very day when the petitioner was granted bail,



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thereby attaching provisionally the petitioner's bank accounts bearing Nos.

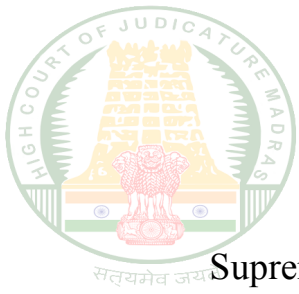
913030056400120, 913020052838685, 922020064571217,
923040075206057, 920040037514892, 920050037258081,
920060053712247, 918010083325206, 913010051365769.

3. Case of the Petitioner:

a) The impugned proceedings is bad for want of jurisdiction inasmuch as it does not disclose any tangible material leading to formation of opinion, that it is necessary to provisionally attach the property of the petitioner, for the purpose of protecting the interest of the government warranting exercise of power under Section 83 of the Act.

b) That in the absence of tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the Revenue, the exercise of power under Section 83 of the Act is without jurisdiction.

c) The impugned proceedings in the absence of reasons being disclosed warranting exercise of the emergent power to provisionally attach the property of the petitioner is contrary to the law laid down by the



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Supreme Court in the case of M/s.Radhakrishnan Industries reported in 2021 (6) SCC 771.

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d) The impugned order insofar as it fails to assign reasons in the order of attachment renders nugatory the opportunity of hearing mandated under Rule 159(5) of the CGST Rules, inasmuch as in the absence of reasons being disclosed, the petitioner would not even be aware of the case that he has to meet thereby rendering the opportunity if any illusory.

e) The petitioner had vide letters dated 24.05.2024, 31.05.2024, 03.06.2024 and 07.06.2024, made repeated requests for lifting the provisional attachment, while also setting out the legal infirmities in the impugned proceedings, the respondent had failed to even consider the same thereby vitiating the impugned order of attachment under Section 83 of the Act, on the ground of non application of mind to material on record.

4. Case of the Respondent :

a) On the basis of intelligence gathered by the office of DGGI, the respondents were prima facie of the view that petitioner was involved in clandestine removal of Gold Bullion without raising invoices and was



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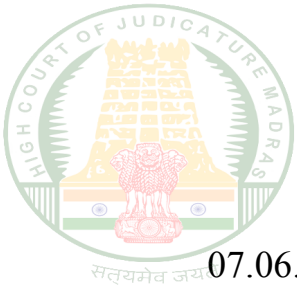
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involved in avilment of ITC without actual receipt of goods. The petitioner had admitted to the clandestine removal and fraudulent avilment of ITC in his statement dated 19.01.2024. File was produced before this court to demonstrate the same.

b) Search conducted in the premises of the dealers with whom the petitioner is alleged to have engaged in buying and selling of Gold Bullion and Jewellery revealed that they were fictitious / non existent. A statement obtained from one such fictitious entity viz., M/s.Diva Trading revealed that they were mere name lenders without engaging in actual transactions of buying or selling Gold Jewellery or Bullion.

c) That the petitioner was operating from undeclared premises and the materials gathered during the course of search revealed that ITC has been availed of fraudulently on the basis of invoice of bogus entities.

d) That the petitioner had failed to avail of the opportunity to file its objection within 7 days of the attachment as provided in Rule 159(5) of the CGST Rules, 2017, inasmuch as the petitioner had not filed its objections in the prescribed Form viz., DRC GST – 23, instead the petitioner had filed letters dated 24.05.2024, 31.05.2024, 03.06.2024 and



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07.06.2024. The above letters not being in the prescribed form was not considered.

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e) That reasons for the purpose of protecting the interest of the government revenue were not disclosed only in view of the fact that DRC 22, did not have adequate space/facility to upload the reasons for invoking Section 83 of the Act, in other words the portal does not enable uploading of reasons in DRC -22.

5. Heard both sides and perused the materials on record.

6. Before proceeding further it may be necessary to refer to Section 83 of the Act which reads as under:

“Section 83. Provisional attachment to protect revenue in certain cases.-

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-



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section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”

7. The scope, object, safe guards and purport of Section 83 of the Act was considered in ***Radha Krishan Industries v. State of H.P.***, reported in **(2021) 6 SCC 771**. The Apex Court found that Section 83 of the Act can be divided into 5 parts, the relevant portions in the judgment is extracted hereunder:

“(i) The power to order a provisional attachment is entrusted during the pendency of proceedings under any one of six specified provisions: Sections 62, 63, 64, 67, 73 or 74. In other words, it is when a proceeding under any of these provisions is pending that a provisional attachment can be ordered.

