

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W. P. No. 18429 (W) of 2019

M/s. Amazonite Steel Pvt. Ltd. & Anr.

Versus

Union of India & Ors.

With

W.P. No. 18431 (W) of 2019

M/s. Corandum Impex Pvt. Ltd. & Anr.

Versus

Union of India & Ors.

With

W.P. No. 18433 (W) of 2019

M/s. Cuprite Marketing Pvt. Ltd. & Anr.

Versus

Union of India & Ors.

With

W. P. No. 21272 (W) of 2019

M/s. Amazonite Steel (P) Ltd. & Anr.

Versus

Union of India & Ors.

With

W. P. No. 21273 (W) of 2019

M/s. Corandum Impex Pvt. Ltd. & Anr.

Versus

Union of India & Ors.

With

W.P. No. 21274 (W) of 2019

M/s. Cuprite Marketing Pvt. Ltd. & Anr.

Versus**Union of India & Ors.**

For the Petitioners : Mr. Arijit Chakrabarti
Mr. Nilotpal Chowdhury
Mr. Prabir Bera

For The UOI : Mr. Bhaskar Prasad Banerjee
Mr. Sujit Mitra

For the Respondent No. 2. : Mrs. Sanjukta Gupta
Mr. Sabnam Basu

For the Respondent Nos. 3 & 4. : Mr. Vivek Basu
Mr. Jaydeb Brahmachari

Heard on : 20.11.2019, 27.11.2019, 08.01.2020, 15.01.2020, 22.01.2020, 05.02.2020 & 19.02.2020

Judgment on : 04.03.2020

Shekhar B. Saraf, J.:

1. The grievances raised and issues involved in all the six writ petitions are common, and accordingly they were heard together and are being decided conjointly. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by the orders passed by the Directorate General of Goods and Services Tax Intelligence, Kolkata Zonal Unit [hereinafter referred to as "DGGI"], to provisionally attach the current bank accounts of the writ petitioner under Section 83 of the Central Goods and Services Tax Act, 2017.

2. For the purpose of convenience, the facts in writ petition W.P. No. 21272(W) of 2019 are being taken into consideration and are chronologically delineated hereinbelow:

- a. The writ petitioner no. 1 is a private limited company duly incorporated under the Companies Act, 2013, under the name of Amazonite Steels Private Limited [hereinafter referred to as the “said company”] whereas petitioner no. 2 is the director of the said company. The said company is duly registered under the Central Goods and Services Tax Act, 2017 [hereinafter referred to as “CGST Act, 2017”] and West Bengal Goods and Services Tax Act, 2017, having its registration number as 19AAPCA2903C1ZW.
- b. The said company carries on its business transactions through the current account registered with M/s. Lakshmi Vilas Bank, New Alipur Branch [hereinafter referred to as the “said bank”] having account no. 0125360000002129 [hereinafter referred to as the “said account”].
- c. On 5th June, 2018, the Additional Director General, Directorate General of Goods & Services Tax Intelligence (hereinafter referred “ADGGI”) passed an Order to provisionally attach the current account of the writ petitioner maintained in the said bank under

Section 83 of the CGST Act, 2017, through FORM GST DRC – 22 [hereinafter referred to as the “said first Order”]. The said first Order of the ADGGI was addressed to the Branch Manager of the said bank in order to freeze the functioning of the said account of the petitioners. The relevant extract of the said Order is delineated below:

“It is to inform that M/s. Amazonite Steels Pvt. Ltd. having principal place of business at 23 MSBK Mitra Road, Baranagar, Kolkata-700036 bearing GST registration number as 19AAPCA2903C1ZW, PAN- AAPCA2903C is a registered taxable entity 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 entity. As per information available with the department, it has come to my notice that the said entity has the following bank account at your bank.

Name as per the Account:- Amazonite Steels Pvt. Ltd.

Account No:- 0125360000002129

In order to protect the interests of the revenue and in exercise of the powers conferred under Section 83 of the Act, I, Ataur Rahman, Additional Director General, hereby provisionally attach the aforesaid account.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid entity on the same PAN without the prior permission of this department.”

- d. The said bank through a letter dated 11th June, 2018, informed the writ petitioner about the Order passed by the ADGGI which directed the bank to freeze the current account of the petitioners.

