

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.05.2023

+ **W.P.(C) 17547/2022**

**SIDHIVINAYAK CHEMTECH PRIVATE
LIMITED THROUGH ITS AUTHORIZED
REPRESENTATIVE**

..... Petitioner

Versus

**PRINCIPAL COMMISSIONER, CGST,
MEERUT AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Vivek Sarin, Mr Ajay Kumar Dubey, Mr Ditya Prashant Singh, Ms Divyansh Singh, Mr. Satish C. Kaushik and Mr Akash Gupta, Advocates.

For the Respondents : Mr Harpreet Singh, Senior Standing Counsel with Ms Suhani Mathur and Mr Jatin Kumar Gaur, Advocates for R-1 and 2 with Mr Manoj Prabhakar, Joint Commissioner.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

VIBHU BAKHRU, J

1. M/s Sidhivinayak Chemtech Private Limited – a company incorporated under the Companies Act 1956, having its registered office at New Delhi – has filed the present writ petition under Article 226 of the Constitution of India impugning a provisional attachment order

dated 01.09.2022 [C.No. IV-CGST (9) CP/MRT/EXEM.SUPP./72/2022/2255-56 - hereafter '**the attachment order**'] passed by respondent no.1 [the Principal Commissioner, Central Goods & Service Tax (CGST) Commissionerate, Meerut] provisionally attaching the petitioner's bank account (Bank A/C No. 4563002100002434) maintained with respondent no. 3 (Punjab National Bank Limited). The petitioner also impugns a subsequent confirmation order dated 08.12.2022 (hereafter '**the impugned order**') passed by respondent no.1, confirming the attachment order.

Factual context

2. The petitioner company was incorporated on 05.09.2012, under the provisions of the Companies Act, 1956 and claims that it is engaged in the trade of industrial chemicals relating to the pesticide industry. Its Permanent Account Number under the Income Tax Act, 1961 is PAN AASCS0082M. The petitioner has two principal places of business. One in the State of Uttar Pradesh and the other in Haryana. It is registered with the GST Department under GSTIN 09AASCS0082M1ZP for its principal place of business in Uttar Pradesh and under GSTIN 06AASCS0082M1ZV for its place of business in the State of Haryana. For carrying out import of industrial chemicals, the petitioner has been granted Importer-Exporter Code (IEC) No.0512052859 by the Directorate General of Foreign Trade, Ministry of Commerce and Industry, Government of India.

3. On 20.05.2022, respondent no. 2 [Superintendent (Anti-Evasion), Central Goods & Service Tax Commissionerate] issued

summons under Section 70 of the Central Goods and Service Tax Act, 2017 (hereafter '**the CGST Act**') to the petitioner company's director, Shri Raman Kumar and Shri Indresh Kumar Yadav, who is employed as a supervisor with the petitioner, to appear at the office of respondent no.1 and tender statements in connection with investigations pertaining to fraudulent use of Input Tax Credit (ITC) of ₹36.6 crores by M/s Best Crop Science LLP and M/s Best Crop Science Pvt. Ltd.

4. The petitioner company replied to the above-mentioned summons by its letter dated 08.06.2022 setting out the details of transactions with M/s Best Crop Science Pvt. Ltd. during the Financial Year 2021-2022. Subsequently, summons dated 22.06.2022, 01.07.2022, 04.07.2022, 26.08.2022, 29.08.2022, 31.08.2022 were issued by respondent no 2. directing the officers and directors of the petitioner company to tender statements along with the details of transactions with M/s Best Crop Science Pvt. Ltd. and M/s Best Crop Science LLP.

5. The petitioner submits that in view of the repeated summons, it addressed a letter dated 06.08.2022 to the Chief Commissioner, CGST, Meerut Zone, requesting to intervene in the investigation conducted by respondent no.2.

6. On 05.09.2022, on becoming aware that its bank account was provisionally attached, the petitioner filed its objection (in Form GST DRC-22A) under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 (hereafter '**the Rules**') with respondent no.1. Subsequently, by e-mails dated 02.11.2022 and 15.11.2022, the

petitioner submitted a representation to respondent no.1 regarding the same.

7. Aggrieved by the attachment order, the petitioner filed a petition, W.P. (C) No. 16084/2022 titled ***Siddhivinayak Chemtech Private Limited v. Principal Commissioner, CGST, Meerut & Ors.***, before this Court. This Court disposed of the above-mentioned writ petition by an order dated 22.11.2022, *inter alia*, directing respondent no.1 to decide the petitioner's objections under Rule 159(5) of the Rules after affording the petitioner an opportunity of being heard.