(ii) The power to order a provisional attachment has been vested by the legislature in the Commissioner.

(iii) Before exercising the power, the Commissioner must be "of the opinion that for the purpose of protecting the interest of the government revenue, it is necessary so to do".

(iv) The order for attachment must be in writing.

(v) The provisional attachment which is contemplated is of any property including a bank account belonging to the taxable



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person.

(vi) *The manner in which a provisional attachment is levied must be specified in the rules made pursuant to the provisions of the statute.”*

7.1. The Supreme Court after finding that the power of provisional attachment conferred under Section 83 of the Act was a draconian measure and thus need to exercise restraint, proceeded to setout the condition precedent for invoking Section 83 of the Act as under:

“49. Now in this backdrop, it becomes necessary to emphasise that before the Commissioner can levy a provisional attachment, there must be a formation of “the opinion” and that it is necessary “so to do” for the purpose of protecting the interest of the government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalisation of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which



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emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory preconditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that “for the purpose of protecting the interest of the government revenue, it is necessary so to do”, it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.”



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7.2. The Supreme Court then proceeded to explain that the power under Section 83 of the Act, ought to be exercised as a last resort on finding that the above measure “*is necessary so to do*” and that is the only measure by which the interest of the revenue can be protected. The following observations are relevant in this regard:

“50. By utilising the expression “it is necessary so to do” the legislature has evinced an intent that an attachment is authorised not merely because it is expedient to do so (or profitable or practicable for the Revenue to do so) but because it is necessary to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the Revenue can be protected “only” by a provisional attachment without which the interest of the Revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 of the Act, is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallized. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an



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assessee can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorise Commissioners to make pre-emptive strikes on the property of the assessee, merely because property is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue.

(emphasis supplied)

7.3. The Apex Court then proceeded to apply the “Test of Tangible Material”, while explaining that the condition precedent for exercise of power under Section 83 of the Act, is the existence of tangible material on the basis of which opinion is to be formed that provisional attachment under Section 83 of the Act, is necessary for the purpose of protecting the interest of the revenue and held as under:

*“51. Moreover, the words embodied in sub-section (1) of Section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of **tangible material** on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement.*



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52. We adopt the test of the existence of “tangible material”. In this context, reference may be made to the decision of this Court in CIT v. Kelvinator of India Ltd. [CIT v. Kelvinator of India Ltd., (2010) 2 SCC 723] S.H. Kapadia, J. (*as the learned Chief Justice then was*) while considering the expression “reason to believe” in Section 147 of the Income Tax Act, 1961 that income chargeable to tax has escaped assessment *inter alia* by the omission or failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of “tangible material” and that “reasons must have a live link with the formation of the belief”. This principle was followed subsequently in a two-Judge Bench decision in CIT v. Techspan (India) (P) Ltd. [CIT v. Techspan (India) (P) Ltd., (2018) 6 SCC 685] While advertent to these decisions we have noticed that Section 83 of the HPGST Act uses the expression “opinion” as distinguished from “reasons to believe”. However for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue.”

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76.5. *The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.*”

(emphasis supplied)

7.4. Having dealt with the law laid down by the Supreme Court with regard to Section 83 of the Act though the above decision was made while considering an order after objections were filed in terms of Rule 159 of the CGST Rules, the above decision has laid down parameters which needs to be satisfied before power under Section 83 of the Act can be invoked. It may also be relevant to refer to the following decisions of the High Court wherein the relevance of orders under Section 83 of the Act containing / disclosing reasons was emphasized :

a. Telangana High Court Judgment – Adil Trading in W.P. No. 30818 of 2023:

“Except for the words "in order to protect the interest of revenue" there does not appear to be any reflection of the grounds/reasons/circumstances that compelled the Principal



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Commissioner to pass the order of provisional attachment. If we look at section 83, what is envisaged is upon initiation of any proceedings under Chapter XII, Chapter XIV or Chapter XV, the Commissioner has to make up an opinion that opinion is to be formed on the basis of the reasons which formed in the course of proceedings from the circumstances that prevailed in between etc., etc. If the opinions were not to be revealed and reflected in the order, the framers of law would have simply held that the Principal Commissioner had the power to issue orders of provisional attachment, protecting the interest of the government revenue. The very fact that the section provides for, moreover, to form an opinion before issuance of order of provisional attachment itself is sufficient enough to accept that it is required law that the order attachment in itself should disclose the reasons/circumstances and grounds which in the opinion of the Principle Commissioner required issuance of the order of provisional attachment.

