

(2020) 11 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition (L) No. 2901 Of 2020

Siddharth Mandavia

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 2(107), 62, 63, 64, 67, 70, 73, 74, 83
Foreign Trade (Development And Regulation) Act, 1992 — Section 7, 8, 8(1)
Central Goods And Services Tax Rules, 2017 — Rule 159, 159(1), 159(5), 159(6)
Constitution Of India, 1950 — Article 226

Citation : (2020) 11 BOM CK 0002

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

Bench : Division Bench

Advocate : Sujay Kantawala, P. Choudhari, Manthan Unadka, Pradeep S. Jetly, J. B. Mishra

Judgement

Ujjal Bhuyan, J

1. Heard Dr. Sujay Kantawala along with Mr. P. Choudhari, learned counsel for the petitioner and Mr. Pradeep Jetly, learned senior counsel along with Mr. J. B. Mishra, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has sought for the following reliefs:-

1. for a direction to the respondents restraining them from adopting any coercive measures without issuing show cause notice to compel the petitioner to pay further customs duty and / or goods and services tax (GST) dues which are disputed by the petitioner;

2. for a direction to the respondents to unfreeze the 12 bank accounts of the petitioner and family members as per details furnished in the writ petition including in the prayer portion;

3. for a direction to the respondents to unfreeze the Importer Exporter Code No.0314035460 of the proprietorship firm of the petitioner by the name of 'M/s. XS Components'; and

4. for a direction to the respondents allowing presence of a lawyer of petitioner's choice during investigation (questioning) of the petitioner.

3. On 08.09.2020, this Court had issued notice on admission as well on stay while directing the respondents to file affidavit. Subsequently an affidavit was filed by the respondents.

4. On 08.10.2020, the interim prayer of the petitioner was heard whereafter the following order was passed:-

"2] Our attention has been drawn to Section 83 of the Central Goods and Services Tax Act, 2017 as well as to the garnishee notices issued including the one at page 195 of the Writ Petition.

3] From a reading of Section 83, we find that there are two preconditions which must be satisfied before the Commissioner can exercise jurisdiction under Section 83. First precondition is pendency of any proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 of the Central Goods and Services Tax Act, 2017. Second precondition is that Commissioner must form an opinion that provisional attachment of any property including bank account is necessary for protecting the interest of Government revenue. Once these two preconditions are satisfied, Commissioner is required to pass an order in writing provisionally attaching any property including bank account belonging to the taxable person.

4] From a perusal of the notice at page 195, we find that it is basically a garnishee notice issued to the Bank Manager of Indusind Bank. In the said notice the deponent has mentioned that proceedings have been launched against the taxable person i.e. the Petitioner under Sections 67 and 74 of the Central Goods and Services Tax Act, 2017. But in what manner the proceedings have been launched is not discernible.

5] For proper appreciation, we feel that it would be appropriate if the Respondents produce before us the order passed by the Commissioner under Section 83 of the Central Goods and Services Tax Act, 2017 in respect of all the garnishee notices.

6] Ordered accordingly."

5. Following the aforesaid order, additional affidavit on behalf of respondent Nos.5 to 7 was filed on 13.10.2020.

6. The interim prayer was finally heard on 15.10.2020 whereafter order was reserved.

7. For a proper appreciation of the rival contentions vis-a-vis the interim relief

sought for by the petitioner, it would be apposite to briefly narrate the relevant facts as projected by the petitioner.

8. According to the petitioner, he is the sole proprietor of the proprietorship firm M/s. XS Components which is engaged in the business of export of various products, such as, garments, footwear, leather accessories etc. Petitioner holds Importer Exporter Code bearing No.0314035460.

8.1. Petitioner has stated how the goods are purchased locally from wholesale traders and thereafter exported out of India through the container freight supply terminal at Inland Container Depot, Tuglakabad. Goods are loaded in the containers in the presence of customs officials who verify and oversee the process. Once the goods are exported and petitioner receives payment from the overseas buyers, payments are made to the local suppliers. For the goods exported out of India, petitioner claims various export incentives as is permissible in law.

8.2. With regard to export incentives claimed by the petitioner, office of respondent Nos.3 and 4 carried out search operations in the residence and office premises of the petitioner on 11.09.2019 whereafter various documents etc. were seized. Simultaneously, the importer exporter code of the petitioner was blocked. According to the petitioner, the search warrant was only in respect of M/s. XS Components; nonetheless, documents belonging to another entity called Evertime Trading Private Limited were also seized. However, seizure memo has not been furnished to the petitioner.