8. Further, on 05.12.2022, the petitioner filed an application (Application No. 52500/2022) in the disposed of writ petition [W.P (C) No. 16084/2022] alleging willful non-compliance of the order dated 22.11.2022. This Court disposed of the said application by an order dated 05.12.2022 with directions to respondent no.1 to pass a reasoned order on or before 09.12.2022.

9. In the meantime, the respondent authorities continued the investigations and summoned Shri Raj Kumar, Shri Ankit Bhutani and Shri Raman Kumar (stated to be the directors of the petitioner company) for a hearing on 09.12.2022. At the hearing Shri Raj Kumar and Shri Ankit Bhutani sought an adjournment on the ground that they had ceased to be directors in the petitioner company and were not involved with the day-to-day running of its business.

10. On 08.12.2022, respondent no.1 passed the impugned order confirming the attachment order. Aggrieved by the same, the petitioner has filed the present petition.

Impugned Order

11. Respondent no.1 upheld the attachment order on the ground that the petitioner company had fraudulently transferred ITC amounting to ₹36.6 crore to M/s Best Crop Science Pvt. Ltd. and M/s Best Crop Science LLP, without supplying any goods to the said companies. Respondent no.1 alleged that during the course of investigation, it was found that the petitioner company's office at Kundli, Sonipat, Haryana was not operational. And, although its unit at Sikandrabad, Uttar Pradesh was operational, it had no records in relation to purchase, production, sale, stocks etc.

12. Respondent no. 1 found that Shri Raman Kumar, director of the petitioner company, was also an employee at M/s Best Agro Group and on this basis alleged that the petitioner company was created as a dummy company of M/s Best Crop Science Pvt. Ltd. for availing ITC by fraudulent means.

13. It was also held by respondent no.1 that the petitioner had not submitted relevant documents, namely, sale invoices of the petitioner company, bank statements of all the accounts and trial balance for the year 2017-18, till date.

14. Respondent no.1 held that if any proceedings under Chapter XIV of the CGST Act were pending, the Commissioner was empowered to provisionally attach the bank account of the taxable person under Section 83(1) of the CGST Act, for the purpose of protecting the interest of the Government revenue. He reasoned that since the proceedings under Section 67 of the CGST Act were undertaken, the provisional

attachment of the bank account of the petitioner under Section 83 of the CGST Act was valid. He also referred to paragraph 3.3 of the guidelines for provisional attachment of property under Section 83 of the CGST Act, issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing *vide* F.No. CBEC-20/16/05/2021-GST/359 dated 23.01.2021. On the strength of the said guidelines, respondent no.1 held that the investigation conducted so far had revealed that the petitioner had fraudulently used ITC amounting to ₹ 36.6 crore.

Submissions

15. Mr. Vivek Sarin, learned counsel appearing for the petitioner, assailed the attachment order on, essentially, two fronts. First, he submitted that the impugned order is without jurisdiction as respondent no.1 did not have the territorial jurisdiction to issue an order under Section 83 of the CGST Act. Second, he submitted that the validity of the attachment order is required to be tested on the basis of its contents. He submitted that the attachment order did not reflect any valid reasons for attachment of the petitioner's bank account nor referred to any tangible material which would indicate that it was necessary to attach the petitioner's bank account to protect the interest of the Revenue. Next, he submitted that the power of the provisional attachment is a draconian power and that the same can be exercised only if it is necessary for protecting the interests of the Revenue, which cannot be protected otherwise. He relied on the decision of the Supreme Court in ***Radha Krishan Industries v. State of Himachal Pradesh & Ors.:***

(2021) 6 SCC 771 and the decision of the Gujarat High Court in *Valerius Industries v. Union of India: 2019 SCC OnLine Guj 6866* in support of his contention.

Reasons and Conclusion

16. The first and foremost question to be addressed is whether respondent no.1 has the jurisdiction to pass the impugned order attaching the petitioner's bank account maintained with Punjab National Bank, Pitampura, Delhi. The petitioner is registered as a taxable person in respect of its two principal places of business. The first being Plot No.26 near Lakhmi Piou, Main G.T. Road, Kundli, Sub-Tehsil Rai, Sonipat, Haryana - 131028 (GSTIN Registration No. 06AASCS0082M1ZV) and the second being D-16, Gopalpur, Sikandrabad, Bulandshahar, Uttar Pradesh - 203205 (GSTIN No. 09AASCS0082M1ZP). Admittedly, the territorial jurisdiction of respondent no.1 (Principal Commissioner, CGST, Meerut) neither covers Kundli, Sonipat, Haryana nor extends to Bulandshahar, Uttar Pradesh.

