

GIB/MH/KAISH IMPEX/17-01-2020/HC-74

High Court Category : Input Tax Credit

State : Maharashtra

Order No.: GIB/MH/KAISH IMPEX/17-01-2020/HC-74

Name of Entry :
Kaish Impex Pvt. Ltd.

Date : 17-01-2020

Breif Issue :

Issue & Fact of the case:

The Petitioner-Kaish Impex Private Limited is a Company incorporated under the Companies Act, 1956. The Petitioner Company is engaged in the export of perfumes and compound fragrance oil. The Petitioner is registered under the Goods and Service Tax Act, 2017. The Petitioner, in pursuant of its activity of export, had carried out various transactions with different entities.

The Respondent-Authorities under the Act initiated an inquiry against an export firm in Delhi - Maps Global. The Respondent-authorities suspected that Maps Global was involved in fraudulent availing of Input Tax Credit, and this Input Tax Credit was utilized for payment of export goods, and later a refund was sought. The Respondent-authorities scrutinized the bank account of Maps Global and noticed that an amount of Rs.28,50,000/- was transferred to one Balajee Enterprises, on 19 June 2019 and 12 July 2019. The Respondent-authorities suspected these transactions were fictitious and no material was supplied to Maps Global. Further, according to Respondent-authorities Balajee Enterprises transferred an amount of Rs.1,63,00,000/- to the account of the Petitioner on 17 October 2019.

The Petitioner was summoned under section 70 of the CGST Act to give evidence and produce documents in the office of the Directorate General of GST Intelligence. On the same day, the Directorate General issued a communication to the State Bank of India informing the Bank Manager of proceedings being initiated against the petitioner and a provisional attachment of a bank account is necessary under section 83 of the CGST Act. Accordingly, the Bank Manager was directed that no debit be allowed to be made from the said account or any other account operated by the Petitioner. The Petitioner received a communication from the State Bank of India on 5 November 2019 regarding attachment by the Respondent-Authorities. Challenging this action of attachment under Section 83 of the Act, the Petitioner has moved the present Petition.

Decision of Advance Ruling Authority :

Decisions:

The Honorable High Court observed that provisions of provisional attachment given under Section 83 read with Rule 159(1), and Form DRC-22 provide a scheme in respect of provisional attachment in certain cases. Section 83 uses the phrase 'pendency of any proceedings', the proceedings being referable to Sections 62, 63, 64, 67, 73 and 74 of the Act and no other proceedings. Thus, the bank account of the taxable person could be attached against whom the proceedings under the above-mentioned sections were initiated.

Order of provisional attachment could be passed where proceeding was initiated against a specific taxable person and opinion had been formed that the said order was necessary to be passed in order to protect the interest of the Revenue. Therefore, Section 83 does not provide for automatic extension of provisional attachment provisions to any other taxable person when an inquiry has been launched against a taxable person.

Hence, bank account of taxable person could not be provisionally attached merely on the basis of summons. The Honorable High Court set aside the order of provisionally attaching the bank account of the assessee