

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16360 of 2020****BHAVESH KIRITBHAI KALANI**

Versus

UNION OF INDIA**Appearance:**

MANAN K PANERI(7959) for the Petitioner(s) No. 1

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

NOTICE SERVED(4) for the Respondent(s) No. 3

UNSERVED WANT OF TIM(31) for the Respondent(s) No. 2

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 19/04/2021****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. The petitioner herein is the proprietor of the Firm running in the name and style of M/s Global Corporation. It is acting as commission agent at Agricultural Produce Market Committee, Gondal with its valid license No.LIC/18424 of the market committee as required under Section 27 of the Gujarat Agriculture Produce Markets Act, 1963.

2. The petitioner has a valid GST Registration Certificate under the Provisions of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act, 2017') having registration No.24BCSPK2560G1ZJ. According to the petitioner, he is involved in voluminous transactions of several parties and he follows the law while conducting his

business. He came to realize that the Central Bank of India on 20.08.2020 froze his current account No.3785569992 with the Rajkot Main Branch. Without availing any opportunity, he straightway received the attachment order and realized that from the Office of the Principal Commissioner of Central GST, Mumbai, such order of freezing had happened and since then, he has not been allowed to operate the account.

3. The petitioner approached the respondent no.3 – the Bank through its Manager and requested to let him be provided the necessary details for the reason of defreezing his account. It is his serious grievance that despite his repeated requests, no information was disclosed by the authority concerned as to why the GST authority exercised such powers. He also approached the respondent no.2 at Mumbai with the similar request of defreezing the account as also to provide the reasons of such attachment for freezing of his account. He was orally conveyed that because of voluminous transactions with the third party, which is involved in violation of the provisions of the CGST Act, his account has been frizzed.

4. He moved an application under the Right to Information Act, 2005 on 22.10.2020. The Reply received on 28.10.2020 from the respondent no.3 revealed that the information sought for could not be revealed on account of the fact that same would impede the process of investigation. This has resulted into his approaching this Court with a

grievance that the action was totally arbitrary and Section 83 does not permit the freezing of the account of the third party for any steps which are needed to be taken against the assesses. He has also depended on the judgment and order of this Court rendered in **Special Civil Application No. 13132 of 2019** in case of **Valerius Industries Vs. Union of India**, as also the decision of the Bombay High Court rendered in case of **Kaish Impex Pvt. Ltd. Vs. Union of India and others** dated 17.01.2020 in **Writ Petition No.3145 of 2019**. Prayers sought in this petition are the following prayers:

"A. Your Lordships may be pleased to issue a Writ of Certiorari or any other Writ or direction quashing and setting aside the attachment order passed by the Respondent No.2 and be further pleased to direct the Respondents to de-freeze/detach the Current Bank Account No.3785569992 of the Petitioner with the Central Bank of India, Rajkot Main Branch from provisional attachment under Section 83 of the Central Goods and Services Tax Act, 2017;

(B) Pending admission and final hearing of the Petition, this Hon'ble Court may be pleased to direct the Respondents to de-freeze/detach the Current Bank Account No.3785569992 of the Petitioner with the Central Bank of India, Rajkot Main Branch from provisional attachment under Section 83 of the Central Goods and Services Tax Act, 2017 on terms and conditions as this Hon'ble Court may deem fit;

(C) Your Lordships may be pleased to dispense with the filing of the requisite Court due to Global COVID-19 Pandemic. The Petitioner undertakes to pay and affix the same as and when directed by this Hon'ble Court;

(D) Your Lordships may be pleased to pass any

other and further order as this Hon'ble Court may deem fit interest of Justice;

(E) Award Costs."

5. The Notice came to be issued by this Court on 22.12.2020. The affidavit-in-reply on behalf of the respondent no.1 and 2 is filed by the Deputy Commissioner, Mr. Rahul Dhingra, denying all averments and contentions raised by the petitioner. According to the respondents, the case has been booked against Sajid Imam Shaikh (M/s. Belluxa Trading Company)(GSTIN -27EXMPS00095G1ZZ) on the ground of procuring bogus invoices and claiming refund of accumulated ITC against those bogus invoices. Upon verification, M/s. Belluxa Trading Company was found to be non-existent. For safeguarding the government revenue, the matter was taken up with the Union Bank of India, where the refund amount of Rs.3,15,52,578/- (Rupees Three Crores Fifteen Lakhs Fifty Two Thousand Five Hundred Seventy Eight Only) was received by the company.

6. It is further the say of the respondents that on getting the trail of the money sanctioned as obtained from Union Bank of India, it was realized that sum of Rs.48,25,000/- (Rupees Forty Eight Lakh Twenty Five Thousand Only) out of the total refund claim sanctioned to M/s. Belluxa Trading Company, was transferred to M/s. Global Corporation on the very next day on 28.07.2020 to the Bank Account No.3785569992. Thereafter, Rajkot Branch of Central Bank of India was asked vide communication dated

19.08.2020 to withhold the amount till the investigation reaches to the completion stage.

