

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**W.P.No.38763 of 2022**

Between:

M/s S.A.IRON METAL,  
Sy.No.198, Telephone Colony,  
Vellore Road, Chittoor,  
Chittoor District,  
Andhra Pradesh,  
Rep. by its Proprietor Sri Shaik Samiuddin,  
S/o Late G.M.Sahabuddin, aged about 54 years,  
13-127, Invate Line St,  
Chittoor, Chittoor District.

.. Petitioner

And

- 1) State of Andhra Pradesh,  
Rep by its Principal Secretary,  
Revenue (CT) Department,  
Velagapudi, Amaravathi,  
Guntur District, Andhra Pradesh and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 28.08.2023

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO  
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to  
see the fair copy of the Judgment? Yes/No

**U. DURGA PRASAD RAO, J**

**T.MALLIKARJUNA RAO, J**

**\*HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**  
**AND**  
**HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**  
**+ W.P.No.38763 of 2022**

%28.08.2023

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Rep. by its Proprietor Sri Shaik Samiuddin,  
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Vs.

\$ State of Andhra Pradesh,  
Rep by its Principal Secretary,  
Revenue (CT) Department,  
Velagapudi, Amaravathi,  
Guntur District, Andhra Pradesh and others. .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner: Sri M.V.J.K.Kumar, learned counsel for petitioner.

Counsel for respondents: Y.N.Vivekananda, learned Government Pleader for  
Commercial Taxes-II.

? CASES REFERRED:

- 1) MANU/KA/3951/2021
- 2) Manu/gj/1743/2019
- 3) MANU/PH/2993/2019
- 4) MANU/SC/0293/2021
- 5) MANU/GJ/0858/2020 = 2020 GLH (1) 589
- 6) AIR 2001 SC 1980 =MANU/SC/0191/1980
- 7) AIR 2011 SC 1925 = MANU/SC/0249/2011
- 8) (2014) 16 SCC 248
- 9) (2017) 14 SCC 304
- 10) (1994) 5 SCC 346

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO  
AND  
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

**Writ Petition Nos.38763 of 2022**

**ORDER:** *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner prays for writ of mandamus declaring the action of the Assistant Commissioner (State Tax-1), Tirupati / 2<sup>nd</sup> respondent in issuing the provisional attachment orders dated 03.11.2022 against respondents 4 to 14, who are the bank and third-party customers of the petitioner, pending the payment of tax, penalty and interest, which are claimed against the petitioner before issuing show cause notice as illegal, arbitrary, unjust and violative of Rule 142(1A) of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules, 2017') r/w Section 74(5) of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act')/ A.P. Goods and Services Tax Act, 2017 (for short, 'the SGST Act') and also Articles 14, 19(1)(g), 21 and 226 of the Constitution of India and consequently set aside the provisional attachment orders.

2. **PETITIONER'S CASE :**

The petitioner's case succinctly is thus:

(a) The petitioner is a proprietary concern engaged in purchase and sale of iron metal and scrap. The petitioner got registered under the GST Act, 2017.

(b) While so, on 03.11.2022, the Audit Wing lead by 2<sup>nd</sup> respondent under authorization issued by 3<sup>rd</sup> respondent inspected the petitioner's proprietary concern for inspection under Section 67(1) of the CGST / APGST Act, 2017. During such inspection, he recorded in the proceedings in the Form - DRC 01A certain facts as if there was no physical stock and the petitioner was not conducting the business in the premises which is factually not correct. The stock was very much available in the business premises. It was further alleged that the business was closed but still invoices and bills were generated and it was created as if several vehicles were moved from Krishnagiri, Vellore, Tirupattur of Tamilnadu to the business premises of petitioner i.e., Chittoor. However, no enquiry was conducted with the check post, the parties concerned and vendor dealers in that regard to find out whether the petitioner really claimed ITC on fake invoices. Although his allegations were not

correct, still the petitioner was by force constrained to sign the audit statement and panchanama. Accordingly, Form GST DRC-01A was issued under Rule 142(1A) of the CGST / APGST Act, 2017. It is submitted that the petitioner has 30 days time u/s 74(8) of the CGST / APGST Act, 2017 r/w Rule 142(1A) of Central Goods and Services Tax Rules, 2017 (for short 'CGST Rules, 2017) to pay the tax amount and even without waiting for the said period of 30 days after issuing Form GST DRC-01A, the 2<sup>nd</sup> respondent issued provisional attachment order against respondents 4 to 14 which is illegal and unwarranted.