(emphasis supplied)

b. Gujarat High Court in the case of *M/s.Anjani Impex v. State of Gujarat*, held as under:

7.5 After referring to a decision of a coordinate Bench the relevant portions was extracted and reiterated and the same is extracted hereunder:

“15. A Coordinate Bench of this Court, to which one of us



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J.B. Pardiwala, J. was a party, had the occasion to discuss Section 83 of the Act in the case of Valerius Industries vs. Union of India, Special Civil Application No. 13132 of 2019, decided on 28th August, 2019, wherein this Court drew the following conclusion:

"[1] The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

[2] The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.

(3)

(4)

[5] 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.



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[6] *The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.*”

(emphasis supplied)

c) Madras High Court in the case of Sree Meenakshi Industries v. The Additional Chief Secretary / Commissioner of Commercial Tax and others in W.P. 3079 of 2022 :

7.6. This Court after referring to the Supreme Court at length after extracting the parameters laid down by the Apex Court for exercise of power under Section 83 of the Act, held as under:

“28. In the said findings given by the Hon'ble Supreme Court, the findings at Clause (iv), (v), (vii) and (x) are more relevant for the present case. In Clause (iv), the Court says that, the power to order a provisional attachment of the property of the taxable person including a bank account is a draconian in nature. Therefore the conditions, which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. In clause (v), the Court says that, the exercise of the power for ordering a provisional tax attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of



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protecting the interest of the Government Revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on the basis of tangible material, that the assessee is likely to defeat the demand, if any, and that therefore it is necessary so to do for the purpose of protecting the interest of the Government Revenue. In clause (vii), the Court says that the formation of an opinion of the Commissioner under Section 83(1) must be based on the tangible material, bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the Government Revenue. In clause (x), the Court says that, the Commissioner is duty to bound to deal with the objection to the attachment by passing a reasoned order, which must be communicated to the taxable person, whose property is attached.

29. If we apply the said 4 clauses in the facts of the case, certainly this Court without hesitation, can come to a conclusion that, the said criterion fixed by the Hon'ble Supreme Court in Radhakrishna's case (cited supra) has not been met in the present case by the Commissioner, who passed the order under Section 83 of the Act.

30. The Commissioner in the impugned order under Section 83, merely says, in order to protect the interest of the Revenue and in exercise of the powers conferred under Section 83 of the TNGST Act, I Thiru.K.Phanindra Reddy, I.A.S, Additional Chief Secretary / Commissioner of State Taxes, Chennai – 600 005 hereby provisionally attach the aforesaid account.



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31. *On what basis, the Commissioner has decided to invoke Section 83 to go for a provisional attachment before which, whether the Commissioner has formed an opinion to do so, before forming such opinion, what are all the tangible material available before him or placed before him, so as to enable him to form such an opinion, all these aspects have not been even indicated in the order of provisional attachment.*

32. *This kind of exercise of power under Section 83, which, in the words of the Hon'ble Supreme Court, is a draconian one, cannot be approved as it does not meet the requirement of fair play and strict adherence of the provisions of the Act as interpreted by the Hon'ble Supreme Court in the judgment cited supra in Radhakrishnan case.*

33. *The said judgment in the Radhakrishnan case (cited supra) has been taken into account by the writ Court in M/s.Mutharamman & Co., case (cited supra) dated 05.10.2021, where the learned Judge after having allowed the said writ petition by setting aside the similar order under Section 83, directed the Revenue to complete the process of assessment within a time frame of six weeks.*

34. *When Intra-court appeal was filed, the Hon'ble Division Bench of this Court by order dated 21.12.2021, while affirming the said order of the writ court, has only modified the time limit prescribed by the learned Judge to complete the assessment.*

