

GIB/GUJ/VALERIUS IND/28-08-2019/HC-76

High Court Category : Input Tax Credit

State : Gujarat

Order No.: GIB/GUJ/VALERIUS IND/28-08-2019/HC-76

Name of Entry :
VALERIUS INDUSTRIES

Date : 28-08-2019

Breif Issue :

Issue & Fact of the Case:

Petitioner is engaged in the business of purchasing and selling the material of copper whereby the scrap material of copper is purchased and the being is melted and converted into the copper pipes before selling it into the market.

On 23.11.2018 a raid has been conducted in the premises of the petitioner. The Revenue was of the view that there was a huge conspiracy and creation of bogus bills by the sellers and therefore the Revenue was to investigate the entire case. The State Tax Officer issued the provisional attachment of the bank accounts of the petitioner and the properties. Again on 27.11.2018 the raid was conducted in the premises of the petitioner and seized the sales and purchase register and files and bank/RTGS files. On the same day the petitioner was issued with summons under section 70 of the CGST Act whereby the legal representative of the petitioner was directed to remain present on 18.12.2018. The legal representative was not allowed to explain anything to the officers. The Revenue informed that the petitioner would receive show cause notice to give the petitioner an opportunity of bearing heard. On 13.02.2019 the legal representative received an email from the Department in which it was informed that the input tax credit to the tune of 30,55,680/- has been blocked. On 17.06.2019 the Commercial Tax Officer issued an order confirming the demand of 1.60 crores including tax, interest and penalty. The petitioner challenged the said order, the blockage of the input tax credit and attachment of bank accounts before the High Court.

Grounds of Appeal:

The order of provisional attachment of property and under section 83 is without jurisdiction and not tenable in law.

The power to order provisional attachment with a view to protect the interest of revenue under section 83 has been conferred upon the Commissioner.

The action on the part of the Department in blocking the credit balance of 30,55,680/- by a computer

entry could also be absolutely illegal and not tenable in law.

The order passed by the Department on 17.06.2019 is also illegal, arbitrary, unjust and contrary to the provisions of section 74 of the Act.

The impugned order dated 17.06.2019 has been passed without affording an opportunity of hearing to the petitioner, which is violative of the principles of natural justice.

Decision of Advance Ruling Authority :

Decision:

The High Court observed that even for the purpose of section 67, the satisfaction has to be of the proper officer, not below the rank of Joint Commissioner. If the proper officer not below the rank of Joint Commissioner has reasons to believe that a taxable person has indulged in contravention of any of the provisions of the Act or the rules, then in such circumstances, he may authorize in writing any other officer to carry out the inspection, search and seizure.

The High Court, on analysis of section 83, observed that the said section makes it clear that it is the Commissioner's opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner.

High Court held that the statutory requirement of 'reasonable belief' is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so without any fact, no belief can be formed. It is not required that the Authority is to state reasons for its belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which belief was formed.

The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his / her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

The High Court held that the power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weight grounds and reasons. This power should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

The High Court further held that the attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under section 83 of the Act should not be equated with the attachment in the course of the necessary proceedings.