8.3. Thereafter summons were issued to the petitioner by respondent No.4 on 06.11.2019 seeking certain information pertaining to export incentives claimed by the petitioner which was replied to by the petitioner on 13.11.2019. Further details were furnished by the petitioner to respondent No.4 on 15.11.2019.

8.4. It is stated that on the insistence of respondent No.4, petitioner made payment of Rs.30,00,000.00 without prejudice to his rights and contentions vide three demand drafts dated 17.01.2020, 20.01.2020 and 28.01.2020, all drawn in favour of Commissioner of Customs, Tuglakabad.

8.5. Notwithstanding the same, the importer exporter code of the petitioner continued to be blocked. Because of continuing blockage of the importer exporter code, petitioner could not receive drawback incentives to the tune of Rs.8,51,374.00, Integrated Goods and Service Tax (IGST) refund of Rs.58,00,601.00 and Merchandise Export Incentive Scheme (MEIS) refund of Rs.45,98,702.00. Further, because of such blockage, many export orders received by the petitioner from overseas buyers had to be cancelled.

8.6. Parallely respondent Nos.6 and 7 commenced investigation against petitioner's firm vide summons dated 12.02.2020 directing appearance of the petitioner on 17.02.2020. In his reply, petitioner expressed inability to appear as he was out of station. When the next summons were issued on 21.02.2020,

petitioner appeared before respondent No.7 on 28.02.2020 when his statement was recorded.

8.7. Petitioner had gone to Dubai for some business work but got stuck there due to the global pandemic and he could not return back. When respondent No.4 made telephonic enquiries on 16.06.2020, petitioner wrote back on the same day informing about his stay at Dubai and furnished copies of passport and flight details.

8.8. To the utter surprise of the petitioner, in the month of July, 2020, he was informed by various bank authorities that accounts belonging to him and his family members have been frozen by respondent Nos.6 and 7. Details of the bank accounts frozen by the offices of respondent Nos.6 and 7 have been disclosed in the writ petition, which are extracted hereunder:-

Sr. No.

Name of Bank

Name of A/c. Holder

Account No.

1

Karnataka Bank Ltd

XS Component

5102000100132300

2

Indusind Bank Ltd.

XS Component

259930200000

3

Kotak Mahindra Bank Ltd.

Siddharth P. Mandavia & Mansi Mandavia

5111293099

4

Kotak Mahindra Bank Ltd.

Siddharth P. Mandavia

5111185073

5

Kotak Mahindra Bank Ltd.

Mansi Mandavia & Siddharth P. Mandavia

3811295986

6

Kotak Mahindra Bank Ltd.

Hriaan Siddharth Mandavia (Minor) & Siddharth P. Mandavia

7511305259

7

Kotak Mahindra Bank Ltd.

Evertime Overseas Pvt. Ltd.

2012351880

8

Kotak Mahindra Bank Ltd.

E-global Trading Ltd.

4811811701

9

Indusind Bank Ltd.

Siddharth P. Mandavia

159920799999

10

Indusind Bank Ltd.

Mansi Siddharth Mandavia

159820756968

11

HDFC Bank Ltd. Santacruz (W)

Hriaan Siddharth Mandavia (Minor) & Siddharth P. Mandavia

00791460006096

12

HDFC Bank Ltd. Santacruz (W)

Mansi Mandavia & Siddharth P. Mandavia

8.9. Aggrieved by the above, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

9. Respondent Nos.5 to 7 have filed a common affidavit in reply through Mr. Hrishikesh Kiran Utpat, Deputy Director in the office of Directorate General of GST Intelligence, Mumbai Zonal Unit. Though many things have been stated, for the purpose of consideration of the interim prayer we may mention that as per the stand of the answering respondents, based on information received that some exporters had availed input tax credit (ITC) on the basis of ineligible documents or by committing fraud showing payment of IGST on goods exported out of India, a joint pan India operation was conducted on 11.09.2019 by the Directorate General of GST Intelligence and Directorate General of Revenue Intelligence. Various exporters covered in the said operation included the proprietorship firm of the petitioner. The said exporter is being investigated by the Directorate General of GST Intelligence in regard to possible violations of the GST law.