(c) It is further contended that as per Section 83 of the CGST Act, 2017, the "Commissioner" and as per Section 83 of the APGST Act, the "Chief Commissioner" shall issue provisional attachment order, but in this case without following Section 83, the said attachment order was issued by the 2<sup>nd</sup> respondent, who is the Assistant Commissioner. Hence, the attachment is not sustainable. Further, except mentioning Section 83 of the CGST / SGST Act, 2017, no reasons are mentioned for issuing attachment order.

Hence, the writ petition.

**3. COUNTER OF RESPONDENTS:**

The 2<sup>nd</sup> respondent opposed the writ petition contending that the writ petition is not maintainable as an efficacious and alternative remedy of appeal is available to the petitioner.

(a) The petitioner got GST registration certificate w.e.f. 22.02.2022 for doing business in iron scrap. Pursuant to the authorization issued by 3<sup>rd</sup> respondent to conduct inspection u/s 67 of the APGST Act, 2017, the 2<sup>nd</sup> respondent inspected the business premises of the petitioner along with the staff and Panchas and found petitioner's business was not in the stated place. The departmental enquires revealed that Sri S.Samiuddin is not doing any business and in his name the business is carried out by Sri Mohammad Jaffar and his son Mohammad Saif. When enquired, Sk. Sameeuddin, the proprietor of the petitioner's firm stated that he is not doing any business activities and unknowingly he has signed on some papers on request of his friend Mohd. Jaffar. He further stated that Mohd. Jaffar's family members are doing business activities in the name of said firm. The 2<sup>nd</sup> respondent and his team visited the residence of Mohd. Jaffar (D.No.28/1071, KN.Colony, Chittoor). Mohd. Jaffar and his elder son Saif were present . On

enquiry, they confessed that they were doing business. They further confessed that they were buying purchase invoices from Tamilnadu parties for input purpose without physical receipt of the goods. It indicates that the tax payer has obtained GST registration with malafide intention to evade output tax by claiming ITC through fake invoices and e-way bills without physical receipt of goods.

(b). The enquiry further revealed there was no physical stock available at the business premises at Chittoor. As seen from purchase and sale details of taxable persons, it revealed that the purchases from 02.04.2022 to 21.04.2022 were worth Rs.5,66,769/- (6583 Kgs only) and in 11 transactions sales were shown as Rs.49,59,47032 (95,843 Kgs). As such the petitioner's purchases and sales details are irregular. Not only there was no physical stock but also there was no door number to the business premises and no board was displayed. As stated supra, the petitioner is not related to Mohammad Jaffar or his son Mohammad Saif. The statement of those two persons were recorded before the Panchas.

(c) Accordingly, an intimation in Form GST DRC-01A dated 08.11.2022 was issued to the taxable person under Rule 142(1A) of the CGST Rules, 2017 r/w Section 74(5) of the CGST/SGST Act,

2017 for the tax period April 2022 to September 2022 and on authorization dated 03.11.2022 issued by the Chief Commissioner, provisional attachment orders were issued against respondents 4 to 10 and 14.

(d) It is further submitted that the toll plaza details of vehicle movements were compared with the way bills of the taxable persons utilized both for purchase and sale. All the details and malpractices are discussed in DRC 01 show cause notice. Further, the details mentioned in the said notice would reveal that the taxable person received purchase invoices without actual receipt of the goods. However, they sold the goods by purchasing from unregistered persons of other places (other than the places from where purchase tax invoices were raised). Even for purchasing from unregistered persons, the petitioner has to pay full tax on sale. Hence, to avoid output tax, he received invoices without receipt of the goods. All the purchase place and sale place details are recorded in the e-way bills of the tax payer which were generated from GST portal. The details would reveal that the purchases are fake without actual receipt of goods. The petitioner has shown that he purchased goods from Tamilnadu through fake invoices. However, he supplied the

goods to his recipients actually purchased from unregistered dealers locally from different parts of A.P., for instance, Allagdda, Ananatapur, Atmakur, Banagajnapalle, Bapatla, Chandragiri, Darsi, Dharmavaram, Gooty, Guntakal, Kadiri, Kadapa and Khammam etc.

(e) It is further submitted that all the documentation data and movement of vehicle was verified. Selling dealers details were also verified. Yovel enterprises was registered w.e.f. 27.04.2017 but its registration was cancelled within short period i.e., w.e.f. 17.10.2022. Further, one B.S.Enterprises who was registered w.e.f. 21.10.2022, issued entire sale invoices only to the respondents upto the date of inspection. After inspection of petitioner's premises, when the 2<sup>nd</sup> respondent tried to make a call to B.S.Enterprise's mobile No.8125340784 as available in the registration details, he did not lift the call and later he switched off the mobile. But the said concern filed GSTR 1 only to enable the taxable person to utilize the ITC. However, the said B.S.Enterprises did not file GSTR-3B and did not pay tax to the Government. In these circumstances, provisional attachment was made observing the intention of the tax payer to avoid the output tax and cause loss to revenue of the Government. If swift action was not taken, the petitioner would have withdrawn the

entire amount available in the bank. It is submitted that on the date of inspection, when the petitioner was sitting with the respondent, at that time an amount of Rs.15.00 lakhs was transferred to the account of Bannari Ganesh from the account of the petitioner (Axis Bank, Chittoor, A/c.No.921020054649987). Hence, the provisional attachment was ordered. The respondents thus prayed to dismiss the writ petition.

