(2020) 12 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition (ST.) No. 97165 Of 2020

AJE India Private Limited APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 22-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
Food Safety And Standards (Food Products Standards And Food Additives) Regulations, 2011 — Regulation 2.3.30
Central Goods And Services Tax Act, 2017 — Section 62, 63, 64, 67, 67(1)(a), 73, 74, 83, 83(1)

Citation : (2020) 12 BOM CK 0057

Hon'ble Judges : Ujjal Bhuyan, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : V.Sridharan, Gajendra Jain, Sriram Sridharan, J.B.Mishra

Judgement

Sr . N o,Account No.,Account Holderâ??s Name

1.,162705000112,M/s AJE India Pvt. Ltd.

2.,162705000060,M/s AJE India Pvt. Ltd

3.,162705000061,M/s AJE India Pvt. Ltd

mentioned therein. In order to protect the interest of revenue and exercising power conferred under section 83 of the CGST Act, respondent No.2 provisionally attached the aforesaid bank accounts.",,

Respondent No.3 i.e. the Branch Manager of the ICICI Bank was requested that no debit should be allowed to be made from the said accounts or any other accounts operated by the petitioner without,,

the prior permission of the department.,,

16. Since provisional attachment of bank accounts have been made under section 83 of the CGST Act, the same may be examined. For ready reference

section 83 is quoted hereunder:-",,

â??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.,,

(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) .â??,,

17. Sub-section (1) of section 83 says that 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 Government revenue it is necessary so to do, he may by order in writing attach provisionally any property including bank accounts belonging to the",,

taxable person in such manner as may be prescribed. As per sub-section (2) such provisional attachment shall cease to have effect after expiry of one year.,,

18. From an analysis of sub-section (1) of section 83 as alluded to herein above, we find that for invoking the said provision there has to be pendency of any proceeding under any one of the six sections",,

mentioned therein including section 67; thereafter, the Commissioner should form an opinion that for the purpose of protecting the interest of Government revenue, it is necessary to provisionally attach any",,

property including bank accounts of the taxable person.,,

19. Since in this case it is the stand of respondent Nos.1 and 2 that because of pendency of proceedings under section 67 of the CGST Act, power under section 83 has been invoked, section 67 may be",,

looked into. Section 67 of the CGST Act deals with power of inspection, search and seizure.",,

Clause (a) of sub-section (1) is relevant. For ready reference section 67(1)(a) is quoted hereunder:-,,

â??Section 67- Power of inspection, search and seizure.",,

(1) Where the proper officer, not below the rank of Joint Commissioner has

reasons to believe that-",,

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act",,

or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or,,

* Â *,,

Â Â,,

* Â *Â Â Â Â Â Â Â Â Â,,

Â * Â,,

Â *,,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator,,

of warehouse or godown or any other place.â??,,

20. From an analysis of the above it is seen that where the proper officer not below the rank of Joint Commissioner has reasons to believe that a taxable person has suppressed any transaction relating to,,

supply of goods or services or both or the stock of goods in hand or has claimed input tax credit in excess of his entitlement under the CGST Act or has indulged in contravention of any of the provisions of,,

the CGST Act or the rules made thereunder to evade tax under the CGST Act, he may authorize in writing inspection of any place of business of the taxable person.",,

21. A conjoint reading of the relevant provisions of section 67 and section 83 of the CGST Act would indicate that the proper officer must have reasons to believe that the taxable person has suppressed,,

any taxable transaction to evade payment of tax. It is not necessary for us at this stage to delve into the meaning of the expression reasons to believe employed in section 67 which has its own connotation,,

in fiscal statutes. Suffice it to say, requirement of section 67(1)(a) is that the proper officer should have reasons to believe that the taxable person has suppressed any taxable transaction to evade payment",,

of tax.,,

22. Having discussed the above, we may advert to the admitted facts of the present case. It is quite clear that petitioner had disclosed the details of its goods and had applied the classification which it",,

thought was appropriate. On that basis it had filed its CGST returns and had been assessed. It is not the case that petitioner has defaulted in payment of tax as per its returns or assessment. On the other,,

hand, respondent Nos.1 and 2 contends that it is a case of misclassification which has led to short payment of GST.",,