- e. After more than a year, on 19th July, 2019, the said company by way of a letter made representation before the ADGGI, requesting to de-freeze the current account of the company which was earlier provisionally attached under Section 83 of the CGST Act, 2017.
- f. The petitioner company on 20th July, 2019 informed the said bank regarding the appointment of new directors in the company, which was duly acknowledged by the said bank.
- g. On 31st July, 2019, the petitioner company wrote to the said bank praying for immediate de-freezing of the said account. The relevant portion of the letter is delineated below:

“In this connection it is to inform you that although during the pendency of any proceedings under Section 67, the concerned authority had power to provisionally attach the bank account under sub-section (1) of Section 83 of the CGST Act, 2017 but under Section 83(2) of the CGST Act, 2017, such provisional attachment ‘shall cease to have effect after one year from the date of the order made under sub-section (1)’.

The letter for provisional attachment was issued by the DGGI, GOI on 05-06-2018 and in terms of Section 83(2) the period of provisional attachment expired on 05-06-2019.

In such circumstances, you are requested to immediately de-freeze the said account and allow the operation of the account forthwith.”

- h. Thereafter, several other representations were made by the writ petitioner before the said bank as well as the ADGGI respectively praying to de-freeze the said current account but there was no response to the representations by either of the parties.
- i. Being aggrieved and dissatisfied with the inaction on the part of the respondents the writ petitioner preferred a writ application before this Court bearing W.P. No. 18429(W) of 2019 [hereinafter referred to as “earlier writ petition”]. The main prayers made by the writ petitioner in the earlier writ petition are delineated below:

“(a) Writ in the nature of Mandamus directing the respondents and/or their men, servants, agents, assigns, etc. to withdraw/ cancel/ rescind the order of provisional attachment of the Current Account No. 012536000002129 of the petitioner no. 1 company maintained with M/s. Lakshmi Vilas Bank, New Alipur Branch, Kolkata;

(b) Writ in the nature of Mandamus directing the respondents and/or their men, servants, agents, assigns, etc. to forthwith allow the petitioners to operate the Current Account No. 012536000002129 of the petitioner no. 1 company maintained with M/s. Lakshmi Vilas Bank, New Alipur Branch, Kolkata in terms of Section 83(2) of the CGST Act, 2017”

- j. The earlier writ petition which was filed by the writ petitioners came up for hearing and a co-ordinate bench of this Court passed an Order dated 1st October, 2019, directing the parties to file affidavits within a prescribed time.

- k. Thereafter, on 31st October, 2019, the Principal Additional Director General, Directorate General of Goods & Services Tax Intelligence (hereinafter referred to as “PDDGI”) passed a fresh provisional order directing the said bank to provisionally attach the said current account of the petitioner. The said order was annexed to the affidavit-in-opposition filed in the earlier writ petition.

1. Assailing the above fresh order of provisional attachment a fresh writ was filed being W.P. 21272 (W) of 2019.

3. The facts in W. P. No. 18431 (W) of 2019 and W. P. No. 18433 (W) of 2019 are identical to W. P. No. 18429 (W) of 2019, and accordingly, all these three writ petitions are hereinafter referred to as ‘earlier writ petitions’. Furthermore, the facts in W.P. 21274 (W) of 2019 and W.P. 21273 (W) of 2019 are identical to W.P. 21272(W) of 2019, and accordingly, all these three writ petitions are hereinafter referred to as “present writ petitions”. The legal issues which need to be addressed in the above writ petitions are as follows:
 - A. Whether the Principal Additional Director General, DGGI and Additional Director General, DGGI are competent to pass orders under Section 83 of the CGST Act, 2017?
 - B. Whether an order passed under Section 83 of the CGST Act, 2017, remains valid after the expiry of one year from the date of the order?

C. Whether the authorities can issue fresh order of provisional attachment/multiple orders under Section 83 of the CGST Act, 2017?

Issue A:

4. In relation to the first issue, Mr. Arijit Chakrabarti, counsel on behalf of the petitioner submitted that Section 83 of the CGST Act, 2017 read with Rule 159 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'CGST Rules, 2017') only empowers the 'Commissioner' to attach any property including bank account provisionally for the purpose of protecting the interest of the Revenue. He placed Section 2(24) of CGST Act, 2017 to indicate that 'Commissioner' means Commissioner of Central Tax and includes Principal Commissioner of Central Tax appointed under Section 3 and the Commissioner of Integrated Tax appointed under the Integrated Goods and Service Tax Act, 2017. Ergo, he submitted that the 'Principal Additional Director General' and Additional Director General are not 'Commissioner of Central Tax' or 'Principal Commissioner of Central Tax' or 'Commissioner of Integrated Goods & Service Tax'. Hence, power vested under Section 83 of the CGST Act, 2017 cannot be exercised by the respondent no. 2 and 3 herein.