9.1. From the investigation carried out till date, it prima facie appears that M/s. XS Components has indulged in availment and utilization of fake input tax credit (ITC) without actual receipt of goods or services and has fraudulently claimed refund of bogus ITC despite being ineligible. Details of investigation carried out till filing of the affidavit in reply on 23.09.2020 have been stated. Against exports worth Rs.114.75 crores for the period from August, 2017 to April, 2019, it appears that petitioner's firm had received foreign remittances amounting to Rs.21.56 crores only. On the other hand, for the said period GST refund amounting to Rs.9,32,96,551.00 has been credited to the bank account of the petitioner. Investigation revealed that 21 suppliers had passed on ITC greater than Rs.10 lakhs to M/s. XS Components. Out of these, 17 were stated to be New Delhi based and 1 Mumbai based. All the New Delhi based suppliers have been found to be non-existent. The Mumbai based firm M/s. Kumar Tradings which is also currently under investigation appears to have passed on ineligible ITC to M/s. XS Components on the strength of fake invoices without actual supply of goods or services. No payments have been made to the suppliers by the petitioner. It was thereafter that summons under section 70 of the Central Goods and Services Tax Act, 2017 was issued to the petitioner.

9.2. In his statement recorded on 28.02.2020, petitioner admitted that in certain cases he had received only invoices without actual receipt of goods or services, giving a list of 8 firms from whom he received such invoices. After his appearance on 28.02.2020, petitioner did not appear before the investigating authorities despite summons. Instead he left India for Dubai on 09.03.2020 without informing the authorities.

9.3. According to the respondents, investigations carried out prima facie indicates that there is a network of fictitious entities set up only to pass on fake

ITC; petitioner appears to have utilized such fake ITC to discharge his IGST liability on export of goods with an intention to get ineligible refund and thus to defraud government exchequer.

9.4. From an analysis of the bank transactions in the two bank accounts of the petitioner in Karnataka Bank Limited and in Indusind Bank, it appeared that after receipt of the IGST refund, he had transferred substantial amounts to various other accounts. Therefore, there was bona fide apprehension that petitioner would siphon-off the remaining money lying in his bank accounts with a view to thwarting the ultimate collection of tax demand that is likely to be raised on completion of the enquiry.

9.5. After referring to section 83 of the Central Goods and Services Tax Act, 2017 (briefly 'the CGST Act' hereinafter), it is stated that provisional attachment of bank accounts of the petitioner was proposed. Holding that the investigation carried out against the petitioner falls within the ambit of pendency of any proceedings under section 67 and section 74 of the CGST Act, it is stated that Principal Additional Director General concluded that it was necessary to provisionally attach the bank accounts of the petitioner. In this connection, reference has been made to rule 159 of the Central Goods and Services Tax Rules, 2017 (briefly 'the CGST Rules' hereinafter), more particularly sub-rules (5) and (6) thereof as well as to Form GST DRC-22. It is therefore contended that Principal Additional Director General was vested with the power to provisionally attach the bank accounts of the petitioner under section 83 of the CGST Act which power he has exercised. Power has also been conferred on the Commissioner to consider the objection filed by the person concerned for lifting or withdrawing of such provisional attachment under sub-rules (5) and (6) of rule 159 of the CGST Rules. Respondents have explained that action under section 83 of the CGST Act is a provisional measure to protect the interest of revenue in the course of investigation. It should not be equated with attachment in the course of recovery proceeding post assessment. It is stated that the department was constrained to provisionally attach bank accounts of the petitioner to safeguard interest of the government exchequer. Such attachment is provisional only.

9.6. Allegation of the petitioner that no order of provisional attachment was passed by the Commissioner has been denied as it is stated that order for provisional attachment in Form GST DRC-22 was issued which is the requisite format under section 83 of the CGST Act read with rule 159 of the CGST Rules.

10. Petitioner has filed rejoinder affidavit denying the allegations made against him by the respondents. Regarding the statement made by him on 28.02.2020, he has stated that it was not a voluntary statement but one made under duress. He has stated that M/s. XS Components has exported goods worth Rs.114 crores and had realized about Rs.22 crores. Before the entire dues could be realized and paid to the suppliers, the search was carried out and original documents were seized, further blocking importer exporter code of the petitioner. Regarding freezing of bank accounts, he has stated that it came to his notice only when his

son's school payment cheque got dishonoured.

