

MANU/TN/5816/2021

**IN THE HIGH COURT OF MADRAS**

W.P. No. 12965 of 2021, WMP Nos. 13766 and 13767 of 2021

Decided On: 12.07.2021

Appellants: **Forte Solutions Pvt. Ltd.**

**Vs.**

Respondent: **The Principal Addl. Director General, DGGI, Chennai Zonal Unit and Ors.**

**Hon'ble Judges/Coram:**

*Dr. Anita Sumanth, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: B. Kumar, Senior Counsel for S. Ramachandran*

*For Respondents/Defendant: V. Sundareswaran, Senior Panel Counsel*

**ORDER**

**Dr. Anita Sumanth, J.**

**1** .The petitioner in this writ petition claims to be a first generation woman entrepreneur, in the business of recruitment of manpower. Manpower is supplied according to the requirement of companies and the petitioner receives a commission in regard to the services rendered.

**2** . On 22.02.2018, there was a search initiated by the 2nd respondent i.e. the Intelligence Officers under the provisions of the Goods and Service Tax Act, 2017 (GST Act). On the basis of materials collected, the Intelligence Department levelled allegations to the effect that Service Tax as well as Goods and Service Tax (ST & GST) had been collected from the recipient companies, but had not been remitted to the Department. That is, though the petitioner is registered under the Finance Act, 1994 as well as the GST Act, 2017 and returns have been filed under the aforesaid two enactments, the petitioner did not, and this is admitted, remit the amounts of ST and GST collected by it from the service recipients.

**3** . A statement was recorded from the petitioner at the time of investigation and a letter filed thereafter, dated 22.07.2020, admitting to the position that the total GST shortfall for the period 2017-18 to 2019-20 would be a sum of Rs. 28,58,90,794/-. Post remittance of a sum of Rs. 9,38,52,849/-, the shortfall stood determined at an amount of Rs. 19,20,37,945/-. As against the admitted dues of GST, the petitioner has furnished a tabulation giving a scheme of installment stretching upto December 2021.

**4** . As far as the service tax dues are concerned, the petitioner has approached the revenue by way of an application under the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019. We are however, not concerned with the arrears of service tax in this matter. Learned Senior Counsel appearing for the learned counsel for the petitioner would confirm that up and until May 2021, an amount in the region of around six (6) crores has been remitted. Admittedly, however, the petitioner has not been able to adhere to the scheme of installments, as agreed upon, in light of the difficulties faced on account of the on-going pandemic.

**5.** The thrust of this writ petition is a challenge to a provisional attachment made under Section 83 of the Act, of the bank account of the petitioner bearing No. 0912083000000023 with the South Indian Bank, Ambattur Branch. Learned Senior Counsel for the learned counsel for the petitioner would, while not disputing the fact that the petitioner is in arrears of revenue, point out that there is nothing to be gained by virtue of the impugned provisional attachment since the attachment only stands in the way of the petitioner carrying on business and making efforts to settle the arrears due. Quite apart from the fact that there are manifold difficulties being faced by businesses on account of the pandemic, the petitioner has, he says, been making and is continuing to make, an earnest attempt to repay the dues to the revenue.

**6.** Per contra, Mr. V. Sundareswaran would state that in light of the admitted arrears, the department has no other option, but to recover the arrears by any means at its disposal.

**7.** Having regard to the rival contentions that have been advanced, I am of the view that the petitioner must be permitted to approach the revenue by way of a representation seeking lifting of the bank attachment, conditional upon her furnishing an undertaking therein to made earnest efforts to repay the admitted dues in line with a scheme of installment to be arrived at, and I do so. The revenue will consider the representation, take into account the amounts remitted by the petitioner, till date, arrive at a new scheme of installment and thereafter, consider lifting the bank attachment.

**8.** I agree with Mr. Kumar that there is nothing to be gained by thwarting the attempt of an assessee to engage in legitimate business. In fact, this would be in the best interests of both the petitioner as well as the revenue, subject of course to there being scrupulous monitoring of the inflow and outflow in the account itself and bonafide attempts by the petitioner to remit the outstanding dues to the revenue. To this effect, I would also direct the South Indian Bank through Mr. V. Sundareswaran, since the bank is not arrayed before me, to circulate a statement of inflow and outflow/debit and credit to the respondents on a monthly basis, should the revenue be inclined to lift the attachment.

**9.** I draw support in this regard from a judgment of a three Judge Bench of the Supreme Court in Internet and Mobile Association of India v. Reserve Bank of India (MANU/SC/0264/2020 : 2020 (10) Supreme Court Cases 274) that considered a challenge to a circular issued by the Reserve Bank of India placing an embargo on dealings in virtual currency/crypto currency. The Bench considers the test of proportionality as enunciated in the case of Modern Dental College and Research Centre v. State of Madhya Pradesh & Ors. (MANU/SC/0495/2016 : 2016 7 SCC 353), to the effect that the remedy must not be worse than the evil that it seeks to protect from. By attaching the bank account and preventing fruitful productivity, nobody stands to gain. Thus, it is in the best interest of both parties to permit the petitioner to continue in business operations subject to the caveats laid by me above and any further that the revenue may choose to impose.

**10.** In the case of Nokia India Private Limited v. Additional Commissioner of Income Tax and others (2015 13 Supreme Court Cases 729), an order under Section 281(B) of the Income Tax Act, provisionally attaching the bank accounts of that assessee under the Income Tax Act for arrears of income tax, was considered by the Hon'ble Supreme Court and noticing the position that the petitioner was managing a running concern, the bank account was ordered to be lifted, upon condition that a monthly statement of account is filed in hard copy, to ensure proper monitoring of the receipts and payments

from that account.

**11.** If a representation is filed by this petitioner, let it be disposed within a period of three (3) weeks from date of receipt thereof, after hearing the petitioner.

**12.** This writ petition stands disposed. Connected miscellaneous petitions are closed. No costs.

© Manupatra Information Solutions Pvt. Ltd.