5. Mrs. Sanjuka Gupta, counsel on behalf of the respondent authorities (hereinafter referred to as 'Revenue') placed Section 2(24), Section 3(c),

Section 3(d) and Section 5(2) to submit that Section 3(c) and 3(d) make it clear that 'Principal Commissioner of Central Tax' and "Commissioner of Central Tax' are equivalent to 'Principal Additional Directors General of Central Tax' and 'Additional Directors General of Central Tax'. She further submitted that Section 5(2) allows an officer of central tax to exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him. She submitted that the definition of 'Commissioner' in Section 2(24) has to be read in conjunction with Section 3. In light of the same, she submitted that the orders passed by the respondent nos. 2 and 3 are absolutely legal and within the scope of the officers who have passed these orders.

6. For a better understanding of the issue, Section 2(24), Section 3 and Section 5 of the CGST Act, 2017 are delineated below:-

“Section 2 (24):- “Commissioner” means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

Section 3:- Officers under this Act:-

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act.

“Section 5:- “Powers of officers”

- (1) *Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*
- (2) *An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.*
- (3) *The commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.*
- (4) *Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.”*

7. On a bare perusal of the CGST Act, 2017, it is absolutely clear that Section 3 equates the ‘Principal Commissioner of Central Tax’ as the ‘Principal Additional Director of Central Tax’ and the ‘Commissioner of Central Tax’ as the ‘Additional Director General of Central Tax’. One need not quibble with the wording as the meaning is plain and unambiguous. Furthermore, the fresh orders of provisional attachment has been passed by ‘Principal Additional Director of Central Tax’ who is the superior officer and therefore, as per Section 5(2) of the CGST Act, 2017 she possesses the power to pass the provisional attachment orders under Section 83.

Hence, the first issue is answered in favour of the Revenue.

Issue B:

8. Mr. Arijit Chakrabarti learned counsel appearing on behalf of the petitioner company submitted in relation to the earlier writ petitions that the writ petitioners are aggrieved by the illegal and highhanded actions on the part of the respondent authorities. He submitted that the current accounts that were used by the petitioner companies for its daily business transactions was provisionally attached by the order dated 5th June, 2018, and ceased to have any effect after one year according to Section 83(2) of the CGST Act, 2017.

9. Mr. Chakrabarti further argued that various representations were made to the respondent authorities praying before them to defreeze the said accounts of the petitioners but to no avail. He further submits that the fresh orders dated 31st October, 2019, passed by respondent no. 3 was not even served personally upon the petitioner, in fact, it was annexed along with the Affidavit-in-Opposition filed by the respondent No. 3 in the earlier writ petitions.

10. Counsel on behalf of the respondent submitted that the non issue of the fresh orders within time was an error on the part of the authorities. She further submitted that since the investigation with regard to the entire transactions that involved several companies was in progress, the authorities may have inadvertently failed to issue the fresh orders of provisional attachment within time.

11. Upon hearing both parties on the second issue, it is obvious that the authorities have acted in a blatantly highhanded and illegal manner by keeping the provisional attachments in a state of continuance for the period from 5th June, 2019 (when the first order of provisional attachment ceases to operate) till 31st October, 2019 (when fresh order for provisional attachment was passed). Section 83(2) is crystal clear that the provisional attachment shall cease upon expiry of one year. It was therefore incumbent on the authorities to either release the provisional attachment by informing the bank or by issuing a fresh order of provisional attachment, if the law so allowed. The failure to do the above is nothing short of being an act of highhandedness. Such actions of the authorities is an obloquy and reprehensible. No explanation has been provided for the same either in the affidavits filed in the earlier writ petitions or by counsel appearing on behalf of the respondent authorities during hearing of arguments. In my view the above action is clearly in violation of the petitioners' rights for carrying on business under Article 19(1) of the Constitution of India and under Article 300A of the Constitution of India wherein the petitioners have been deprived of their property without authority of law. **Ergo, the issue is decided in favour of the petitioners.** In my view the actions of the Revenue in acting in contravention of Section 83(2) is condemnable, and accordingly costs are required to be imposed. In light of the same, I direct the concerned respondent authorities to pay costs of Rs. 5 Lakhs to each of the three petitioner

companies. These amounts should be deposited in the current account that are provisionally attached within a period of four weeks from date.

Issue C:

12. Mr. Chakraborty drew the court's attention to the Calcutta High Court judgment in ***Falguni Chakraborti Vs. The State of West Bengal and Others***¹ and the Supreme Court judgment in ***Indian National Congress (I) Vs. Institute of Social Welfare and Others***² to bring home the point that an authority cannot act beyond the powers conferred by the statute. He submitted that in fiscal statutes, the Supreme Court has time and again held that strict interpretation is required to be followed and no liability of tax can be imposed de hors the statute. He further relied on the Supreme Court judgments in ***CIT Bombay Vs. Gwalior Rayon Silk Manufacturing Company Ltd.***³ and ***State of Jharkhand and others Vs. Ambay Cements and another***⁴ to buttress the argument that when the language is plain and unambiguous and the provision penal in nature, the same must be strictly construed and the courts should not do violence to the provision by reading and/or adding something that is not intended by the legislature.