3. Heard arguments of learned counsel for petitioner Sri M.V.J.K.Kumar, and Sri Y.N. Vivekananda, learned Government Pleader for Commercial Taxes-II.

4. **ARGUMENTS OF PETITIONER :**

Firstly, learned counsel would argue, the impugned provisional attachment orders dated 03.11.2022 were issued by 2<sup>nd</sup> respondent even before launching any proceedings against the petitioner under section 74 as contemplated in Section 83 of CGST / SGST Act, 2017. Therefore, the attachment proceedings *per se* are

illegal and unjust. He placed reliance on **Sterne India Pvt Ltd v. Union of India**<sup>1</sup>.

(a) Secondly, learned counsel argued that in the instant case Form-GST DRC-01A intimation under Rule 142(1A) of CGST Rules was issued to the petitioner on 08.11.2022. The said Form GST DRC-01A is only an intimation but not a notice. The said intimation would be issued before service of notice u/s 74(1) of the Act to the person chargeable with tax to enable him to pay the tax, interest and penalty. Receiving the intimation, such a person can pay the aforesaid amount U/s 74(5) of the Act even before service of notice U/s 74(1). On his failure, the authority will issue notice U/s 74(1). Learned counsel would submit that even after issuing notice U/s 74(1) also, the petitioner would have 30 days time to pay the tax amount in terms of Section 74(8) of the CGST / APGST Act, 2017. However, without waiting for the mandatory statutory – period, the 2<sup>nd</sup> respondent resorted to the provisional attachment proceedings against respondent Nos.4 to 10 on 03.11.2022 itself. Therefore, the provisional attachment proceedings are illegal on that ground also.

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<sup>1</sup> MANU/KA/3951/2021

(b) Thirdly, referring to Section 83 of CGST / SGST Act, 2017, Sri M.V.J.K. Kumar would submit that “The Commissioner” under CGST Act or “The Chief Commissioner” Under SGST Act, 2017 alone is competent to pass an order directing the provisional attachment of the property and bank account of a taxable person. He would submit that since the personal opinion of the designated officer is the *sine qua non* for ordering attachment, such power cannot be delegated by such designated authority to any other officer. To buttress his argument he relied upon the decision in **Valerius Industries v. Union of India**<sup>2</sup>. He would submit that in the instant case instead of Chief Commissioner/Commissioner, the Deputy Commissioner (ST), Tirupati/2<sup>nd</sup> respondent has passed the provisional attachment order which is *per se* illegal.

(c) The fourth argument of the learned counsel for the petitioner is that the 2<sup>nd</sup> respondent simply quoted Section 83 and passed the attachment order without mentioning the reasons for his order. Therefore, the attachment being bereft of reasons is liable to be set aside. In this regard he relied upon

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<sup>2</sup> Manu/gj/1743/2019

- (1) **Valerius Industries v. Union of India** (2 supra),
- (2) **Bindal Smelting Pvt Ltd v. Additional Director General**<sup>3</sup> and
- (3) **Radhakrishan Industries v. State of Himachal Pradesh**<sup>4</sup>

**5. ARGUMENTS OF GOVERNMENT PLEADER :**

(a) Per contra, learned Government Pleader argued that the first argument of the petitioner that the provisional attachment proceedings cannot be initiated under Section 83 without initiating proceedings u/s 74 is untenable for the reason that Section 83 itself is clear to the effect that during the pendency of any proceedings u/s 62 or 63 or 64 or 67 or 73 or 74, the provisional attachment proceedings can be initiated for the purpose of protecting the interest of the Government revenue. Learned Government Pleader would argue that in the instant case the 2<sup>nd</sup> respondent having obtained authorisation dated 01.11.2022 from the 3<sup>rd</sup> respondent, initiated proceedings U/s 67 of CGST/SGST Act and conducted the inspection of the premises of the petitioner on 03.11.2022 and having found many irregularities in the business activities of the petitioner, most importantly, having found no business was

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<sup>3</sup> MANU/PH/2993/2019

<sup>4</sup> MANU/SC/0293/2021

conducted by the petitioner and on the other hand business was conducted by some third-parties i.e., Mohd. Jaffar and his son, proposed to initiate provisional attachment proceedings U/s 83 of the Act. For this purpose, the 2<sup>nd</sup> respondent obtained authorization from the Chief Commissioner vide order dated 03.11.2022 and issued provisional attachment orders dated 03.11.2022 against respondents 4 to 10. Learned GP would submit that since the 2<sup>nd</sup> respondent proceeded U/s 67 and pending the same issued attachment proceedings, his action is within the purview of Section 83, though he has not resorted to the proceedings U/s 74 by the date of attachment.

