

GIB/DL/ROSHNI SANA/12.05.2021/HC-215

High Court Category : PROVISIONAL ATTACHMENT OF BANK ACCOUNTS

State : Delhi

Order No.: GIB/DL/ROSHNI SANA/12.05.2021/HC-215

Name of Entry :
ROSHNI SANA JAISWAL

Date : 12-05-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The petitioner was acting as a director on the Board of Directors of a company, going by the name of Milkfood Ltd., between 2006 and 2008. The petitioner is also a shareholder in the said company. The petitioner drew a salary of Rs.1.50 crores per annum qua the financial year (in short „FY?) 2019-2020.

The respondent, based on the information received, that Milkfood Ltd. was availing Input Tax Credit (in short „ITC?) against fake/ineligible invoices, commenced investigation, under Section 67 of the Central Goods and Services Tax Act, 2017 (in short „the Act?), against Milkfood Ltd. The respondent claims that, the statement of the persons, who controlled entities, which enabled Milkfood Ltd. to claim ITC, were recorded in the course of the investigation. It is in this connection, the respondent claims, that “the voluntary statement” of the petitioner was recorded on 03.12.2020. Since the petitioner was aggrieved qua the impugned action of the respondent, she approached this Court by way of the instant writ petition.

Decision of Advance Ruling Authority :

DECISION:

In this case, one of the jurisdictional ingredients?, which is missing, is that the petitioner is not a taxable person. This aspect is borne out upon perusal of the impugned orders, which are identical. In the impugned orders, dated 07.12.2020, the respondent adverts to the fact that, Milkfood Ltd. is the taxable person. The order rejecting the petitioner’s objections under Rule 159(5) was passed on 19.04.2021.

Furthermore, the definition of the taxable person, as set out in Section 2(107) of the Act, provides that only that person can be a taxable person, who is registered or liable to be registered as per the Act. It is not even the case of the respondent that the petitioner is either

registered or was liable to be registered in terms of the provisions of Section 2(107) of the Act.

In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

The impugned provisional attachment orders dated 07.12.2020 are quashed. The respondent will communicate the order passed today to the concerned Banks. Consequently, the order dated 19.04.2021, disposing of the objections filed by the petitioner, would also collapse, in its entirety, as the proceedings carried out against the petitioner were without jurisdiction.