7. Later on, the Order in Original under Section 74 of the CGST Act, 2017 passed by the Additional Commissioner, CGST & CX, Mumbai was issued to M/s. Belluxa Trading Company.

8. It is further stated that in similar matter **Special Civil Application No.16437 of 2020** in case of **Piyush Shamjibhai Vasoya vs. Union of India through the Secretary and Others**, this Court had quashed the proceedings under Section 83 of the CGST Act, 2017 on 27.01.2021 and pointed out that the proceedings under Section 79 to be continued in accordance with law. It is the say of the respondent that as per Section 79 of the CGST Act, 2017 for recovery of proceeds of crime; a notice was issued to the Central Bank of India, Rajkot Branch in the name of M/s. Global Corporation. The Central Bank of India was also requested to hold a sum of Rs.48,25,000/- and pay the same to the government in compliance of the provisions contained in clause (c)(i) of sub-section (1) of Section 79 of the Act. According to the respondents, it is the case of fraud, willful misstatement and suppression of the facts under Section 29(2)(e) of the CGST Act, 2017. The show cause notice was also issued on 24.11.2020 under Section 74 of the CGST Act, 2017 and Order in Original dated 11.12.2020 is passed. The same was addressed to M/s. Belluxa Trading Company, and the Speed Post was returned with

the endorsement of "insufficient address/not known". On the email address of Sajid Imam Shaikh, the show cause notice or the order in original could not be served. The fraudulent transactions and the refund of huge sum of amount (Rs.3,15,52,578/-), with diversion of substantial portion to the present petitioner of Rs.48,25,000/- , the company account has been frizzed. It is the further say of the respondents that the communication dated 22.02.2021 has been addressed to the petitioner to inform the office of the respondents about the source of money for this transaction. It is further say of the respondents that the entire Bank account No.3785569992 has not been put on a hold but the same has been attached only to the tune of Rs.48,25,000/- only.

9. We have heard learned advocate, Mr. Manan Paneri for the petitioner. Following the line of memo of petition, he has urged that the respondents authorities have no powers to proceed against the petitioner as none of the proceedings under Sections 62, 63, 67, 73 or 74 of the Act are pending against him, whose properties are likely to be disposed of in the interest of the government. So far as third party is concerned, provision of Section 83 will not be available with the Court and even to provisionally attach the bank account being a drastic power, such powers are not to be exercised in routine. Even if for safeguarding the government revenue, provisional attachment of bank account is not permitted against the third party. Only upon the conditions provided

under Section 83 being fulfilled, the powers are to be exercised. He has urged that there are inbuilt safeguards against the third party provided under Section 83 of the Act and therefore, there is a need for the Court to intervene in its writ jurisdiction. He further urged that in the decision of Valerious Industries Versus Union of (Supra), the Court extensively has examined the scope of section 83 of the CGST Act, where it has not permitted the freezing of the bank account of the third party petitioner, holding it arbitrary under section 83 of the Act.

10. Learned Additional Solicitor General, Mr. Devang Vyas for the respondent nos.1 and 2 has fairly submitted that this Court dealt with identical issue in a petition which is decided on 27.01.2020 in Special Civil Application No.16437 of 2020 (Coram : Mr.J.B. Pardiwala J. and Mr.Ilesh J. Vora J.). According to them, the Court has interfered when there was invocation of the powers under Section 83 of Act, 2017 whereby the provisional attachment was made in case of the third party. He has fairly submitted that there is an absence of any proceedings pending against the writ applicant under Section 83 of the Act and therefore, the Court earlier had interfered in SCA 16437 of 2020. However, he has emphasized from the need to contend that the freezing of account as a proceedings under Section 79 has already been initiated against the present petitioner. He has emphasized that for protecting the interest of the revenue, section 79 certainly would

come to the rescue of the respondents. This is a gross case of a trading company not existing and by willfully mistaking its proceedings, the facts the huge amount of refunds being taken, out of which the substantial sum of deposit of the refund of about 3.15 crores, sum of 42.25 lakhs have been diverted to the account of the present petitioner. Therefore, as such, the proceedings initiated under Section 79 of the CGST Act, 2017 shall continue against the petitioner.

11. Having heard both the sides, firstly, the decision rendered by this Court in case of Piyush Shamijibhai Vasoya vs. Union of India (Supra) delivered on 27.01.2021, shall need to be regarded. There also the controversy was in relation to the third party, in whose case the bank account in exercise of the powers under Section 83 of the CGST Act, 2017 had been freezeed. It was a question of some actions taken by the authority concerned against few other individuals. The Court having noted that there being no proceedings under sections 62, 63, 64, 67, 73 or 74, having been initiated or pending against the writ applicant, held that the powers under Section 83 of the Act could not have been invoked by the respondents for the purpose of provisional attachment. Paragraph 6 to 9 are reproduced herein:

*"6. Section 83 of the Act, 2017 reads thus:
SECTION 83. Provisional attachment to protect revenue in certain cases. – (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67*

or section 73 or section 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 order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

7. Indisputably, in the case on hand, no proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 of the Act have been initiated or pending against the writ applicant. In the absence of pendency of any such proceedings referred to above, the respondent no.2 could not have invoked Section 83 of the Act for the purpose of provisional attachment. Assuming for the moment that something has surfaced in the course of any inquiry or investigation against the writ applicant as regards some business transaction with any other individuals, the same by itself will not confer jurisdiction to the respondent no.2 to invoke the Section 83 of the Act. The language of Section 83 of the Act is plain and simple. In the absence of any proceedings pending as on date against the writ applicant under the provisions of the GST Act as referred to under Section 83 of the Act, the order of provisional attachment could not have been passed.