17. The petitioner claims that its place of business falls within the jurisdiction of Gautam Buddha Nagar Commissionerate and not the Meerut Commissionerate. The petitioner had specifically pleaded to the aforesaid effect in its petition and the material averments were not traversed. On 28.02.2023, Mr. Harpreet Singh had submitted that he had overlooked the aforesaid averments and had sought time to take instructions and, if necessary, file a reply. It is relevant to note that the

respondents did not file any reply contesting the aforesaid pleadings pursuant to the opportunity granted by this Court.

18. Mr. Harpreet Singh did not contest that respondent no. 1 does not have any territorial jurisdiction in respect of the petitioner; however, he contended that respondent no.1 had the jurisdiction to pass the attachment order as the petitioner had transferred fraudulent ITC to M/s Best Crop Science Pvt Ltd., which was being investigated by respondent no.1.

19. At this stage, it would be relevant to refer to Section 83 of the CGST Act. The same is set out below:

“83. Provisional attachment to protect revenue in certain cases.— (1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 or any person specified in sub-section (1A) of Section 122, 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).”

20. A plain reading of the said Section 83 of the CGST Act indicates that ‘the Commissioner’ can take an action under the said Section provided that the following conditions are fulfilled:

- (i) that proceedings under Chapter XII, Chapter XIV and Chapter XV of the CGST Act have been initiated;

(ii) that the Commissioner is of the opinion that it is necessary to provisionally attach any property including bank account for the purpose of protecting the interest of the Revenue.

21. If the aforesaid conditions are met, ‘the Commissioner’ can provisionally attach the property and/or bank account “*belonging to the taxable person or any person specified in sub-section (1A) of Section 122*”. Section 83 also mandates that the order of provisional attachment be in writing.

22. The term ‘the Commissioner’ is defined under Section 2(24) of the CGST Act as under:

“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.”

23. In terms of Section 3 of the CGST Act, the Government is required, by a notification, to appoint various classes of officers as set out in the said Section including the Principal Chief Commissioner of Central Tax, Chief Commissioner of Central Tax and Commissioner of Central Tax. Section 5 of the CGST Act contains the provisions regarding power of officers and reads as under:

“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.”

24. In view of the above, the term ‘the Commissioner’ as used in Section 83 of the CGST Act would necessarily refer to the Commissioner who exercises jurisdiction under the CGST Act in respect of ‘the taxable person’. In the present case, the petitioner is the taxable person. In the given circumstances, we find merit in the contention that the expression ‘the Commissioner’ would necessarily mean the Commissioner who exercises its powers in respect of ‘the taxable person’. Section 83 of the CGST Act must be read in harmony with Section 3 and Section 5 of the CGST Act and the Commissioner, whose territorial jurisdiction is confined by the Board to a particular territory, would not have the jurisdiction to discharge the functions under the CGST Act beyond its territorial jurisdiction. Thus, for the purposes of the CGST Act, the expression ‘the Commissioner’ must necessarily be read to be the Commissioner who is empowered to discharge the functions under the CGST Act. In the present case, it is conceded that respondent no.1 does not exercise jurisdiction in respect of territories where the petitioner’s principal place of business is located. Thus, respondent no.1 had no jurisdiction to pass the attachment order in respect of the petitioner as ‘the taxable person’.

25. Mr. Harpreet Singh contended that respondent no.1 had passed the order freezing the petitioner's bank account in the context of his investigation being conducted in respect of M/s Best Crop Science Pvt. Ltd. and M/s Best Crop Science LLP. According to respondent no.1, a search was carried out at the business premises of M/s Best Agro Life Ltd. and M/s Best Crop Science Pvt. Ltd., which are located at Gajraula and certain incriminating documents were found that indicated the involvement of the petitioner company. He contended that the petitioner would be liable to penalty and it was necessary to attach its bank account to protect the interest of the Revenue.

26. We are unable to agree that respondent no.1 would have the jurisdiction to pass orders in respect of other taxable persons who do not fall within its jurisdiction. The jurisdiction of respondent no.1 would necessarily be confined to the taxable persons falling within its jurisdiction or persons specified under Sub-section (1A) of Section 122 of the CGST Act.

