$~53

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 29th March, 2023*

\+ **W.P.(C) 3986/2023**

SAKSHI BAHL & ANR. ..... Petitioners

Through: Mr. Aditya Kumar, Mr. Jitin Singhal, Mr. Himanshu Tyagi and Mr. Mohit Yadav, Advocates.

versus

THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL ..... Respondent

Through: Mr. Harpreet Singh, Senior Standing Counsel, with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(Oral)*

W.P.(C) 3986/2023 & CM APPL. 15508/2023 *(for stay)*

1. The petitioners have filed the present petition, *inter alia*, impugning an order dated 06.02.2023 (hereafter **'impugned order'**), whereby the respondent (Principal Additional Director General, DGGI, DZU), had ordered provisional attachment of the savings bank accounts of the petitioners, as detailed below:

S. No.	Bank Account No.	IFSC Code	Name of the beneficiary
1.	50100394909519	HDFC0001563	Sakshi Bahl
2.	50100395145331	HDFC0001563	Ansh Bahl

2. In addition, the respondent had also directed the Bank Branch Manager, HDFC Bank, not to permit any withdrawal from the bank accounts of the petitioners which were operated under the same PAN numbers, without the permission of the Department.

3. It is the petitioners' case that they are neither taxable persons nor persons covered under Section 122(1A) of the Central Goods and Services Tax Act, 2017 (hereinafter **'the Act'**); therefore, the impugned order is *ex facie* without jurisdiction.

4. Notice in this petition was issued to the respondents on 28.03.2023; Mr Harpreet Singh, learned Senior Standing Counsel had accepted notice, and had sought time to obtain Instructions, and produce the relevant file containing the reasons for issuing the impugned attachment order. He states that he is unable to produce the file but he has since obtained instructions, and the contents of the file noting, records recording the reasons for issuing the impugned order.

5. He submits that the respondent had attached the petitioners' bank account in view of the statement made by one, Shri Rajiv Chawla during the course of investigation relating to fake firms involved in passing off fake Input Tax Credit.

6. He states that during the course of proceedings, the statement of one, Shri Kamal Kumar, was recorded on 06.02.2023. He had stated that he and his wife, Mrs. Pooja Khattar, were partners in M/s Shankar/Shankar Trading Company and were authorised to operate the bank account.

However, he used to sign his cheque books in blank and hand over the same to one, Shri Sumit Maggo and Shri Rajiv Chawla, for payment of funds. He would receive a minor commission for the same.

7. Shri Rajiv Chawla and Shrimati Shipra Chawla are stated to be partners in a firm named M/s Hindustan Paper Machinery Industry, and are alleged to be the main beneficiaries of the invoices raised by M/s Shankar/ Shankar Trading Company.

8. Mr. Harpreet Singh states that Shri Rajiv Chawla was in judicial custody at the material time and his custodial statement was recorded on 06.02.2023. In his statement, he had stated that his firm maintains a bank account with South Indian Bank and he and his wife, Shipra Chawla, were partners in the said firm - M/s Hindustan Paper Machinery Industry.

9. Although the relevant file has not been produced, Mr. Harpreet Singh states that the file noting records that Shri Rajiv Chawla had issued a cheque of ₹8.5 crores for voluntary payment of Goods and Service Tax (GST) Challan, however, the funds in the bank account were not sufficient to honour the said cheque. Mr Chawla examined the messages received from the bank and had found that a sum of ₹4.5 crores and ₹2.5 crores had been withdrawn from the bank account and the remaining balance in the account was insufficient to honour the cheque of ₹8.5 crores.

10. The messages indicated that the amounts had been transferred to petitioner no. 1 (who is the sister of Shri Rajiv Chawla) and her elder son (petitioner no. 2).

11. In view of the above, the respondent was of the view that the funds lying in the account of the petitioners belonged to the partners of M/s Hindustan Paper Machinery Industry and,

therefore, had proceeded to attach their bank accounts.

12. Section 83 of the Act which empowers the Commissioner to provisionally attach the assets of a taxable person, is set out below:

> ***"83. Provisional attachment to protect revenue in certain cases.***
> *(1) Where, after initiation of any proceedings under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.*
> *(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."*

13. Concededly, in the present case, the petitioners are not taxable persons or persons as specified in Section 122(1A) of the Act.

14. It is also the petitioners' case that the funds received by them were return of advances and loans that were extended by the petitioners.

15. The petitioners have also annexed the statement of account which indicates that over a period of 9 years, ₹12.62 crores had been withdrawn from the account of petitioner no. 1 in favour of M/s Hindustan Paper Machinery Industry or Mr. Rajiv Chawla. The statement also indicates that the petitioner no. 1 had received ₹6,05,50,000/- during the aforesaid period.

16. It is not necessary for this Court to examine the nature of the payment made by Shri Rajiv Chawla to the petitioners. Clearly, the same cannot be a subject matter of adjudication in these proceedings. However, it is clear that the petitioners are

not taxable persons. The power under Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act.

17. In view of the above, the impugned order cannot be sustained. It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person.

18. The attachment of bank accounts is a draconian step and such action can only be taken in case conditions specified in Section 83 of the Act, are fully satisfied. The exercise of power under Section 83 of the Act must necessarily be confined within the limits of the aforesaid provision.

19. In view of the above, the petition is allowed and the order dated 06.02.2023 in so far as it attaches the bank accounts of the petitioners is set aside.

20. It is clarified that this order will not preclude the respondents from taking any other steps for protecting the interest of revenue *albeit* in accordance with law.

21. *Dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 29, 2023
"SS"