11. In the additional affidavit filed by respondent Nos.5 to 7 following order of this Court dated 08.10.2020, reference has been made to office memorandum dated 12.05.2019 issued by the Central Board of Indirect Taxes and Customs wherein it is provided that provision for provisional attachment of property including bank accounts contained in section 83 of the CGST Act read with rule 159 of the CGST Rules should be invariably invoked in cases of fake invoices detected during investigations. In the said affidavit, relevant note-sheets have been annexed wherefrom it is seen that Principal Additional Director General had noted on 08.07.2020 that in the light of the apparent findings of fraudulent avilment of IGST refund, it was deemed necessary to attach the bank accounts of the concerned person Mr. S. P. Mandavia to protect government revenue as per section 83 of the CGST Act. It has been clarified that the post of Principal Additional Director General is equivalent to the post of Principal Commissioner and he granted approval to the action under section 83. Thereafter the order was issued on 08.07.2020 in the prescribed format i.e., Form GST DRC-22. Reference has been made to sections 67 and 74 of the CGST Act whereafter it is contended that the investigation carried out in respect of the petitioner falls within the ambit of pendency of any proceedings under sections 67 and 74 which is an essential pre-requisite for invocation of section 83 of the CGST Act.

12. While Dr. Kantawala submits that attachment of the bank accounts of the petitioner and his family members is wholly unjustified and illegal being beyond the purview of section 83 of the CGST Act causing immense hardship to the petitioner and his family members, Mr. Jetly, learned senior counsel for the respondents on the other hand submits that attachment of bank accounts is provisional only and the said power is available to the authorities which has been exercised in a bonafide manner to protect the interest of government revenue. He has referred to rule 159 of the CGST Rules and submits that petitioner has got an adequate and efficacious alternative remedy against such provisional attachment which he has not availed.

13. Dr. Kantawala has produced before the Court a number of decisions in support of his contention that such a harsh and drastic measure like attachment of bank account should ordinarily not be resorted to and if at all the same is required to be done, the due procedure has to be followed. Asserting that due procedure has not been followed, he submits that in the present case there was no necessity to resort to attachment of bank accounts when petitioner had deposited Rs.30,00,000.00 with respondent No.4 in the month of January, 2020.

14. Submissions made by learned counsel for the parties have been considered.

15. Section 83 of the CGST Act deals with provisional attachment to protect revenue in certain cases. Section 83 reads as under:-

"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)."

16. We had done some analysis of this provision in our order dated 08.10.2020. To enable invocation of section 83, first and foremost there must be pendency of any proceeding either under section 62 or under section 63 or under section 64 or under section 67 or under section 73 or under section 74 of the CGST Act. Thereafter, the Commissioner must form an opinion that for the purpose of protecting the interest of the government revenue, it is necessary to attach any property provisionally, including bank account belonging to the taxable person. On satisfaction of the above two conditions, the Commissioner must pass an order in writing provisionally attaching any property of the taxable person including bank accounts. Because of the very nature of temporary attachment, sub-section (2) makes it abundantly clear that such provisional attachment shall not be in excess of one year from the date of the order made under sub-section (1) and shall cease to have effect after the expiry of one year from the date of the order.

17. Rule 159 of the CGST Rules deals with provisional attachment of the property as envisaged in section 83 of the CGST Act. Rule 159 is extracted hereunder:-

"159. Provisional attachment of property.- (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount

payable by the taxable person.

(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC- 23.

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23."

17.1. As per sub-rule (1), when the Commissioner decides to attach any property including bank account in terms of section 83, he shall pass an order in Form GST DRC-22 mentioning therein the details of property which is attached. Sub-rule (5) says that any person whose property is attached may, within 7 days of attachment, file an objection to such provisional attachment and if such objection is filed, Commissioner may release the said property after affording an opportunity of being heard to the person filing the objection. As per sub-rule (6), the Commissioner may, upon satisfaction that the property was or is no longer liable for attachment, release such property.

17.2. In so far sub-rule (6) is concerned, the same is in consonance with the provisional nature of attachment. Under section 83 and rule 159 we are dealing with provisional attachment of property, including bank account. Therefore, by its very nature such attachment is temporary as opposed to permanent. Dictionary meaning of provisional is 'arranged or existing for the present, possibly to be changed later'; Black's Law Dictionary, 8th Edition has defined it as 'temporary or conditional'. Being provisional such attachment is required to be reviewed periodically by the Commissioner. Such suo-motu review is implicit in rule 6 which empowers the Commissioner to release the property provisionally attached before the outer limit of one year if he is satisfied that such attachment of property is no longer required.