27. The contention that respondent no.1 has the jurisdiction to attach the bank account of the petitioner as it was a person specified under Sub-section (1A) of Section 122 of the CGST Act is also unpersuasive. Sub-section (1A) and the relevant clauses of Sub-section (1) of Section 122 of the CGST Act are set out below:

“122. Penalty for certain offences. –

(1) Where a taxable person who –

122(1) of the CGST Act. On the contrary, the allegation is that the petitioner has facilitated M/s Best Crop Science LLP / M/s Best Crop Science Pvt. Ltd. to avail fraudulent ITC. More importantly, there is no allegation that any of the allegedly offending transactions were conducted at the instance of the petitioner. On the contrary, it is alleged that the petitioner company was set up by the promoters of M/s Best Crop Science Pvt. Ltd. for availing fraudulent ITC.

30. The impugned order is, thus, liable to be set aside on this ground alone.

31. In view of the above, it is not necessary to examine other questions as raised by the petitioner; however, for the sake of completeness, we consider it apposite to also consider whether the other conditions necessary for attaching the petitioner's bank account are satisfied. One of the principal conditions necessary for provisionally attaching a property (including a bank account) under Section 83 of the CGST Act is formation of an opinion by the Commissioner that such attachment is necessary for protecting the interest of the Government and the Revenue. It is now well settled that formation of the opinion cannot be a mere subjective satisfaction of the Commissioner empowered to take measures under Section 83 of the CGST Act but must necessarily be an opinion, which is formed on credible material having live link with formation of the opinion.

32. In *Radha Krishan Industries (supra)*, the Supreme Court had set out the parameters for exercising powers under Section 83 of the CGST Act in the following words:

“76.4. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.

76.5. The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

76.6. The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.

76.7. The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue.”

33. The Supreme Court had adopted a test of existence of tangible material as set out by the Supreme Court in the context of re-opening of assessments under the Income Tax Act, 1961. In *Commissioner of Income Tax, Delhi v. Kelvinator of India Limited: (2010) 2 SCC 723*, the Supreme Court had held that the reason to believe that the income had escaped assessment – which is the necessary pre-condition for initiating proceedings for re-assessment – must be based on tangible material that has a live link with the formation of such belief. The formation of opinion by the Commissioner that it is necessary to provisionally attach any property under Section 83 of the CGST Act must meet the objective standards as set out by the Supreme Court in *Kelvinator of India Limited (supra)*.

34. The action of respondent no.1 in provisionally attaching the bank account of the petitioner must be decided on the anvil of the parameters as explained by the Supreme Court in *Radha Krishan Industries (supra)*

35. The order of attachment in Form GST DRC-22 does not indicate any reason that had led respondent no.1 to form an opinion that the petitioner is liable to defeat any demand of tax or dues if its bank account is not provisionally attached.

36. Pursuant to the orders passed by this Court, respondent no.1 had passed the impugned order disposing of the petitioner's objections against the provisional attachment of its bank account. It is stated in the said order that during the course of investigation against M/s Best Crop Science Pvt. Ltd. (known as Best Crop Science LLP before converting into Best Crop Science Pvt. Ltd.), it was found that the petitioner had supplied invoices for passing on ITC of approximately ₹36.6 crores. It was alleged that the invoices were without the supply of goods. It was also alleged that there were circular transactions amongst the petitioner company and two other entities, namely, MK Chemicals and Guru Kripa Impex prior to final billing by those entities to M/s Best Crop Science Pvt. Ltd. Thus, leading to believe that they were suspicious transactions without the supply of goods. It is stated that during the course of search operations at the premises of M/s Best Agrolife Ltd. and Best Crop Science Pvt. Ltd., certain incriminating documents were found including the employment record of Shri Raman Kumar, who was employed as the Senior Manager Account by M/s Best Crop

Science Pvt. Ltd. and was also a director of the petitioner company. The said order also refers to the search conducted on 06.09.2022 at the premises of the petitioner in Haryana where it was found to be non-existent and the search conducted on 18.05.2022 at the premises of the petitioner in Sikandrabad, where no records regarding purchase, sale, stock and production were found.

37. It is alleged that during the search conducted in the premises of the petitioner, record was found, which suggests that Mr. Raman Kumar (director of the petitioner company) was employed with M/s Best Agrolife Ltd., which is the holding company of M/s Best Crop Science Pvt. Ltd.

38. The statement of one Shri Gaurav Sharma, one of the directors of M/s Best Crop Science Pvt. Ltd. was recorded and he stated that the Managing Director of the said company (M/s Best Crop Science Pvt. Ltd.) had appointed Shri Raman Kumar to manage the transactions and look after the finance and accounts of M/s Best Crop Science Pvt. Ltd. and M/s Best Crop Science LLP. The Facebook account of Shri Raman Kumar also indicates that he was employed as the Senior Manager Accounts of M/s Best Agro Group. In view of the above, respondent no.1 had inferred that the petitioner company was a dummy company created under the directorship of the employees of M/s Best Agro Group. In addition, it was submitted that the movement of goods carrier mentioned in the e-way bills of outward supplies made by the petitioner company were examined and it was noticed that the RFID data from the

tollbooths between Kundli / Sikandrabad to Gajraula did not reflect movement of the said vehicles.