(b) As against the second contention of the petitioner, learned GP argued that assuming the proceedings were launched u/s 74 r/w Rule 142(1A), still the 2<sup>nd</sup> respondent need not wait for 30 days in terms of Section 74(8) of the Act without initiating attachment proceedings u/s 83, for the reason, Section 83 is not controlled by section 74, particularly section 74(8). He would logically argue that after issuing intimation under Rule 142(1A) and thereafter issuing notice U/s 74(1), if the 2<sup>nd</sup> respondent waits for 30 days without initiating the provisional attachment proceedings in spite of

existence of sufficient grounds, there will be every possibility of petitioner depleting his bank balance and credit resources to scuttle the ultimate process of recollection of tax and thereby the interest of the Government revenue will receive a setback. Learned GP thus sought to back up the attachment proceedings.

(c) As against the third argument of petitioner, learned Government Pleader would submit that the Commissioner/Chief Commissioner by virtue of the power conferred on him U/s 5(3) r/w Section 167 of CGST/APGST Act, 2017 can delegate the power exercisable by him U/s 83 to any other officer and accordingly, in the instant case the Chief Commissioner by virtue of the proceedings in CCST's Ref. No. CEW/E2/221/2022, dated 03.11.2022 has delegated his power to the 2<sup>nd</sup> respondent and therefore the petitioner cannot take any objection in this regard. Learned Government Pleader would further submit that the decision in **Valerius Industries** (supra 1) case relied upon by the petitioner has been held *per incurium* by another Division Bench of High Court of Gujarat in **Nathalal Maganlal Chauhan v. State of Gujarat**<sup>5</sup>.

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<sup>5</sup> MANU/GJ/0858/2020 = 2020 GLH (1) 589

(d) As against the fourth argument of the petitioner, learned Government Pleader would submit that on the basis of tangible material exhumed during the course of inspection and having formed a reasonable opinion that the petitioner is likely to defeat the ultimate tax recovery, the 2<sup>nd</sup> respondent issued attachment orders to protect the interest of the Government revenue. In expatiation he would submit that many incriminating facts relating to the business affairs of the petitioner *viz.*, (i) absence of business activity in the premises mentioned in the registration details (ii) the petitioner not doing business but some third-parties were doing business (iii) passing Input Tax Credit to different industries without supply or movement of goods (iv) his availment of ITC using the invoices fraudulently without purchasing and receiving the goods physically, forced the 2<sup>nd</sup> respondent to take the drastic step. Learned GP thus sought to defend the attachment proceedings submitting that there was no other way to safeguard the interest of the Government revenue.

## 6. **FINDINGS OF THE COURT:**

Having heard the above and punctiliously scrutinised the relevant law, we are unable to accept the first argument of the petitioner that without launching proceedings U/s 74, the 2<sup>nd</sup> respondent should not have issued attachment orders U/s 83 of CGST/SGST Act, 2017.

It is expedient to extract Section 83 here:

### **Section 83 of CGST Act:**

#### **“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)”

### **Section 83 of APGST Act:**

#### **“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 Chief 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)”

7. As can be seen, both the above provisions are in *pari materia* with the minor variation regarding the designation of attaching officer. They say, after initiation and during pendency of any proceedings U/s 62 or 63 or 64 or 67 or 73 or 74, if the Chief Commissioner is of the opinion that for the purpose of protecting the interest of Government revenue it is necessary so to do, he may order in writing attach provisionally any property including bank account of the taxable person. Thus, the *sine qua non* for ordering provisional attachment is the protection of interest of Government revenue. The plain language of Section 83 manifests that provisional attachment proceedings can be initiated by the Commissioner not invariably during the pendency of the proceedings U/s 74 alone but also during the pendency of proceedings under other Sections *viz.*, Section 62, 63, 64, 67 & 73. The language in Section 83 is plain and clear and therefore literal rule of interpretation will apply in the instant case. This interpretation would say that if the provision of a statute is plain, clear and unambiguous, its literal meaning has to be

imported without the necessity of any other external aids. In **Gurudevdatla VKSSS Maryadit v. State of Maharashtra**<sup>6</sup>, the Apex Court observed:

“It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.”

