



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

**WRIT PETITION NO.909 OF 2023**

Turnon Systems )  
Having its office at, )  
332, 1<sup>st</sup> Floor, Room No.4, )  
Haroon Manzil Block A, )  
Sardar Vallabhbhai Patel Road, )  
Mumbai - 400 009. ) .. Petitioner

Versus

1. The Union of India )  
Through its Revenue Secretary )  
Department of Revenue, Ministry of Finance )  
2<sup>nd</sup> Floor, Ayaker Bhavan, Churchgate, )  
Mumbai – 400 020. )  
2. Commissioner of CGST & C.Ex )  
Mumbai Central, GST Bhavan 115, )  
Maharishi Karve Road, )  
Opp. Churchgate, )  
Mumbai - 400 020. )  
3. Deputy Commissioner of CGST & C.Ex )  
Mumbai Central Commissionerate, )  
GST Bhavan 115, Maharishi Karve Road, )  
Opp. Churchgate, )  
Mumbai - 400 020. ) .. Respondents

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Mr.Nikita Badheka a/w Parth Badheka for the petitioner.

Mr.Dhananjay B. Deshmukh a/w Mr.Ashutosh Mishra i/by Mr.Jitendra B. Mishra for Respondents.

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**CORAM** : **G.S. KULKARNI &  
JITENDRA JAIN, JJ.**  
**DATE** : **9<sup>th</sup> August 2023**

**P.C. :-**

. This petition challenges the provisional attachment of three bank accounts under Section 83 of the Central Goods and Service Tax Act, 2017 (CGST Act), the details of which are as under :-

Sr. No.	Bank Name	Account Number
1	Kotak Mahindra Bank	4646113216 (overdraft)
2	Yes Bank Limited	000483800001641
3	Bombay Mercantile Co-operative Bank Ltd.	013110100082945

2. Immediate concern of the Petitioner, as per the interim relief sought in the petition, is with regard to the provisional attachment of overdraft account with Kotak Mahindra Bank which according to the Petitioner, could not have been attached. In the order dated 18<sup>th</sup> April 2023 passed this Court it was recorded that the Petitioner would attend the office of the concerned Commissioner as regards permission to operate the overdraft account. The matter was hence, listed on 21<sup>st</sup> April 2023 under the caption "For Directions." On 21<sup>st</sup> April 2023, this Court was informed that the Petitioner had contacted the concerned Officer and

the attachment of the overdraft account stood lifted. Therefore, as of today, the Petitioner is in a position to operate the Overdraft Account with the Kotak Mahindra Bank. The Respondents have communicated the Kotak Mahindra Bank in April 2023 to de-freeze the Overdraft Account, a copy of the said letter was produced before us. Therefore, the interim relief sought for by the Petitioner by prayer clause (h) now no more survives. We are only concerned with interim prayer for stay of any further coercive measures. There is no interim prayer in the petition with respect to de-freezing other accounts.

3. The Respondents have provisionally attached the bank accounts under Section 83 of the CGST Act, primarily on the basis that the Petitioner had claimed input tax credit of Rs.4,19,53,348/- on purchases of Rs.23,71,23,628/- from 14 parties which as per the preliminary investigation of the Respondents are suppliers who are fictitious/non-existent.

4. The Petitioner has submitted that it has filed all the details pursuant to the summons issued by the Respondents to prove the purchases and therefore, the Respondents are not justified in provisionally attaching the bank accounts.

5. We have heard the learned counsel for the Petitioner and the Respondents.

6. At the outset, the Respondents have intimated the Kotak Mahindra Bank lifting the provisional attachment order on Overdraft Account and therefore, it cannot be said that the Petitioner's business has come to a standstill. The Petitioner can operate this account for running his business.

7. The Petitioner, in his statement before the Respondents, has admitted that the Input Tax Credit (ITC) has been wrongly availed and undertook to reverse ITC by 30<sup>th</sup> June 2022. However, the Petitioner has not reversed the ITC till today. We have not been shown any document which would demonstrate that the statement made was under coercion or force. Be that as it may, the Petitioner is free to reverse the ITC if it so desires. We may also note that the Petitioner had made an application for anticipatory bail apprehending arrest on account of investigation being conducted by the respondent and the said anticipatory bail has been rejected. However there has been no arrest till today.

8. As per Section 16(2), ITC can be taken only if there is actual

receipt of goods or services. In the instant case, the Respondents' preliminary investigation have revealed that the 14 parties from whom the Petitioner has purchased the goods, are not in existence and, therefore, there is a question mark whether if at all the goods have been received or not.

9. The Respondents are investigating the entities/persons from whom the Petitioner has purchased the goods and as of today, they have found 14 parties who are fictitious. The amount of alleged ITC and the purchases made by the Petitioner are substantial and which is under investigation by the Respondents. We are informed that the Respondents would issue a show cause notice after completing their investigation.

10. In view of the above, the Petitioner has not made out a prima facie case for grant of any interim relief. Furthermore, attachment of Overdraft Account having been lifted, there cannot be any irreparable damages or inconvenience in operating the business. Furthermore, the Petitioner has its offered to reverse ITC availed on purchases from these 14 parties which till today, the Petitioner has not reversed. In view of the above, the prayer for interim relief of no further coercive action is rejected.

11. However, in the peculiar facts and circumstances of the case, if the Petitioner deposits a sum of Rs.2 crores with the Respondents, then in that case, the provisional attachment of all the accounts shall stand lifted which shall be subject to the further orders to be passed on this petition.

12. Insofar as the legal issues as raised in the petition in the context of Section 83 of the CGST Act are concerned, we are of the opinion that the petition would require final hearing. Hence, **Rule.** Respondents waive service.

13. List this petition for final hearing on 29<sup>th</sup> September 2023.

14. Further pleadings, if any, on the petition are intended to be filed, let the same be completed on or before the date of final hearing.

**JITENDRA JAIN, J.**

**G. S. KULKARNI, J.**