39. The respondents had also produced the original file before this Court in support of the contention that the reason to believe that it was necessary to protect the interest of the Revenue by provisionally attaching the petitioner's bank account, were recorded in the said file.

40. Mr. Harpreet Singh had read out the relevant noting in the file. The notings indicate that there are only two reasons for attaching the petitioner's bank account. The first being that Shri Raman Kumar, director of the petitioner company was employed with M/s Best Agro Group. The respondents, on this basis, suspect that the petitioner company is a dummy company and is controlled by the promoters of M/s Best Agro Group. The second reason, as indicated, is that the shares of the companies of M/s Best Agro Group have been recently sold in the market and the money has been parked in the bank account of the petitioners.

41. This Court had enquired from the respondents whether there is any material in the file, which would establish that the shareholding of M/s Best Agro Group and the shareholders of the petitioner company were common or that the petitioner company held or controlled any share in M/s Best Agro Group. The respondents answered in the negative. This Court had also enquired whether there was any material whatsoever, which would indicate that the sale proceeds of shares of companies of M/s Best Agro Group had been deposited in the bank

account of the petitioner. The respondents fairly stated that there was none.

42. It is apparent from the above that the principal reason for attaching the petitioner's bank account – the sale proceeds of shares of M/s Best Agro Group and other group companies are parked in the bank account of the petitioner – is not founded on or has nexus with any tangible material. Thus, any such belief would be clearly in the realm of unsubstantiated suspicion and therefore, cannot be considered as a ground for taking the drastic step of provisionally attaching a taxpayer's bank account.

43. It is necessary to bear in mind that attachment of a bank account would in effect result in the closure of the business of a taxpayer and has the propensity to cause irretrievable harm. The said drastic action is impermissible merely on the basis of suspicion and without any tangible material.

44. The second reason that the petitioner is a dummy company because the director of the petitioner is/was an employee of M/s Best Crop Group is also somewhat in the realm of assumptions. The petitioner had stated that Shri Raman Kumar was employed by M/s Best Crop Group but he had since moved on and had taken up his role as a director of the petitioner company.

45. It is relevant to note that there is no allegation that the shareholders of the petitioner company are non-existent or fictitious persons. It is also not disputed that the petitioner has, over the years, imported chemicals of substantial value under its ITC. The petitioner

had also submitted details of transactions with M/s Best Crop Science Pvt. Ltd. undertaken during the Financial Years 2021-22 including back up of purchase invoices supplied to M/s Best Crop Science Pvt Ltd.; party ledger of M/s Best Crop Science Pvt. Ltd.; proof of receipt of the invoiced amount; the details of the bank account, as well as the bank statement for the Financial Year 2021-22. The petitioner is also an assessee under the Income Tax Act, 1961 and had furnished copies of the Income Tax Returns for the Financial Years 2019-20, 2020-21 and 2021-22. He had also submitted the tax audit report and balance sheets for three years as well as electricity bills and wage bills. The adequacy of material for affirming a belief that the provisional attachment of assets is necessary, are not justiciable. However, there must be a live nexus between the reasons for provisionally attaching assets and bank accounts and the material available with the Commissioner. Merely because there was some material (although disputed) to indicate that one of the directors of the petitioner was an employee of another company cannot be the basis to believe that the petitioner company is a dummy company given the material as provided.

46. The language of Section 83 of the CGST Act requires the Commissioner to form an opinion that it is necessary to attach the property of a taxable person. However, the said opinion is required to be based on relevant facts and not merely on grounds of suspicion. It is difficult to imagine that a company would survive if its bank accounts are frozen for a protracted period of time. Thus, the nature of the power makes it necessary that the same is exercised with due caution and only when it is necessary.

47. Mere suspicion that the petitioner is a dummy company, which is founded on the basis of statements that one of the directors of the petitioner company was, or is an employee of M/s Best Agrolife Group, and is in complete disregard of the corporate documents of the petitioner, would clearly fall foul of the requirement of forming an opinion, as it does not meet the standards required for taking an action under Section 83 of the CGST Act.

48. In view of the above, the attachment order is set aside. It is, however, clarified that the concerned authorities are not precluded from proceeding against the petitioner in accordance with law.

49. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 16, 2023
'gsr'/RK..