In **B. Premanand v. Mohan Koikal**<sup>7</sup> the Apex Court held thus:

“16. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. Securities and*

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<sup>6</sup> AIR 2001 SC 1980 =MANU/SC/0191/1980

<sup>7</sup> AIR 2011 SC 1925 = MANU/SC/0249/2011

Exchange Board, India MANU/SC/0693/ 2004MANU/SC/0693/2004 : AIR 2004 SC 4219.”

8. When the above literal rule of construction is applied to Section 83, the plain and unambiguous meaning portrayed is that the provisional attachment can be issued during the pendency of not only the proceedings covered by Section 74 but also some other provisions including Section 67, after initiating which, the 2<sup>nd</sup> respondent issued provisional attachment. The contra argument of the petitioner has no force in our view.

9. The decision in **Sterne India Pvt Ltd.** (supra 1) relied by the petitioner can be distinguished. In that case investigation was initiated under GST Act against one M/s Paul Overseas regarding the alleged issuance of bogus/fake invoices without supply of goods but claiming ITC. The writ petitioner therein was purchasing mobile handsets from Ms/ Paul Overseas and selling to its customers. While so, the 2<sup>nd</sup> respondent therein conducted search in the head office of the petitioner under Section 67 of CGST Act and before initiating the proceedings U/s 74 of CGST Act, attached the bank accounts of the petitioner U/s 83 of CGST Act which was

challenged before the High Court of Karnataka. It appears in the attachment order enclosed to Annexure-A, it was mentioned that proceedings have been initiated U/s 74 of CGST Act which was factually not correct. In that context, a learned single Judge while allowing the writ petition observed that the proceedings were initiated against a different taxable entity and even without initiation of proceedings U/s 74 against the petitioner, attachment was made U/s 83 which is not tenable. Learned Judge observed thus:

“31. In the present case, it must be noticed that the taxable entity to which the proceedings were taken out is an entity other than the petitioner and in the context of which search has been conducted with respect to the petitioner. Admittedly, no proceedings have been initiated under Section 74 of CGST Act as against the petitioner till date. What must also be noticed is that though the statement of objections of the respondent Authority seeks to make out a case that the proceedings under Section 74 of CGST Act are sought to be instituted and in the context of which the provisional attachment under Section 83 of CGST Act is resorted to, the impending proceedings under Section 74 of the CGST Act cannot be a ground to exercise power under Section 83 for the provisional attachment. **If the only ground made out in the statement objections and the very order of attachment at Annexure-A is the proceedings under Section 74 of the CGST Act, even if there are other proceedings that may be considered to be pending against the petitioner as long as the proceedings under Section 74 are not initiated by issuing a show-cause notice, the order of attachment purportedly relating to the proceedings under Section 74 cannot be upheld. The respondent Authority cannot be permitted to contend that any other proceedings contemplated under Section 83 of CGST Act have been initiated, as it is made out in the provisional order of attachment enclosed at Annexure-A that proceedings have been initiated under Section 74 of the CGST Act. Any exercise of power as may be permitted statutorily**

**which has an adverse consequence on the petitioner, would have to be strictly construed.** (emphasis supplied)”

Unlike in the above case, in the instant case, the attachment orders dated 3<sup>rd</sup> and 4<sup>th</sup> November, 2022 issued against respondents 4 to 10 would clearly depict that proceedings have been launched against the petitioner U/s 67(1) and 67(2) of the CGST/SGST Act, 2017 but not U/s 74. As already stated supra, pending the proceedings U/s 67, the provisional attachment U/s 83 can be made. For this reason we reject the first argument of learned counsel for the petitioner.

**10.** The second argument of the petitioner is concerned, in order to appreciate the same we have to refer to Section 74(1) (5) and (8) of CGST/SGST Act, 2017 and Rule 142(1A) of CGST Rules, 2017.

**Section 74(1) (5) and (8) of CGST Act:**

**“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) xxx
- (3) xxx
- (4) xxx
- (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) xxx
- (7) xxx
- (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent 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.”

**Section 74(1) (5) and (8) of APGST Act:**

**“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 willful 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 willful 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) xxxx
- (3) xxxx
- (4) xxxx
- (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) xxxx
- (7) xxxx
- (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent 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.”