17.3 In so far sub-rule (5) is concerned, it goes without saying that pre-assessment attachment of property, including bank account, even if provisional, is a drastic measure. Its sole purpose is to protect the interest of government revenue. It cannot be used as a punitive measure. It is a serious invasion into the private domain of a tax payer. Therefore, to ensure that the said power is exercised after due consideration and in a reasonable manner as well as to provide an opportunity to the tax payer to satisfy the Commissioner that such attachment is unnecessary and therefore should be lifted, provision for objection, hearing and release is provided in sub-rule (5).

18. The format of passing the order contemplated under section 83 read with sub-rule (1) of rule 159 is provided in Form GST DRC-22 which is in the form of an intimation to the bank / post office / financial institution / immovable property registering authority.

19. From a careful analysis of the above provisions what is to be noted is that the property including the bank account liable to or which has been provisionally attached must belong to the taxable person. 'Taxable person' has been defined in section 2(107) of the CGST Act to mean a person who is registered or is liable to be registered under sections 22 or 24 of the CGST Act.

20. Respondent Nos.5 to 7 have explained in their affidavits that the investigation carried out against the petitioner falls within the ambit of sections 67 and 74 of the CGST Act and on satisfaction of the concerned authority provisional attachment orders were issued in the prescribed format.

21. Contention of the petitioner that there was violation of the provisions of section 83 of the CGST Act and no due process was followed while provisionally attaching the bank accounts and the rebuttal contentions of the respondents that there has been due compliance to the statutory requirement of section 83 read with rule 159 may require a detailed examination. However, for the moment we may consider attachment of the bank accounts from the perspective of the taxable person i.e., the petitioner Mr. Siddharth Mandavia and his proprietorship firm M/s. XS Components. From the list of bank accounts mentioned in paragraph 8.8, it is seen that the bank accounts at Sr. Nos.3, 5 and 12 are in the joint names of Ms. Mansi Mandavia and Mr. Siddharth P. Mandavia whereas the bank account at Sr. No.10 is solely in the name of Ms. Mansi Siddharth Mandavia. It has been clarified that Mansi Mandavia and Mansi Siddharth Mandavia is one and the same person and is the wife of the petitioner. On the other hand we find that the bank accounts at Sr. Nos.6 and 11 are in the joint names of the petitioner and Hriaan Siddharth Mandavia (minor) who is stated to be the son of the petitioner. Prima facie, Mansi Mandavia alias Mansi Siddharth Mandavia and Hriaan Siddharth Mandavia (minor) are not the concerned tax payers in this case. There are no allegations against them. To be more specific, there is no allegation or any averment made by the respondents that any money belonging to the petitioner or to his firm have been credited into the joint accounts of the petitioner with his wife or with his minor son or into the account of his wife. As a matter of fact, in paragraph 38 of their first affidavit, respondent Nos.5 to 7 have stated that the reason for attachment of other bank accounts appears to be their link with the petitioner or his PAN. They being not the tax payers in this case, provisional attachment of their bank accounts therefore would not be justified.

21.1. In so far the other bank accounts are concerned, considering the seriousness of the measure and having regard to the provisions contained in sub-rule (5) of rule 159, we are of the view that liberty may be granted to the petitioner even at this stage to file objection to the provisional attachment and if such an objection is filed, the competent authority may take an appropriate decision thereon after providing an opportunity of hearing to the petitioner.

22. At this stage, we may usefully refer to the observations of the Gujarat High Court in the case of Patran Steel Rolling Mill Vs. Assistant Commissioner of State Tax, 2019 (20) GSTL 732 wherein it was emphasized that while exercising

powers under section 83 of the CGST Act, authorities should try to balance the interest of the government revenue on the one hand and the interest of the dealer on the other hand. Authorities should ensure that the dealer is left in a position where he can continue with his business because it is only if the dealer continues with the business that he would be in a position to generate revenue and pay the taxes. Bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue.