23. At this stage we may refer to the decision of Commissioner of Customs (Appeals), Kolkata dated 8th June, 2020. It may be mentioned that M/s Anutham Exim Private Limited had imported beverages",,

under the brands of Big Cola, Big Orange, Big Lemon etc. from Bhutan. The adjudicating authority by the order in original took the view that such products like Big Cola, Big Orange, Big Lemon etc.",,

were classifiable under CTH 2202 10 20 for which the taxable person was liable to pay IGST at the rate of 28% and compensation cess at the rate of 12%. Assailing the findings of the adjudicating,,

authority M/s Anutham Exim Private Limited preferred appeal before the Commissioner of Customs (Appeals), Kolkata. Commissioner of Customs (Appeals) held that even after taking into consideration",,

amendments made to the Food Safety and Standards (Food Products, Standards and Food Additives) Regulations, 2011, a sub set has been created under regulation 2.3.30 covering therein beverages",,

having fruit juice contents between 5% to 10% and 2.5% to 5% for lime or lemon. Referring to the decisions of the Supreme Court in Parle Agro (P) Ltd. and the larger bench of CESTAT it was held,,

that products falling under regulation 2.3.30 would qualify as fruit juice based drinks. Thus, carbonated beverages with fruit juice falling under clause 3A of regulation 2.3.30 would be treated as fruit juice",,

based drink only and classifiable under tariff Item 2202 99 20.,,

24. In the reply affidavit of respondent Nos.1 and 2 a bald statement has been made by the Commissioner that the department has filed an appeal against the aforesaid decision of Commissioner of,,

Customs(Appeals) and therefore, the said order had lost relevancy. We are afraid we cannot subscribe to such a view taken by the Commissioner; besides being devoid of any particulars, it shows",,

complete disregard to an order of an appellate authority. But the moot point is whether on the basis of the above facts can it be said to be a case of suppression of a taxable transaction by the petitioner or,,

a case of contravention of any of the provisions of the CGST Act to evade payment of tax? The answer to this, in our prima facie view, would have to be in the negative.",,

25. We have perused the original record produced by Mr.Mishra which discusses about investigation under section 67 and therefore, the need to take action under section 83. Whether recourse to section",,

83 is warranted at this stage has not been dealt with in the record. Merely because there is a proceeding under section 67 would not mean that recourse to such a drastic power as under section 83 would,,

be an automatic consequence, more so when petitioner has cooperated with the investigation. That apart, section 83 speaks of provisional attachment of any property including bank account. The record is",,

silent as to whether any attempt has been made for provisional attachment of any property of the petitioner and instead why the bank accounts should be attached. Besides, by use of the word â??mayâ?",,

in sub-section (1) of section 83 Parliament has made it quite clear that exercise of such a power is discretionary. When discretion is vested in an authority, such discretion has to be exercised in a just and",,

judicious manner, more so when the power conferred under section 83 admittedly is a very drastic power having serious ramifications. Such power having the potential to adversely affect property rights",,

of persons as well as life and liberty under Article 21 of the Constitution of India has to be exercised in a fair and reasonable manner.,,

26. Being possessed of power is one thing and exercise of such power is altogether another thing. Because the Commissioner is conferred with the power of provisional attachment under section 83 it,,

would not ipso-facto mean that he can straight away proceed to provisionally attach any property including bank accounts of a taxable person merely on the ground of pendency of proceedings under,,

section 67.,,

27. During the course of the hearing Mr.Sridharan had referred to averments made in the writ petition more particularly to Ground No.F.11 to submit that petitioner had already offered to respondent No.2,,

its land, building and plant and machinery having estimated gross value of approximately Rs.44 crores to secure the interest of the revenue. In such circumstances, we are of the view that recourse to",,

section 83 by respondent No.2 straight away is not justified. Prima facie, such an exercise appears to be harsh and excessive, thus arbitrary.",,

28. Consequently, we stay the impugned order dated 18th/ 19 th November, 2020 and direct withdrawal of the provisional attachment of the bank accounts of the petitioner mentioned in the said order",,

forthwith. However, petitioner shall furnish an undertaking before the Court by way of affidavit that it shall not alienate its land, building, plant and machinery during pendency of the present proceeding.",,

29. Stand over to 9th March, 2021 for final hearing.",,

30. The record produced by Mr.Mishra is hereby returned.,,

31. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.,,