### **Rule 142 (1A) of CGST Rules, 2017**

**“142. Notice and order for demand of amounts payable under the Act.**

- (1) xxx
- (1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section(1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of Form **GST DRC-01A**”

**11.** The above provisions would show that the proper officer even before serving notice U/s 74(1), may issue an “intimation of tax” payable under Rule 142(1A) of the CGST Rules, 2017 and if the taxable person accordingly pays the amount of tax U/s 74(5), the

notice U/s 74(1) cannot be issued. If he fails to pay the amount, the proper office may issue notice U/s 74(1). Then, if the taxable person in terms of Section 74(8) of the Act, pays the tax amount with interest and penalty equivalent to twenty five per cent as mentioned in notice U/s 74(1) within 30 days of the notice, all the proceedings shall be deemed to be concluded. Now the argument of the petitioner is that even if a notice is issued U/s 74(1) still he would have time of 30 days to comply with but however no notice was issued U/s 74(1) but only an intimation under Rule 142(1A) was issued on 08.11.2022 and without waiting for the further time and following the due procedure U/s 74, the attachment was made even prior to 08.11.2022 which is illegal.

**12.** The above argument in our view is wholly irrelevant and unacceptable for the reason that, the attachment orders were issued by the 2<sup>nd</sup> respondent on the basis of his proceedings U/s 67 but not U/s 74. What is to be noted is that after conducting inspection U/s 67 and having found incriminating material against the petitioner, the 2<sup>nd</sup> respondent immediately issued provisional attachment orders dated 03 and 04.11.2022 and thereafter issued intimation of tax in

Form GST DRC-01A dated 08.11.2022. The said action of the 2<sup>nd</sup> respondent cannot be found fault. Of course whether there are sufficient grounds to order attachment is a question of fact which we will discuss presently.

13. The third argument of the petitioner is that in view of the clause “Commissioner/Chief Commissioner is of the opinion”, employed in Section 83, such an opinion must be the subjective opinion of a specified and designated officer but not that of a delegate. To appreciate this argument we have to examine certain provisions. In this context, Section 5(3) of CGST Act says thus:

**“5. Powers of officers:**

1.xxx

2.xxx

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.xxxx”

Section 5(3) of APGST Act, 2017 is also in *pari materia* but for the difference that in the place of “Commissioner”, “Chief Commissioner” has to be read.

14. Then Section 167 of CGST Act reads thus:

**“167. Delegation of powers:**

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.”

15. Section 167 of APGST Act, 2017 is also identical except that the word “Chief Commissioner” has to be read in the place of “Commissioner”.

16. Thus as rightly argued by learned Government Pleader, as per the respective statutes, Commissioner/Chief Commissioner is authorised to delegate his power to the subordinate officer. Therefore, the contention of the petitioner that the subjective satisfaction of the designated officer alone is essential to exercise the power U/s 83 holds no water. In **Valerius Industries** (supra 1) cited by the petitioner, a Division Bench of Gujarat High Court was dealing with the question whether the State Tax Officer –I can exercise power U/s 83 of Gujarat Goods and Services Tax Act, 2017 (GGST Act, 2017). It may be noted, Section 83 of GGST Act, 2017

is in *pari materia* with Section 83 of APGST Act, 2017. In that context, the Division Bench of High Court of Gujarat held thus:

“35. In the case on hand, Section 83 makes it abundantly clear that it is the Commissioner’s opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of the order dated 15<sup>th</sup> January 2018 passed in exercise of power under sub-section (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed thereunder. In our opinion, the answer has to be in the negative. Although there is no specific challenge to the order dated 15<sup>th</sup> January 2015 passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, we are of the view that by virtue of such order, such impugned order of provisional attachment cannot be defended.”

17. However, subsequently in **Nathalal’s** case (supra 2) another Division Bench of High Court of Gujarat, considering the ratio in the judgments (1) **Sidhartha Sarawgi v. Board of Trustee for the Port of Kolkata**,<sup>8</sup> (2) **State of Bihar v. Anil Kumar** <sup>9</sup> and (3) **Sahni Silk Mills (P) Ltd., v. Employees’ State Insurance Corporation**<sup>10</sup> held as follows:

“43. In *Valerius Industries* (supra), this Court was dealing with a matter in which the subject matter of challenge was an order of provisional attachment under Section 83 of the Act. For the purpose of Section 83 of the Act, the Legislature thought fit to confer the power upon the Commissioner. However, in this regard also, the Commissioner has issued a notification dated

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<sup>8</sup> (2014) 16 SCC 248

<sup>9</sup> (2017) 14 SCC 304

<sup>10</sup> (1994) 5 SCC 346

15<sup>th</sup> January 2018 delegating his power to three subordinate officers. While considering the challenge, this Court observed in para-35 as quoted above.

44. We are of the view that the observations made by this Court in the above referred para-35 could be termed as *per incurium* as such observations run contrary to the Supreme Court decisions referred to above in this judgment.

