

**GIB/KA/MAHESH M.C./26.03.2021/HC-232**

**High Court Category :** POWER TO ATTACH BANK ACCOUNTS

**State :** Karnataka

**Order No.:** GIB/KA/MAHESH M.C./26.03.2021/HC-232

**Name of Entry :**  
MAHESH M.C.

**Date :** 26-03-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case the petitioner has challenged the impugned order passed at Annexure-A as being contrary to the power conferred under Section 5(3) of the KGST Act, 2017/CGST Act, 2017. The petitioner has also assailed the order passed under Section 83 of the CGST Act on various legal contentions including that the power under Section 83 of the Act is to be exercised by the commissioner who must be of the opinion that for the purpose of protecting interest of the Government revenue there could be an attachment provisionally of property, bank account belonging to the taxable person.

Reliance is placed on the judgment of the High Court of Gujarat in Spl. Civil Application No.13132/2019, wherein the High Court of Gujarat has gone in to the aspect of legal challenge as made herein and has held that the satisfaction of the designated officer under Section 83 of the Act must be of the named authority and none else. Further contentions are advanced as regards to the legal contention that the power of the delegation is absent under Section 5(3) of the GST Act.

**Decision of Advance Ruling Authority :**

**DECISION:**

Statement is made by the learned Additional Government Advocate that on the basis of the material available necessary report would be sent to the concerned to initiate assessment proceedings as per law and that they do not intend to further proceed with the proceedings under Section 67 of the Act and such submission is stated to be made under instructions of the respondent No.3.

The petitioner may be called upon to secure the interest of the revenue. In light of the said stand by putting the petitioner on terms while noticing the absence of the invoice, at the present point in time as regards to the claim of credit for input tax, the Court is of the view

that the petitioner on furnishing bank guarantee of ₹ 7,00,000/- the order of attachment may be lifted.

It must be noted that in light of disposal of the main petition while recording the statement of the Government Advocate stated to be made upon instructions that proceedings under Section 67 of the Act will not be proceeded with on the basis of the material made available by the assessee to the department, entering in to the question of validity of the order at Annexure-A and the challenge as regards delegation under Section 83 of the Act by the Commissioner to other person would remain an academic question which need not be adjudicated in the present case and may be dealt with in an appropriate case. Further when the petition is itself being disposed off without the necessity of adjudication there is no warrant to embark upon further adjudication of the legal contention raised.

The request of the petitioner for continuing with the present proceedings is rejected - Petition disposed off.