¹ 2002 LAB I.C. 65

² (2002) 5 SCC 685

³ (1992) 3 SCC 326

⁴ AIR 2005 SC 4168

13. Mr. Chakraborty further relied on judgements of the Punjab and Haryana High Court, Calcutta High Court and Andhra Pradesh High Court in ***PML Industries Ltd. Vs. Commissioner of Central Excise***⁵, ***I.C.I. India Ltd. Vs. Collector of Customs***⁶ and ***Commissioner of Customs & Central Excise, Hyderabad -IV Vs. Sunder Ispat Ltd.***⁷ respectively to submit that the respondent authorities are creatures of statute and can only exercise power that has been specifically entrusted upon them and cannot under any circumstances travel beyond the scope of the statute.
14. Mr. Chakraborty further relied on judgements passed in relation to Section 281B of the Income Tax Act, 1961 (a similar provision for provisional attachment) in ***Shrimati Majjo Vs. Assistant Commissioner of Income-Tax and Another***⁸, ***Sukhpal Singh (HUF) Vs. Commissioner of Income-Tax and Another***⁹, ***VLS Finance Limited and Others Vs. The Assistant Commissioner of Income Tax & Another***¹⁰ and ***Electro Zavod (India) Pvt. Ltd. and Others Vs. Commissioner of Income-Tax and Others***¹¹ to highlight the drastic nature of a provision for provisional attachment and the scope and limitation of the same.

⁵ 2013 (290) ELT 3 (P & H)

⁶ 1992 (60) ELT 529 (Cal)

⁷ 2015 (316) ELT 238 (AP)

⁸ (1991) 187 ITR 642

⁹ (1985) 156 ITR 480

¹⁰ 2012 SCC Online Del 1363

¹¹ (2005) 278 ITR 187

15. Mr. Chakraborty also relied on the judgments of the Gujarat High Court in **Valerius Industries v. Union of India of India**¹² wherein the Court had held that initiation of proceedings under Section 67 of the CGST Act, 2017 by itself is not sufficient to provisionally attach the property for the purpose of protecting the interest of the government revenue. The counsel then relied on **Pranit Hem Desai v. Additional Director General & others (Special Civil Application No. 9392 of 2019)** wherein the court observed the nature of drastic power under Section 83 and highlighted the rationale of exercising such power.
16. Relying heavily on the above judgements, he submitted that Section 83 of the CGST Act, 2017 does not provide either for any extension of an order of provisional attachment or for issuance of any fresh order of provisional attachment. According to him, the Revenue being a branch of the Executive cannot assume such jurisdiction. He submitted that if a fresh order of provisional attachment on the same property of the petitioner in the same case is allowed, the same would make redundant Sub-section (2) of Section 83 of the CGST Act, 2017, and accordingly, that cannot be the intention of the Legislature. He further submitted that since the provisional attachment of the bank account of the petitioners creates embargo on the rights of the petitioners as guaranteed under Article 19(1)(g), 300A and 301 of the Constitution of India, the order of provisional attachment during pendency of investigation cannot continue for an indefinite period, and it is for that reason the Legislature had

¹² 2019 (3) G.S.T.L. 15 (Guj.)

provided the period of one year for completion of such investigation and adjudication of alleged demand, if any, and in the interregnum, provisional attachment would be in operation.

17. Mrs. Sanjukta Gupta, counsel appearing on behalf of the respondents submitted that in the instant case investigation has been initiated under Section 67 of the CGST Act, 2017 and the demand will be made under Section 74 of the CGST Act, 2017. The counsel submits that the fresh order of provisional attachment was issued on the grounds that the investigation authorities have come across fresh evidences against the writ petitioners and also that there is no bar under Section 83 of the CGST Act, 2017, preventing a fresh order of provisional attachment.
18. The learned counsel relied on the case of ***Shrimati Priti v. State of Gujarat***¹³ wherein the Court interpreted the scope of Section 45 of the Gujarat Value Added Tax Act, 2003 (provisional attachment similar to Section 83) and held that on one hand Section 45 requires the competent officer to review the situation compulsorily at least upon completion of the period, while so doing, does not limit his discretion to exercise such powers again if the situation so arises. Mrs. Gupta referred to another unreported judgment delivered by the Gujarat High Court in the matter of ***Kaithal Timber Pvt. Ltd. vs. State of Gujarat and Ors. [Special Civil Application No. 14039 of 2017]*** wherein the Court held that Section 45 of the Gujarat Value Added Tax Act has not barred fresh issue of

¹³ 2011 SCC Online Guj 1869

provisional attachment order and that such order could be passed for protecting the interest of government revenue.

