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

% *Date of Decision: 31.07.2023*

+ **W.P.(C) 9495/2023 & CM APPL. 36293/2023**

M/S VIKAS ENTERPRISES

..... Petitioner

Through: Ms. Vibhooti Malhotra, Mr.
Bhuvensh Satija & Mr. Udit
Sharma, Advs.

versus

COMMISSIONER OF CENTRAL TAX (GST), DELHI NORTH &
ANR.

..... Respondents

Through: Mr. Anurag Ojha, SSC with Mr.
Gautam Barwal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning a communication dated 25.03.2022 (hereafter '**the impugned communication**'), issued by respondent no.2 [Superintendent (Anti-Evasion) Group 1] to the Branch Manager, State Bank of India, Indraparstha Building, Vikas Marg, Lakshmi Nagar, Delhi, calling upon the bank to furnish certain documents pertaining to the petitioner. The said impugned communication further directed the bank not to permit any debit from the petitioner's bank account (Account



No.39617476186) maintained with the said bank without prior permission of the Department.

2. The present petition was listed on 19.07.2023. The learned counsel for the respondents had accepted notice and sought time to take instructions in regard to the statutory provision under which respondent no.2 had issued the impugned communication.

3. Mr. Ojha, learned counsel appearing for the respondents is unable to point out any provision under the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') permitting respondent no.2 to issue such a communication directing the Bank to freeze the bank account. He has referred to the provision of Section 83 of the CGST Act, which empowers the Commissioner to issue an order for provisional attachment of assets including bank accounts. However, an order of provisional attachment of assets under Section 83 of the CGST Act can be issued only if the Commissioner is of the view that it is necessary to protect the interest of the Revenue. However, admittedly, in the present case, the Commissioner has not issued any such order.

4. It is well settled that the orders of provisional attachment of bank accounts or other assets of a tax payer has a serious adverse effect on the business of the tax payer. In ***Radha Krishan Industries v. State of Himachal Pradesh & Ors. (2021) 6 SCC 771***, the Supreme Court made observations to the effect that such drastic powers must be exercised only where it is necessary. Considering that the wide adverse ramifications such orders have, this Court, has in a number of decisions,



held that the power under Section 83 of the CGST Act can be exercised only subject to the conditions, as specified therein, being fully satisfied. No order under Section 83 of the CGST Act can be passed by any officer other than the Commissioner and this can be done only if he is satisfied that it is necessary to pass such an order for protecting the interest of Revenue.

5. In the present case, respondent no.2 has, by a letter addressed to the bank seeking information, also directed freezing the petitioner's bank account. The impugned communication is without authority of law. It has been issued in complete disregard of the provisions of the CGST Act and the adverse effect of such orders.

6. The learned counsel for the petitioner also states that the bank account freezed by respondent no.2 is a cash credit account, therefore, the petitioner was unable to effectively operate the same.

7. The petitioner had filed his objection in terms of the Rule 159(5) of the Central Goods and Services Tax Rules, 2017 (hereafter '**the CGST Rules**') assuming that the impugned communication was passed under Section 83 of the CGST Act. However, the said objections were not considered and admittedly, the respondents did not furnish any response to the said application.

8. Mr. Ojha submits that the order freezing the petitioner's bank account would cease to be operative since a period of one year has since elapsed. The said contention is premised on the basis that the impugned communication is an order, under Section 83 of the CGST Act,



however, no such order was passed by the Commissioner. It is conceded that the order in Form DRC-22 has not been issued. The impugned communication has emanated from respondent no.2 and not by the Commissioner exercising jurisdiction in respect of the tax payer. The impugned communication also does not indicate that it was issued with the authority of the Commissioner.

9. In view of the above, we set aside the impugned communication to the extent that it seeks to place a debit freeze on the petitioner's account. The respondents are required to act in accordance with the statutory provisions. We find that the same has been disregarded with impunity. Accordingly, we also consider it apposite to impose cost of ₹5,000/- on the respondents. The said cost will be recovered from the concerned officer (respondent no.2).

10. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J



AMIT MAHAJAN, J

JULY 31, 2023

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