

Smt. Lalita v. Central Goods And Service Tax And Another

WRIT TAX No. 862 of 2023 | Decision: 2023-07-25 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:152363-DB

Chief Justice's Court

Case :- WRIT TAX No. - 862 of 2023

Petitioner :- Smt. Lalita Respondent :- Central Goods And Service Tax And Another Counsel for
Petitioner :- Anuj Agrawal,Sr. Advocate Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Om Prakash Mishra

Hon'ble Pritinker Diwaker,Chief Justice Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Anoop Trivedi, learned Senior Counsel, assisted by Shri Anuj Agarwal, learned counsel for the petitioner, Shri Om Prakash Mishra, for respondent no. 2 and Shri Gaurav Mahajan, learned counsel for the respondent no. 1.

2. The writ petition has been filed assailing the legality, propriety and correctness of the order dated 21.04.2023 passed by the Commissioner, Central Goods and Service Tax, Ghaziabad, respondent no. 1 whereby and whereunder the current account of the petitioner i.e. A/C No. 355401001796 maintained with ICICI Bank situate at 4, Part A, Gaur Global Village Crossing Republic, Ghaziabad-201009 has been provisionally attached exercising powers under Section 83 of the CGST Act, 2017 read with Rule- 159 (1) of the CGST Rules '2017'.

3. It is the case of the petitioner that the respondent no. 1 initiated an investigation against 3 persons including the husband of the petitioner Shri Rajiv Sharma for availing and passing on wrong Input Tax Credit by creating various firms without supply of goods. During the course of investigation an order dated 02.04.2022 was passed by the respondent no. 1 provisionally attaching the Bank account of the petitioner. Since attachment order under Section 83 ceases to have effect after expiry of one year as contemplated under Section 83 (2) of the CGST Act, 2017 petitioner moved application requesting for the de-attachment of the Bank account on 03.04.2023 on the ground that the petitioner is not a taxable person as defined under Section 2 (107) of the CGST Act, 2017, no investigation is pending against her and the attachment of her Bank account cannot be continued. No heed was paid to the request. Petitioner sent another letter on 18.04.2023. The respondent no. 1 responding to the letter has passed the

impugned order on 21.04.2023 attaching the Bank account of the petitioner.

4. Learned counsel for the petitioner vehemently submitted that the impugned order dated 21.04.2023 is invalid having been issued without DIN number in violation of Circular dated 05.11.20219 and 23.12.2019. It is further contended that the ingredients germane for exercise of the power under Section 83 being absent the order dated 21.04.2023 is vitiated in law. The respondent no. 1 has also failed to follow the procedure prescribed in Rule 159 of the CGST Rules 2017. The order impugned proceeds on the premise that proceeding sunder Section 122 of the Act have been launched against the petitioner through no show cause notice in form DRC-01 under Rule 142 has been issued so far. Reliance has been placed upon the decisions reported in 2022 (64)GSTL 150 (All) Varun Gupta vs. Union of India and upon order dated 29.08.2022 passed in Writ Tax No.858 of 2022 (Varun Gupta vs. Union of India and another to buttress the point that attachment order in the absence of notice is vitiated.

5. Per contra, Shri Gaurav Mahajan, learned counsel appearing for the Revenue/Respondent no. 1 submits that during investigation it has been found that the PAN No. AEXPL 2406 in the name of the petitioner has been utilized for GST registration against four firms in the State of UP and the Union Territory of Delhi which have been found to be inactive. Certain queries have been raised by the department against the petitioner in that regard and the department in order to protect the interest of

revenue has passed the order dated 21.04.2023 exercising powers under Section 83 of the CGST Act, 2017 read with Rule 159 (1) of the CGST Rules 2017 provisionally attaching the current account of the petitioner. The exercise of power is in accordance with law and calls for no interference by this Court it is also contended by Shri Mahajan that the petitioner ought to have invoked Rule 159 (5) of the CGST Rules 2017 by filing objections against the attachment rather than directly approaching this Court invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Reliance is placed upon the decisions reported in 2021 (45) GSTL 104 (All) (R.J. Erim vs. Principal Commissioner of CGST), 2021 (52) GSTL 5 (ori) (Shri Radha Raman Alloys Private Limited vs. Union of India) and 2023 (72) GSTL167 (Bom) (Chotu Lal vs. Union of India).

6. Having considered the rival submissions and having perused the case laws cited at the Bar we find that Rule 159 of the CGST Rules, 2017 sets out the procedure to be followed for issuing a

provisional attachment order. Under Rule 159 (5) a person whose property is attached may within 7 days of such attachment, file an objection to the effect that the property attached was or is not liable to attachment. After such objection is filed, the Commissioner is required to offer the person objecting an opportunity of being heard and thereafter pass appropriate order in Form GST DRC-23, if he is of the view that property is required to be released from attachment.

7. Clearly the petitioner has approached this Court without availing the aforementioned remedy available under the law. We also note that the Bank account of the petitioner has remained under attachment since long once under order dated 02.04.2022 and thereafter under the order dated 21.04.2023 but partially the petitioner herself is to be blamed for not taking recourse to Rule 159 (5) of the Rules early. Be that as it may. Since the bank account of the petitioner has remained attached since April 2022 we deem it appropriate to direct the petitioner to approach the respondent no. 1 within two weeks from today, under Rule 159 (5) by filing objections the respondent no. 1 shall make all endeavour to take a decision thereupon as per law expeditiously preferably within three weeks of filing such objection under Rule 159 (5) of the CGST rules, 2017.

8. With the aforesaid observations/ directions the writ petition is disposed of. No order as to costs.

Order Date :- 25.7.2023 Deepak/

(Ashutosh Srivastava,J.) (Pritinker Diwaker,C.J.)

2023-08-01T11:40:09+0530 High Court of Judicature at Allahabad