19. Thereafter, Mrs. Gupta drew the Court's attention towards Rule 159(3) of the CGST Rules, 2017 which provides for release of provisional attachment on payment of 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. She further refers to Rule 159(5) of the CGST Act to which she submits that 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. She submitted that the petitioner never made any application under Rule 159, and therefore, it was clear that the petitioners' business was not impacted in any manner whatsoever.

20. Counsel on behalf of the respondent thereafter submitted that the petitioner companies are shell companies that have no business of trading or manufacturing whatsoever. Relying on the affidavit filed by the authorities, she submitted that a company M/s Mecon Engineering Works, Raniganj simply engaged in issuance of fake invoices without supplying any goods and/services leading to fraudulent utilization of

input credit that has resulted in massive evasion of GST and fraudulent availment and utilization of input tax credit. The above company M/s Mecon Engineering Works, Raniganj had supplied several fake invoices to the petitioner companies. Investigation had revealed that the three petitioner companies had also made several fake transactions with various iron and steel manufacturing units and passed on fake input tax credit to these companies. She further submitted that the petitioner companies were nonexistent at their registered address and on search carried out by the officers of DGGI on Shri Sanjay Kr. Bhuwalka and Shri Neeraj Jain various incriminating documents had been recovered and seized. She further submitted that these two persons were controlling several companies including the petitioner companies and had passed on approximately Rs. 40 crores of fake input tax credit. She submitted that these persons had been arrested on May 12, 2018 and have been presently enlarged on bail on furnishing personal bond of Rs. 50 lakhs each by an order of the High Court dated October 9, 2018. Mrs. Gupta highlighted the factual aspect that the erstwhile directors (directors at the time of search and seizure) of the three petitioner companies had made statements to the investigating authorities that they were dummy directors who are unemployed and had simply submitted copies of their personal documents to Shri Bhuwalka who operated the bank accounts of the three petitioner companies. She further highlighted that investigations had been started by the authorities with respect to the companies that had received the fake input tax credit and new material is being

unearthed in the course of investigations that are presently being pursued by the DGGI.

21. Mrs. Gupta finally submitted that the investigation is a continuing process against several companies that have issued fake invoices and the recipient of the same that have availed unauthorised input tax credit. She submits that out of the estimated 40 crores, Rs. 12 crores have been reversed by the companies that had received the bogus invoices. According to her, in the absence of the provisional attachment, the money lying in the accounts of the three petitioners would vanish into thin air. On the legal aspect, she submitted that the GST Act, 2017 provides for 5 years for completion of the investigation, issuance of show cause notice and adjudication. She placed sub-Section (1), (2), (9) and (10) of Section 74 to highlight the above point. She submitted that when the legislature has given a period of 4 and half years for issuance of show cause notice, it clearly contemplated that investigations for such complex fraudulent transactions may take the aforesaid time. Accordingly, she submitted that Section 83 of the GST Act 2017 cannot be read in a manner detrimental to the interest of the Revenue. She further submitted that the words “every such” in sub-Section (2) of Section 83 makes it clear that multiple provisional attachment orders may be issued by the Revenue, if the need so arises.

22. Before moving directly to answer the legal issue in hand it is germane to produce few of the relevant provisions of the CGST Act, 2017 and CGST Rules, 2017.

“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

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

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.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or

any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Section 74:- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts: –

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve

notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) prays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. – For the purpose of section 73 and this section,-

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.- For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

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).

Rule 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.”

23. At this juncture, it is important to examine the relevant judgments to adjudicate the legal issue at hand. In the judgment cited by the petitioner in **Valerius Industries (Supra)**, the Gujarat High Court held that initiation of proceedings under Section 67 of the CGST Act, 2017 by itself is not sufficient to provisionally attach the property for the purpose of protecting the interest of the government revenue. The relevant extract of the judgment is delineated below:

“52. Our final conclusions may be summarized as under:

(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 farfetching, 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) The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.

(4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

(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.

(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.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things: (i) whether it is a revenue neutral situation (ii) the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.”