35. *Therefore, absolutely there can be no quarrel as of now*



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that, what shall be the criterion to be followed by the Commissioner or any other officer, who exercise the power under Section 83 of the Act before invoking such provisional attachment provision and while exercising the power, whether an opinion has been formed by the officer and such an opinion was formed based on any tangible material available before him for consideration and all these things if not exhaustively but atleast to the limited extent, must have been indicated in the order itself, so that the assessee can have a prima facie satisfaction that atleast the provision of the Act has not been violated as interpreted by the Hon'ble Supreme Court. Therefore, in the present case, this Court has no hesitation to hold that, the first respondent has not followed the mandatory guidelines issued by the Hon'ble Supreme Court in the said judgment in Radhakrishnan Case (cited supra) followed by orders passed by the writ court as referred to above while passing order under Section 83 dated 20.12.2021, making a provisional attachment of the Bank Account of the petitioners in these cases."

7.7. Having examined the law laid down by the Apex court and High Courts including this Court on Section 83 of the Act, wherein the following parameters have been summarised by the Apex Court in ***Radha Krishan Industries v. State of H.P., reported in (2021) 6 SCC 771***, for exercise of power under Section 83 of the Act viz.,

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"76.1. The Joint Commissioner while ordering a provisional attachment under Section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107(1).

.....

76.3. The High Court has erred in dismissing the writ petition on the ground that it was not maintainable.

76.4. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.

.....

76.6. The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.

76.7. The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue.



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76.8. *In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal.*

76.9. *Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:*

(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and

(b) An opportunity of being heard.

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard.

76.10. *The Commissioner is duty-bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached."*

7.8. It may be necessary to apply the above tests to the impugned proceedings to see if it satisfies the parameters laid down by the Apex court followed by the various High Courts referred supra. It may be relevant to clarify that two aspects relevant to be examined are existence of tangible material leading to formation of opinion that provisional attachment under Section 83 of the Act, is necessary to protect the interest of the revenue and



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secondly disclosure of reasons in the order of attachment under Section 83 of the Act. The above two aspects are distinct though seemingly overlapping. Keeping this in mind it may be necessary to refer to the impugned proceedings which reads as under:

"It is to inform that M/s.Kesar Jewellers having principal place of business at 4th Floor, 224/116, TARUS TOWERS, NSC BOSE ROAD, SOWCARPET, Chennai, Tamil Nadu, 600079 bearing GST registration number as 33AIEPK2116M1ZH, PAN No.AIEPK2116M registered taxable person under the CGST Act, 2017. Proceedings have been launched against the aforesaid taxable person under Section 67 of the said Act to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has two <<saving/ current/ FD/ RD/ depository>> accounts in your bank saving account No.923040075206057 and 920050037258081.

2. In order to protect the interests of revenue and in exercise of the power conferred under Section 83 of the CGST Act, 2017, I Sucheta Sreejesh, Additional Director General, hereby provisionally attach the aforesaid accounts. No debit shall be allowed to be made from the said accounts or any other accounts operated by the aforesaid person on the same PAN without the prior permission of this department."



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7.9. The Apex Court in Radha Krishan's case followed by High Courts referred supra, leaves no room for any doubt that the order of provisional attachment under Section 83 of the Act must be on formation of opinion on the basis of tangible material that the provisional attachment is *necessary for the purpose of protecting the interest of the revenue*. Importantly, the same is a jurisdictional fact, in the absence of which the exercise would stand vitiated. Secondly, the proceedings must disclose the reasons which led to the formation of opinion that the provisional attachment is *necessary for the purpose of protecting the interest of the revenue*.

7.10. From a reading of the impugned order under Section 83 of the Act, this court is of the view that the impugned proceeding under Section 83 of the Act, does not disclose any tangible material which led to the formation of opinion that the provisional attachment is *necessary for the purpose of protecting the interest of the revenue*. The impugned order merely states that proceedings are initiated under Section 67 of the Act to determine the liability of the petitioner. The only information it refers to is

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with reference to the account held by the petitioner with the said Bank. The order then proceeds to state that provisional attachment is *necessary for the purpose of protecting the interest of the revenue*, i.e., a mere reproduction of Section 83 of the Act. It appears that the respondent was under the misconception that initiation of proceedings under Chapter XII, XIV and XV of the Act, by itself would enable or rather warrant exercise of power under Section 83 of the Act. There appears to be a complete misdirection in understanding the scope of Section 83 of the Act, for while pendency of proceedings under the above Chapters is necessary for the exercise of the power, but then pendency of proceedings would not automatically warrant exercise of power under Section 83 of the Act. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute viz., formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue. The expression “necessary so to do for protecting the government revenue”, implicates that the interests of the



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government revenue cannot be protected without ordering a provisional attachment.