45. It is an accepted principle of administrative law that the repository of power must exercise that power personally. However, there are two exceptions to this principle:

1. Legislation provides for the power to delegate or authorise:

An express power to delegate, usually in legislation, allows the person who has the legislative authority to delegate that authority to others. The individual/s or position/s having the delegation can exercise the authority in their own right. An example of an express power to delegate can be seen in section 5(3) of the Act, 2017.

2. Implied power to authorise:

An implied power to authorise, arises where even though there may or may not be an express power to delegate in legislation, there can be an implied power for an official to exercise the power on the person's behalf - it is often termed the 'alter ego' principle, the '**Carltona principle**' or an implied power to delegate. This principle arose from the decision *Carltona Limited v. Commissioner of Works*, (1943) 2 All ER 560.

46. The principle is : devolving power is permitted in the cases where the nature, scope, and purpose of the power in legislation means that it is unlikely that the Parliament intended that the power is to be exercised personally, and the only practical way the power can be exercised is by the officers who are responsible to the person (who has the power by legislation).”

Thus in essence, in the subsequent judgment, the Division Bench of High Court of Gujarat approved the delegating powers of the Commissioner.

18. In the instant case, the Chief Commissioner vide his proceedings in CCST's Ref.No.CEW/E2/221/2022, dated 03.11.2022 has delegated his powers U/s 83 of APGST Act, 2017 to the 2<sup>nd</sup> respondent. The order reads thus:

**:ORDER:**

The Additional Commissioner of State Tax, Regional GST Audit and Enforcement Office, Tirupathi unit vide reference 1<sup>st</sup> cited has requested to accord permission for provisional attachment of Bank Account or any other properties of M/s Unique Enterprises, GSTN:37MFBPK6797J1ZI, Nellore Division under Section 83 of APGST Act, 2017.

After careful examination of the report submitted by the Additional Commissioner of State Tax, Regional GST Audit and Enforcement Office, Tirupathi unit and in view of circumstances explained therein, I am of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to initiate provisional attachment provisions under Section 83 read with Rule 159 of APGST Act, 2017 and accordingly here with delegate all powers vested with the Undersigned, under Section 83 of APGST Act, 2017 regarding the provisional attachment proceedings relating to M/s Unique Enterprises, GSTN:37MFBPK6797J1ZI, Nellore Division to the proper Officer viz, Deputy Commissioner of State Tax Regional GST Audit and Enforcement Office, Tirupathi unit office as per the powers vested under the provisions of Section 167 of APGST Act, 2017.

In view of the above, proper Officer viz, Deputy Commissioner of State Tax Regional GST Audit and Enforcement Office, Tirupathi unit is directed to initiate the provisional attachment as per the provisions under section 83 read with Rule 159 of APGST Act, 2017 and the Additional Commissioner of State Tax, Regional GST Audit and Enforcement Office, Tirupathi unit is directed to monitor the proper Officer and report compliance regarding the provisional attachment made by the Proper Officer.”

Sd

Chief Commissioner of State Tax  
A.P., Vijayawada dt. 03.11.2022

19. The above order would manifest that the Chief Commissioner pursuant to his power U/s 5(3) r/w Section 167 delegated his power U/s 83 of the CGST/SGST Act, 2017 to the 2<sup>nd</sup> respondent and in consonance thereof, the said officer has issued provisional attachment proceedings against the respondents 4 to 10. Therefore, the delegating power of the Chief Commissioner and consequential action of the 2<sup>nd</sup> respondent cannot be said to be without power or jurisdiction. Thus the third argument of the petitioner is rejected.

20. The fourth argument of the petitioner's counsel is that the attachment order is bereft of any reasons much less valid reasons and hence, the same fell foul of Section 83. Learned GP refuted the same.

21. The law on the aspects of the draconian nature of Section 83 and the principles to be followed to initiate provisional attachment proceedings under the said section is no more *res integra*. In **Radhakrishan Industries**'s case (4 supra), the Hon'ble Apex Court after considering the decisions of different High Courts including the decision of the High Court of Gujarat in **Valerius Industries**'s

case (2 supra), has laid down the following guidelines to be followed by the concerned authority for taking up of provisional attachment proceedings u/s 83.

72. (iv) 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;

(v) 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.

(vi) 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;

(vii) 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.”

It has now to be seen whether in the instant case the above guidelines have been scrupulously followed or not.

22. The 2<sup>nd</sup> respondent on obtaining authorisation dated 01.11.2022 issued U/s 67(1) by the 3<sup>rd</sup> respondent, inspected the business premises of the petitioner on 03.11.2022 in the presence of two independent mediators and noticed the following grave and incriminating facts relating to the business affairs of the petitioner

and mentioned in the 'intimation of tax' vide Form GST DRC-01A, dated 08.11.2022 served on the petitioner.