24. The counsel for petitioner has also cited **VLS Finance Limited (supra)** wherein the court has made an observation about not extending the time of provision attachment after a period of time as prescribed under Section

281B of the Income Tax Act, 1961. Relevant paragraph of the judgement is presented below:

“9. Sub-section 1 to Section 281B stipulates that an order provisionally attaching any property of the assessee can be passed during pendency of any proceedings for assessment/reassessment, if the Assessing Officer is of the opinion that such an order is necessary for purpose of protecting interest of the Revenue. The order can be only passed with the previous approval of the Chief Commissioner, Commissioner, Director General or Director. The order has to be in writing. Sub-section 2 to Section 281B states that the order for provisional attachment under sub-section (1) shall cease to have effect after six months. Thus, sub-section 2, provides the period during which an order of provisional attachment remains in force, i.e., six months. The first proviso to Section 281B states that the Chief Commissioner, Commissioner, Director General, Director may for reasons recorded in writing extend the said period or periods, which shall not exceed two years. Thus, the total period for which extension can be granted is two years, after the first order of provisional attachment, which is valid for six months, comes to an end. The period of provisional attachment, therefore, cannot be for more than two years and six months. The said period in the present case, as the first attachment order was issued on 28th July, 2005, came to an end on 24th January, 2008.”

25. Another case presented by the petitioner is ***Shrimati Majjo (supra)*** wherein it was held that the extension of provisional attachment period is not allowed after a certain period of time as per the provisions of Section 281B of the Income Tax Act, 1961. Relevant extract of the judgement is delineated below:

“6. We do not, however, think it necessary to examine the said contention for the reason that the total period for which extensions can be granted under section 281B is two years and that period has also expired on and with August 19, 1989. It is thus clear that the attachment under section 281B cannot survive beyond the said date, namely, beyond August 19, 1989. The petitioner shall be entitled to encash or withdraw the amounts concerned subject, of course, to any demand for any tax due as on today. Even if there is any such demand, the amount equal to such demand shall be retained and the remaining amount returned to the petitioner.”

26. Counsel for Revenue has relied on **Shrimati Priti (supra)** for buttressing the argument that fresh issue of provisional attachment orders is permissible even after the expiry of one-year period as prescribed under the Act. The relevant paragraph of the judgement is as follows:

“13. Contention that an order of provisional attachment can last only for one year and that no further order thereafter, can be passed is not borne out from statutory provisions contained in Section 45 of the Act. It is undoubtedly true that sub-section(2) of Section 45 statutorily provides for maximum life of a provisional order to last not beyond one year from the date of order. There is nothing in the language used in the said section to suggest that upon completion of such a period, no fresh order could be passed. Reading any such requirement or limitation would amount to supplying words not used in the section itself. Section 45 of the Act aims to protect Revenue's interest pending assessment proceedings by empowering the competent authority to pass provisional attachment order. To obviate, obvious inconvenience to an assessee, such provisional attachment order cannot be effective beyond one year. However, that by itself does not mean that if assessment proceedings are not completed within the said period and where the satisfaction of the Commissioner or his delegate that such attachment is required to safeguard interest of the Revenue looking to the dues of the dealer, no such fresh order could be passed. The section thus on one hand, require the competent officer to review the situation compulsorily at-least upon completion of the period, while so doing, does not limit his discretion to exercise such powers again if situation so arises. Contention of the petitioner that upon completion of maximum period prescribed under sub-section(2) of Section 45, no fresh order of provisional attachment could be passed, therefore cannot be accepted.”

27. While deciding the issue of provisional attachment under Section 45 of the VAT Tax Act, the court in **Kaithal Timber Pvt. Ltd. (supra)** has held that the interest of government revenue must be given importance while interpreting the section for provisional attachment. It further held that

after a provisional order ceases to remain in force, a fresh order under the same provision could be passed. Relevant paragraph of the judgement is attached below:

“5. The statute has not provided any prohibition on fresh order of attachment being passed. Sub-section (2) of section 45 would, in any case, ensure that even if the Commissioner or the authority in whom the power of the Commissioner under sub-section (1) of section 45 have been delegated is of the opinion that the attachment should continue, it would be necessary that a fresh order be passed. This would ensure that the authority would examine the current position and would take a fresh decision that to protect the interest of Government revenue, it is necessary to pass fresh order of provisional attachment and that the earlier order of attachment would not mechanically continue indefinitely.”

