

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.4229 OF 2021

Dharmesh Gandhi ..Petitioner
Versus
Assistant Commissioner (Anti-Evasion),
CGST & Central Excise, Belapur Commissionerate
& Ors. ..Respondents

Mr. Dharam Gandhi, Advocate for the Petitioner.
Mr. J. B. Mishra a/w Ms. Sangeeta Yadav, for the Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : 10th MARCH, 2021

P.C.

Heard Mr. Dharam Gandhi, learned counsel for the petitioner
and Mr. J. B. Mishra, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of communication dated 09.11.2020 issued by the Assistant Commissioner (Anti-Evasion), CGST and Central Excise, Belapur Commissionerate i.e., respondent No.1 to the Branch Manager, Kotak Mahindra Bank Ltd., Fort Branch, Mumbai for provisional attachment of property under section 83 of Central Goods and Services Tax Act, 2017 (briefly “the CGST Act” hereinafter).

3. Though a number of prayers have been made, principal grievance of the petitioner is the attachment of bank accounts not only of him but also of his family members pursuant to the impugned

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communication dated 09.11.2020 details of which are mentioned in paragraph 5.17. of the writ petition which are extracted hereunder :-

Sr. No.	Account Name	Proprietor/Karta	Account No	Balance	Balance
1	Gurudada Trading Co	Bharti H Gandhi	9312377770	Current	70,091.00
2	Gandhi International	Dharmesh H Gandhi	9312377619	Current	3,32,362.69
3	Dharmesh H Gandhi	Dharmesh H Gandhi	09580010003724	Savings	41,868.13
4	Dharmesh H Gandhi	Dharmesh H Gandhi	Various FDs	FDs	10,10,000.00
5	Bharti H Gandhi (Mother)	Bharti H Gandhi	09570110007089	Savings	16,434.00
6	Pranjal D Gandhi (Wife)	Pranjal D Gandhi	09570110007076	Savings	2,17,284.52
7	Pranjal D Gandhi (Wife)	Pranjal D Gandhi	Various FDs	FDs	15,70,000.00
8	Shaalini D Gandhi (Son)	Shaalini D Gandhi	06660120002766	Savings	88,963.11
9	Shaaling D Gandhi (Son)	Shaaling D Gandhi	Various FDs	FDs	2,00,000.00
	Total				35,47,148.65

4. Learned counsel for the petitioner has made number of submissions assailing the legality and validity of the provisional attachment and has also relied upon a number of judgments of this Court as well as of other High Courts including Gujarat High Court by filing a compilation.

5. On the other hand, Mr. J. B. Mishra, learned counsel for the respondents has referred to the averments made in the reply affidavit filed

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on behalf of the respondents to contend that provisional attachment is justified and does not warrant interference.

6. After hearing the matter at some length, we find that out of the nine bank accounts that have been attached by respondent No.1, only the accounts at Sr. Nos.2, 3 and 4 belong to the petitioner whereas the other accounts belong to the family members, namely, Bharti H. Gandhi (mother), Pranjal D. Gandhi (wife) and Shaalin D. Gandhi (son).

7. In **Siddhart Mandavia Vs. Union of India, Writ Petition (L) No.2901 of 2020**, decided on 03.11.2020, this Court had examined a similar issue relating to attachment of bank account of not only the taxable person but also of his family members. In that context, this Court held that bank account of only the taxable person can be provisionally attached under section 83 of the CGST Act and therefore the provisional attachment of bank account of the family members was set aside. In so far bank account of the taxable person in **Siddharth Mandavia (supra)** was concerned, this Court took note of the provisions contained in sub rules (5) and (6) of Rule 159 of the Central Goods and Services Tax Rules, 2017 and relegated the taxable person to the forum of the Commissioner to take a decision regarding release of the bank account of the taxable person provisionally attached. Relevant portion of the order passed in **Siddharth Mandavia (supra)** is extracted hereunder :-

“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.

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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).

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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.

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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.”

8. Having regard to the above and on due consideration, we pass the following orders :-

- I) The bank accounts at Sr. Nos.1 and 5 to 9 as per statement in paragraph 3 herein-above shall be released from provisional attachment forthwith.
- II) In so far the bank accounts of the petitioner at Sr. Nos.2, 3 and 4 in the said statement are concerned, petitioner may file objection before the Commissioner i.e. respondent No.2 within a period of seven days from today.
- III) If such objection is filed as above, respondent No.2 shall afford an opportunity of hearing to the petitioner and thereafter pass an appropriate order in accordance with

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law within a period of three weeks from the date of filing of objection.

IV) Since we have not examined or decided anything on merit, all contentions are kept open.

9. With the above directions, writ petition is disposed of. However, there shall be no order as to cost.

MILIND N. JADHAV, J

UJJAL BHUYAN, J