8. In such circumstances referred to above, we are left with no other option to quash and set aside the impugned order of provisional attachment. However, we clarify that in future if any proceedings are initiated as referred to in Section 83 of the Act and if the authority deems fit, then he may proceed to invoke the Section 83 of the Act in accordance with law. However, as on date, the order of provisional attachment cannot continue.

9. In the result, this writ application succeeds and is hereby allowed. The impugned communication at Page 24, Annexure C to this writ application is hereby quashed and set aside. The attachment is ordered to be

lifted. The bank shall permit the writ applicant to operate his bank account.

9. Mr. Vyas would submit that the proceedings under Section 79 of the Act, 2017 have been initiated against the writ applicant and they are pending as on date. We may only say that if such proceedings have been initiated and are pending, the same may continue in accordance with law. We do not express any opinion on merits as regards the proceedings initiated under Section 79 of the Act, 2017."

12. We have given to understand by the learned advocate, Mr. Paneri that as the proceedings under Section 79 of the Act have already been initiated against the writ applicant under jurisdiction of the Bombay High Court, he earlier also have challenged such proceedings initiated under Section 79 of the Bombay high Court and the same have not been initiated here as he was waiting for this writ petition to be taken up and the action on the part of the bank of freezing his account also be interfered with.

13. We have noticed that in the instant case also, there are no proceedings against the present petitioner under Sections 62, 63, 64, 67, 73 and 74 of the Act. There is no reason therefore, to invoke section 83 against the writ applicant and proceedings. Since the proceedings are initiated by the authorities in connection with the third parties, invocation of powers under Section 83 are not available with the respondents. Therefore, the order of the provisional attachment in connection with the

bank account No.3785569992 of M/s. Global Corporation be interfered with. It is also necessary to note that despite of due service to the bank the bank has chosen not to remain present. Under the RTI Act, where information was sought by the petitioner, It has chosen not to divulge on the ground of pending investigation strangely. It is rightly pointed out before us that this action of freezing account is harsh and to be resorted as provided under the Statute. Thus, being a drastic power, the authority concerned cannot be oblivious of the serious consequences of provisional attachment of the bank account. Even if for the purpose of safeguarding the interest of the government revenue, the bank had chosen to follow the directions from the respondents, not to intimate to the petitioner as to why his account was freezed is wholly impermissible. In relation to the third party when such powers are impermissible to be exercised under section 83 of the Act, the bank ought to have applied its mind and more so when even under the RTI Act, the bank had been requested to furnish the details. Let a copy of this order be sent to the legal department of the bank for the future reference where it is not to be a party to something which the statute does not permit.

14. We notice at this stage that section 79 of CGST Act, 2017 which provides for the powers to the proper officer to recover the amount where the amount payable by a person to the government under the provisions of this act and rules, is not paid. What

would be relevant for the purpose of this matter is to refer to Section 79 (1)(c)(i) where the proper officer by a notice in writing require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay the government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount. Such person to whom such a notice is issued, is bound to comply with the notice and where the notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of entry, endorsement or the like being made before payment is made. Section (1) (C)(iii) also provides that in case of a person to whom the notice has been issued, fails to make the payment in pursuance to thereof of the government despite of the notice, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow. The proper officer may detain any movable or immovable property belonging to such person and detain the same until the amount payable is paid.

15. We are conscious of the fact that there are

already proceedings initiated under Section 79 against the present petitioner, who is the third party. Against such initiation of proceedings under Section 79 of the Act, no challenge in the present petition is made and a limited prayer is to the actions of initiating proceedings under section 83 and freezing of the account which has already been addressed. We follow the decision of the Division Bench and quash and set aside the provisional attachment, without addressing the issue concerning Section 79 of the Act which the Petitioner wishes to challenge before the appropriate forum.

16. In the result, this writ petition succeeds and is allowed. The communication dated 28.08.2020 (Annexure – C, Page 24) is quashed and set aside. The attachment is ordered to be lifted and the petitioner is permitted to operate his bank account. The proceedings which have been initiated under Section 79 of the CGST Act, 2017 against the present petitioner shall continue. There is no interference by this Court so far as those proceedings are concerned and we have also chosen not to express any opinion on merits so far as the proceedings under section 79 of the CGVT Act are concerned.

17. Accordingly, the petition is disposed of with no order as to the cost.

(SONIA GOKANI, J)

(VAIBHAVI D. NANAVATI, J)