- i. During inspection of the premises of the petitioner, the 2<sup>nd</sup> respondent and the mediators found that the proprietor GM Sahabuddin was not doing business and in his name one Mohammad Jaffar and his Mohammad Saif were doing business and they are not related to the registered proprietor. The enquiry of Sahabuddin revealed he is only a name lender. On enquiry, Mohammad Jaffar and Saif confessed that they were doing business and they were buying purchase-invoices from Tamilnadu parties for claiming ITC without physical receipt of goods meaning thereby, the GST registration was obtained with a malafide intention to evade output tax by claiming ITC through fake invoices and e-Way bills without physical receipt of goods.
- ii. The enquiry revealed no physical stock was available at the business premises of the petitioner.
- iii. As seen from purchase and sales details of the petitioner they revealed that purchases were made from 02.04.2022 to 21.04.2022 worth Rs.5,66,769/- (6583 Kgs only) but in 11 transactions sales were shown to be made worth Rs.41,59,473/- (95,843 Kgs only). As such purchases and sales are irregular.
- iv. The petitioner showed e-Way bills upto 30 tones of goods for light goods vehicles (SGV) but the vehicle's capacity was upto 7 tones only.
- v. The toll plaza details of vehicles movements were verified to compare the way bills produced by the petitioner which were utilized for purchases and sales. Verification of the same and verification of e-Way bill portal revealed that not even a single vehicle passed through any of the toll gates while moving from Tamilnadu to Chittoor i.e., the place of delivery. It revealed that the petitioner showed as if goods were purchased from different places in tamilnadu. However, the goods were supplied neither

from Tamilnadu nor from Chittoor i.e., his business place on the other hand the outward e-Way bill showed the petitioner made supplies from various places i.e., Allagadda, Anantapur, Atmakur, Banaganapalli, Bapatla, Chandragiri, Darsi, Dharmavaram, Gutti, Guntakal , Kadiri, Kadapa, Khammam etc. It indicates that the petitioner purchased from unregistered persons and supplied to the recipients without paying tax and claimed fake ITC by showing purchases from Tamilnadu.

- vi. While the 2<sup>nd</sup> respondent was conducting the inspection at the time petitioner transferred an amount of Rs.15 lakhs from petitioner's account (Axis Bank, Chittoor A/c.No.9210200546-49987) to the Account of Bannari Ganesh.

**23.** On the strength of above grave facts, the 2<sup>nd</sup> respondent obtained authorization dated 03.11.2022 from the Chief Commissioner and issued the provisional attachment proceedings. Subsequently, he issued intimation of tax in Form GST DRC-01A, dated 08.11.2022 incorporating the above facts. However, it appears so far the petitioner has not submitted any explanation or objections against the said intimation. In the writ petition, the petitioner simply denied the allegations without submitting any clarification against the allegations that G.M. Shaik Samiuddin is only a name lender but the business is conducted by Mohammad Jaffar and his son Saif and that the petitioner transferred 15 lakhs from his account to another account during the inspection and with regard to other allegations.

Though all the aforesaid aspects have to be decided after enquiry, still, *prima facie* they project grave and suspicious facts regarding the business affairs of the petitioner. Most importantly he was not conducting business at his official address and he was only a name lender for Mohammad Jaffar and his son Saif and he was obtaining bogus invoices from Tamilnadu without receiving the goods physically, which speaks volumes of the dubious nature of petitioner's business affairs. Considering these facts, it appears the 2<sup>nd</sup> respondent came to the opinion that unless his financial resources and bank account are attached, it would be difficult to protect the Government revenue. Therefore, we do not find any illegality or irregularity in the attachment orders dated 03<sup>rd</sup> and 04<sup>th</sup> of November, 2022 of the 2<sup>nd</sup> respondent.

Thus, on a conspectus of facts and law, we find no merits in the writ petition.

**24.** Accordingly, the writ petition is dismissed with a liberty to the petitioner to file his objections against the provisional attachment orders dated 03.11.2022 issued against respondents 4 to 10 and 14 in terms of Rule 159(5) of CGST Rules, 2017 within two weeks

from the date of receipt of a copy of this order, if already such objections were not filed and thereupon the 2<sup>nd</sup> respondent shall consider such objections and pass an appropriate order within one week in accordance with governing law and rules and communicate to the petitioner. No costs.

As a sequel, interlocutory applications, pending if any shall stand closed.

U. DURGA PRASAD RAO, J

T. MALLIKARJUNA RAO, J

**28.08.2023**

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