23. In so far blockage of importer exporter code of the petitioner is concerned, we find that the relevant statute in this connection is the Foreign Trade (Development and Regulation) Act, 1992 . Section 7 thereof makes it abundantly clear that importer exporter code number is granted by the Director General of Foreign Trade who is appointed by the central government or by an officer authorized by the Director General of Foreign Trade. No person can make any import or export without an importer exporter code number so granted.

23.1. Suspension and cancellation of importer exporter code number is provided in section 8 of the Foreign Trade (Development and Regulation) Act, 1992. For ready reference, section 8 is extracted hereunder:-

"8. Suspension and cancellation of Importer-exporter Code Number-

(1) Where---

(a) any person has contravened any of the provisions of this Act or any rules or orders made thereunder or the foreign trade policy or any other law for the time being in force relating to Central excise or customs or foreign exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette; or

(b) the Director-General or any other officer authorised by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of, or services or technology provided from, the country; or

(c) any person who imports or exports specified goods or services or technology, in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, the Director-General or any other officer authorised by him may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for a period, as may be specified in the order, or cancel the Importer-exporter Code Number granted to that person.

(2) Where any Importer-exporter Code Number granted to a person has been suspended or cancelled under sub-section (1), that person shall not be entitled to (import or export any goods or services or technology) except under a special licence, granted, in such manner and subject to such conditions as may be prescribed, by the Director-General to that person."

23.2. From a careful reading of sub-section (1) of section 8 it is seen that when there is contravention of the provisions of the Foreign Trade (Development and Regulation) Act, 1992 or the rules or orders made thereunder, or breach of the foreign trade policy or if the Director General of Foreign Trade or his authorized officer has reason to believe that any person has made an export or import in a manner which is prejudicial to the trade relations of India with any foreign country etc., the Director General or the authorized officer after calling for the record and after giving a notice in writing to the person concerned informing him of the grounds on which his importer exporter code number is sought to be suspended or cancelled and after giving him reasonable opportunity of making a representation in writing and a personal hearing, if sought for, either suspend or cancel the importer exporter code number granted to that person. If it is a case of suspension then the period has to be specified in the order of suspension. Once the importer-exporter code number is suspended or cancelled, that person would not be entitled to carry out any import or export except under a special licence that may be granted by the Director General.

24. It is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden. Suspension and cancellation of importer exporter code number can be done only under Foreign Trade (Development and Regulation) Act, 1992 by the Director General of Foreign Trade or by his authorized officer for the reasons specified and in the manner provided in section 8 of the said Act. Respondents arrayed in this petition are neither the Director General of Foreign Trade nor his authorized officer. Prima facie, they are not empowered either to suspend or cancel the importer exporter code of the petitioner, the only two measures provided under law. There is no provision for blocking of importer exporter code, that too by an authority which is not competent either to suspend or cancel such code. It is interesting to note that on the allegation of blocking of importer exporter code of the petitioner by respondent No.3 made in paragraph 11 and ground No.S of the writ petition, respondents in paragraph 32 of their first affidavit have offered no comment, so also in paragraph 64. If that be the position, blocking of importer exporter code of the petitioner by any authority other than the Director General of Foreign Trade or by his authorized officer under section 8 of the Foreign Trade (Development and Regulation) Act, 1992 would be unauthorized, unwarranted and without jurisdiction.

25. That being the position, we feel that the following directions may meet the ends of justice. Accordingly, as an interim measure, we pass the following orders:-

1. The account number at Sr.No.10 of paragraph 8.8 which is solely in the name of Ms. Mansi Siddharth Mandavia shall be unfrozen forthwith;
 2. The account numbers which are jointly in the names of the petitioner and either Mansi Mandavia alias Mansi Siddharth Mandavia and Hriaan Siddharth Mandavia at Sr. Nos.3, 5, 6, 11 and 12 of paragraph 8.8 shall be unfrozen forthwith subject to the condition that until otherwise directed, those accounts shall be in debit freeze to the extent of 50% of the amounts presently credited;
 3. In so far the other accounts are concerned, petitioner may file objection before the Principal Additional Director General of GST Intelligence within a period of 7 days from today;
 4. If such objection is filed as above, the Principal Additional Director General shall afford an opportunity of hearing to the petitioner and thereafter pass an appropriate order in accordance with law within a period of 3 weeks from the date of filing of the objection;
 5. Blockage of importer exporter code of the petitioner by respondent No.3 or by any other authority shall be withdrawn forthwith.
 6. List for further consideration on 15.12.2020.
26. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.