7.11. However, a reading of the impugned proceedings would show that there is no application of mind to the existence of any material muchless tangible material which led to the formation of opinion that the provisional attachment is necessary for the purpose of protecting the interest of the revenue. Nor does it reveal application of mind by the respondent to the existence or otherwise, of the existence of the above jurisdictional element/aspect, thereby vitiating the impugned proceeding warranting exercise of power under Section 83 of the Act. It does not disclose that the interests of the government revenue cannot be protected without ordering a provisional attachment. The impugned order is nothing but mechanical reproduction of Section 83 of the Act. In other words, the impugned proceeding does not show application of mind by the respondent to the existence or otherwise, of the existence of the above jurisdictional elements/aspects, thereby vitiating the impugned proceeding.



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8. At this stage it may be necessary to refer to the following judgments to appreciate the relevance and importance of existence of jurisdictional facts and an application of mind as to its existence by the authority concerned before assuming jurisdiction.

a. Shrisht Dhawan (Smt) v. Shaw Bros., reported in (1992) 1 SCC 534 :

“19. What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. [Wade, Administrative Law] In Raza Textiles [Raza Textiles Ltd. v. ITO, (1973) 1 SCC 633 : 1973 SCC (Tax) 327 : AIR 1973 SC 1362] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.”



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b. Arun Kumar v. Union of India, reported in (2007) 1 SCC 732:

"74. A 'jurisdictional fact' is a fact which must exist before a court, Tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a Tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated : 'Where the jurisdiction of a Tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior Tribunal, a challenge is made to its jurisdiction, the Tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue ; but that ruling is not conclusive.'



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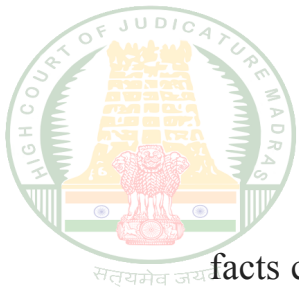
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76. *The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."*

As stated above the impugned order does not disclose application of mind by the respondent to the existence of jurisdictional fact muchless existence of the above jurisdictional fact, thereby vitiating the impugned proceeding.

9. The second aspect on which emphasis is laid by the Apex Court and other High Courts referred supra is disclosure of the reasons which led to the formation of opinion that the provisional attachment is necessary for the purpose of protecting the interest of the revenue.

10. It may therefore be necessary to set-out briefly the relevance of reasons and how it normally is an essential facet of natural justice. It is trite that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the



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facts considered and conclusions reached. Reasons being harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at, it excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion and decision reached. The requirement of giving reasons is based on sound principles. Exercise of power without disclosing reasons leave the party in the dark on the reasons which led the authority to initiating a proceeding. More important, permitting action without reasons is an open invitation to arbitrary action. Reasons must not be accompanied by obscure and unsatisfactory reasons. The need to give reasons cannot be discharged by the use of vague general words. What the decision-making authority must do is to state his reasons in sufficient detail to enable the reader to know the reasons which prompted the exercise of power. The extent and substance of the reasons must depend upon the circumstances. They need not be elaborate or lengthy. But they should be such as to tell the parties in broad terms why the power is exercised.

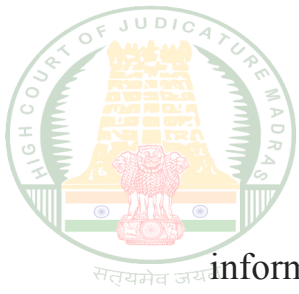


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11. With this in background we must state that Section 83 of the Act is designed to provide for dealing with situations where it could brook no delay and immediacy of action is necessary to protect the interest of the revenue. In view of the above legislative intent and object, Section 83 of the Act, does not provide for pre-decisional hearing which is normally in compliance with natural justice but instead only provides for a post decisional hearing. It may be relevant to clarify that it is now judicially acknowledged that the necessity for speed may call for immediate action and the need for promptitude may exclude the duty of giving a pre-decisional hearing to the person affected. However it does not dispense with disclosing reasons which led to the formation of opinion that the provisional attachment is *necessary for the purpose of protecting the interest of the revenue.*