28. *“Bad facts make bad cases”* – the court crafts its decision to create an outcome dictated by the facts, instead of an outcome based on a proper legal analysis” - I am very well aware of the above adage and do not intend to fall prey to the same. Ergo, the interpretation of Section 83 of the CGST Act, 2017 is not based on the facts that have been presented by the respondents in their affidavits, but on the legal principles of interpretation of fiscal statutes and examination of the precedents cited by parties. Upon hearing both the parties on the third issue, the Court is of the opinion that the powers conferred under Section 83 are drastic and extraordinary in nature. The Court also believes that the powers under this section should not be invoked routinely and must be exercised with due caution, circumspection and deliberation. The judgments relied on by the learned counsel for petitioners in ***Valerius Industries (supra) and Pranit Hem Desai (supra)*** can be distinguished on the grounds that they only highlight the rationale and nature of the powers conferred under Section

83. These judgements do not deliberate upon the point of fresh issue of an order for provisional attachment which is of principal relevance to this case. The judgments relied by the learned counsel for respondents, that is, ***Shrimati Priti (supra)*** and ***Kaithal Timber Pvt. Ltd. (supra)*** interprets a similar provision of provisional attachment in the Gujarat Value Added Tax Act, 2003. The Court in both cases while dealing with a provision that is *pari materia* to the present Section 83, has categorically held that fresh order for provisional attachment can be issued after the expiry of the time as prescribed under the Act.

29. Mr. Chakraborty learned counsel on behalf of the petitioners relied on the Delhi High Court judgement in **VLS Finance Limited (supra)** to support the argument that extending the time of provisional attachment after a certain period of time as prescribed in the statute is not permissible. The Court while appreciating this finding, would also like to note another observation of the Delhi High Court wherein it has categorically mentioned that they have not considered and examined whether the Revenue can pass a fresh order under Section 281B of the Income Tax Act, 1961. In my view this observation is pertinent to the issue in hand. The relevant extract has been cited below:

“15. We wish to further clarify as a matter of abundant caution and state that we have not considered and examined whether the Revenue can pass a fresh order under Section 281B in view of the third proviso to the said Section introduced/inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1988. If required, the said issue and question will be examined in case the Revenue passes any such order. We have not barred or prohibited the

Revenue from passing any such order or expressed any opinion whether any such order should be or could be passed. These aspects can be examined by the respondents. It will be premature to decide these contentions now. We do not want to express any opinion in vacuum on the assumption that an order may be passed. This caveat is necessary least there be any confusion.....”

30. Mr. Chakraborty further relied on **Shrimati Majjo (supra), Electro Zavod (India) Pvt. Ltd. (supra) & Sukhpal Singh (supra)** to contend that extension of provisional attachment beyond the time-period prescribed is not permitted by the statute. It is to be noted that Section 83 of the CGST Act, 2017 does not have a provision for extension of an order for provisional attachment. The contention in hand is with respect to issue of fresh order of provisional attachment and not extension of the same. On this note, the case laws referred to by the learned counsel shall not be applicable to the issue in hand.

31. One need not join issue with regard to the judgments cited by the petitioner with respect to interpretation of fiscal statutes, as I am firmly of the view that Section 83 has to be construed literally and strictly. On a perusal of Section 83, it is evident that Section 83 does not provide for an extension of an order for provisional attachment and any such extension shall be *dehors* the statute. Section 83 empowers the competent authority to issue an order for provisional attachment of property including bank accounts if it is of the opinion that such a step is necessary for protecting the interest of government revenue. It is palpably clear that Section 83(2)

permits continuation of a provisional attachment order for a period of one year from the date of order after which it ceases to remain in effect. However, there is nothing in the section which indicates that upon completion of the prescribed period, a fresh order cannot be issued. To say this would amount to supplying such requirements into the section which would go against the well-established principles of interpretation of statutes. In the view point of the Court, after the expiry of the time period, the appropriate authority may be of the opinion that such an attachment is further required to protect the interest of government revenue, and may therefore, issue a fresh order upon compliance of the formalities in Section 83(1).

32. One may also examine the scheme of the GST Act, 2017 in relation to provisional attachment. Section 83 of the CGST Act, 2017 has to be read with Sections 67 and 74 of the CGST Act, 2017 and Rule 159 of the CGST Rules, 2017. As is evident from Section 74, the time limit for issue of show cause notice is four and half years, while the adjudication is required to be completed within five years of the particular evasion of tax / fraudulent transaction. At this juncture, I ask myself this question as to whether the Legislature would have intended to allow the investigation to be continued for a period of four and half years but only allowed protection to the government revenue for a period of one year. Section 83(2) provides for a period for cessation of the provisional attachment. **This provision does not in any manner prevent the authorities to issue a fresh order of**

provisional attachment if the requirements under Section 83(1) are met. The period of one year has been provided only to bring about a balance between the rights of the assessee and the interest of the Revenue.

33. I make it clear that the Court has not gone into the sufficiency of reasons with respect to the fresh order of provisional attachment under section 83 as the writ petitions filed challenging the same do not raise that point at all. In fact, the counsel on behalf of the petitioner has categorically stated in Court that the petitioners are not challenging the sufficiency of reasons and are only challenging the legality of issue of the fresh order of provisional attachment. Based on the above submissions, no affidavits were called on from the Respondents to explain the sufficiency of reasons for issue of the fresh order of provisional attachment. However, it may be noted that Mrs. Gupta, counsel on behalf of the respondents has categorically submitted in Court that apart from the reasons provided in the affidavits filed in the earlier writ petitions, fresh material has also been unearthed by the DGGI.

34. However, given the far-reaching consequences of provisional attachment under Section 83, the Court is of the opinion that an issuance of a fresh order under Section 83 of the CGST Act, 2017 will require a fresh review and assessment of the circumstances in hand. In no manner, a fresh

order should be issued in the garb of an extension of the earlier order without actually evaluating and analysing the requirement of doing so.

35. Another point raised by the petitioner is with respect to non-service of the fresh order personally upon the petitioner. Section 83 of the CGST Act, 2017 read with Rule 159 of the CGST Rules, 2017 does not provide for supply of an order of provisional attachment of a bank account to the assessee concerned. Accordingly, there is no requirement on the part of the respondent to serve such an order under Section 83 personally upon the petitioners.
36. In light of the discussions made hereinabove, **the third issue is decided in favour of the Revenue.**
37. I would like to summarize the issues that have been answered by this Court for an easier understanding of the parties;

Issue A: Whether the Principal Additional Director General, DGGI and Additional Director General, DGGI are competent to pass orders under Section 83 of the CGST Act, 2017?

Answer: Both the officers that have passed the orders under Section 83 of the CGST Act, 2017 are competent to pass the same, and accordingly, **the issue is answered in favour of the Revenue.**

Issue B: Whether an order passed under Section 83 of the CGST Act, 2017, remains valid after the expiry of one year from the date of the order?

Answer: The actions of the respondent authorities in continuing with the provisional attachment beyond the period of one year and without informing the bank that the provisional attachment ceases to operate after a period of one year is an act that is reprehensible and absolutely contrary to law. Such an arbitrary action has clearly resulted in violation of the petitioners' rights for carrying on business under Article 19(1) of the Constitution of India and under Article 300A of the Constitution of India wherein the petitioners have been deprived of their property without authority of law. **Accordingly, the issue is answered in favour of the petitioners** and the respondent authorities are directed to pay costs of Rs. 5 lakhs to each of the three petitioners. This amount should be deposited in the current accounts that have provisionally attached within a period of four weeks from date.

Issue C: Whether the authorities can issue fresh order of provisional attachment/multiple orders under Section 83 of the CGST Act, 2017?

Answer: Section 83 empowers the competent authority to issue an order for provisional attachment of property including bank accounts if it is of the opinion that such step is necessary for protecting the interest of the

Revenue. It is palpably clear that Section 83(2) permits continuation of a provisional attachment order for a period of one year from the date of order after which it ceases to remain in effect. However, there is nothing in the section which indicates that upon completion of the prescribed period, a fresh order cannot be issued. To say this would amount to supplying such requirements into the section which would go against the well-established principles of interpretation of statutes. In the view point of the Court, after the expiry of the time period, the appropriate authority may be of the opinion that such an attachment is further required to protect the interest of Revenue, and may therefore, issue a fresh order upon compliance of the formalities in Section 83(1). **Accordingly, the issue is answered in favour of the Revenue.**

EPILOGUE:

“A tax collector should collect taxes from a tax payer just like a bee collects honey from a flower in an expert manner without disturbing its petals” –
Kautilya in Arthashastra.

38. The new regime under the GST Act, 2017 is a new legislative creation by which the Union Government along with all the State Governments have streamlined various statutes under which tax was earlier collected to enhance the ease of doing business by preventing multi-point taxation that was extremely cumbersome and time consuming for the citizens of India. The *raison d’etre* of the GST Act, 2017 is to reduce the burden of

tax and also to simplify the procedures. This, however, is coupled with certain far reaching and drastic measures that would be applicable on persons who evade the payment of such taxes. One need not stress the importance of the responsibility that comes upon the government officials who take such drastic measures upon the citizens of this country. Nonetheless, these drastic provisions come with a purpose, and that is to ensure collection of taxes so that the inequities in society may be reduced by the Government. Provisions such as provisional attachment are necessary to ensure that persons who intend to evade taxes and/or are a part of a mechanism to defraud the Government are nipped in the bud and appropriate taxes can be collected from such persons.

39. I would like to show my appreciation to Mr. Chakrabarti and Mrs. Gupta for their diligent work in assisting the Court.

40. In view of the above conclusion, all the writ petitions are disposed of. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)