12. The need to give reasons while making the provisional attachment under Section 83 of the Act, becomes even more compelling, if we bear in mind that under Rule 159 of the CGST Rules, 2017, the petitioners have a right to file their objections against the attachment. In the absence of being



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informed of the reasons the petitioner would have no opportunity of the case that they have to meet. Resultantly, failure to disclose reasons while provisionally attaching the property under Section 83 of the Act, would render the opportunity under Rule 159 of CGST Rules, illusory and not real. The petitioner had admittedly submitted their objections on various dates vide letters dated 24.05.2024, 31.05.2024, 03.06.2024 and 07.06.2024. The respondents attempt at justifying their action of not considering the above objection on the premise that it was not filed in Form DRC 23, does not appear acceptable inasmuch the above submission is adopting a technical approach, to an exercise founded on complying with principles of natural justice. In any view, assuming that the petitioner ought to have responded in DRC 23, nothing stopped the respondent from informing the petitioner of the need to submit its objection in Form DRC 23 instead of the letters referred supra, which the respondent failed to.

13. The learned counsel for the respondent submitted that they were disabled in setting out the reasons inasmuch as Form DRC 22 and the Portal does not enable the authority from setting out reason as there were



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restrictions in terms of space / number of characters that could be uploaded/filled in DRC 22. Having come to a conclusion that giving of reason is essential while making provisional attachment under Section 83 of the Act, the submission of the respondent, of deficiency either in Form DRC 22 or the portal for not supplying reason in the proceeding provisionally attaching the property under Section 83 of the Act cannot be a justification. I say so, for the cardinal principle of 'giving reason' as condition for decision-making cannot be martyred for the cause of immediacy nor inadequacy of provision in the form / portal to enabling disclosure of reasons. In any view, if the contention of the respondent were to be accepted, nevertheless, nothing prevented the respondent from serving the notice containing reasons by other modes provided under Section 169 of the Act, such as tendering, sending by post etc. Thus the impugned proceedings stands vitiated for not furnishing reasons which led to the formation of opinion that the provisional attachment is necessary in the interest of protecting the interest of the revenue.



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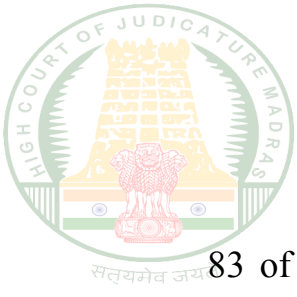
14. From the above discussion it leaves no room for any doubt that the impugned proceedings under Section 83 of the Act miserably fails to satisfy the parameters laid down by the Apex Court for exercise of power under Section 83 of the Act for the following reasons:

a. The impugned order does not disclose any material muchless tangible material which led to the formation of opinion that provisional attachment in exercise of power under Section 83 of the Act is necessary to protect the interest of the revenue.

b. The impugned proceedings does not disclose any reason warranting exercise of power under Section 83 of the Act.

c. The impugned proceedings does not disclose that the respondent had after applying its mind to the material arrived at a conclusion that it is necessary to exercise the power under Section 83 to protect the interest of the revenue and that any other measure less rigorous would not be adequate.

d. The impugned proceeding is attempted to be justified for non-furnishing of reasons on the premise that Form DRC 22 as well as the portal does not enable the setting out reasons for exercise of power under Section



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83 of the Act. A submission which this court has rejected for the reasons setout supra.

e. The impugned order of provisional attachment was made to continue without even considering the petitioners objections vide letters dated 24.05.2024, 31.05.2024, 03.06.2024 and 07.06.2024 on the premise that it is not in the prescribed Form DRC 23, a submission which was rejected for the reasons stated supra.

15. For all the reasons stated above, the impugned order is set aside. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation : Yes/No
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To:

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1. The Additional Director General
Directorate General of Goods and Services Tax
Intelligence,
Chennai Zonal Unit, 5th Floor, Tower-II,
BSNL Building, No16, Greams Road,
Chennai 600 006.
2. The Branch Manager,
Corporate Banking Branch,
Axis Bank Limited,
No.192, Ground Floor,
Kurumuthu Nilayam, Anna Salai,
Chennai 600 002.



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MOHAMMED SHAFFIQ, J.

spp

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and

W.M.P.Nos.22928 and 22930 of 2024

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