



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3275 OF 2025

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Goisu Realty Pvt. Ltd.

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

*Mr. V. Sridharan, Senior Advocate a/w Aditi Jain for the
Petitioner.*

Adv. Jyoti Chavan, Addl.G.P. for the Respondent Nos. 1 to 3.

*Ms. Roopali Barkund, Deputy Commissioner of State Tax, is
present.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JANUARY 31, 2025

P. C.

1. The above Writ Petition has been filed seeking to quash the impugned order dated 28th January, 2025 issued under Section 83 of the MGST Act, 2017. By the impugned order, the Petitioner's bank account No. 0063900 maintained with the 4th Respondent Bank has been attached.

2. Mr. Sridharan, the learned Senior Counsel appearing for the Petitioner, brought to our attention the impugned order which is at page 38 of the paper book. He submitted that the aforesaid order has been passed on surmises, conjunctures and purely on a legal dispute. He submitted that the aforesaid order is passed in the teeth of the decision of the Hon'ble Supreme Court in the case of ***Radha Krishan Industries Vs. State of Himachal Pradesh [2021(48) G.S.T.L. 113(SC)]*** as well as the CBIC Guidelines dated 23rd February, 2021. He, therefore, submitted that the attachment order be raised immediately as the same is not only bringing the business of the Petitioner to a grinding halt but also embarrassing the Petitioner as they cannot make any payments to its vendors, especially when their parent company is one of the largest FDI investors in the State of Maharashtra.

3. We have heard Mr. Sridharan for the Petitioner and also perused the impugned order dated 28th January, 2025. It is a short order and hence the same is reproduced hereunder:-

- “1. It is inform that proceedings have been initiated against the aforesaid taxable person under section 67 of the said Act to determine the tax or any other amount due from the said person.
2. As per information available with the department, it has come to my notice that the taxpayer is engaged in business of development real estate property on his own account.
3. It appears that the taxpayer has wrongly availed input tax credit which is ineligible as per section 17(5) (d) of MGST

Page 2 of 7
JANUARY 31, 2025

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Act, 2017 and needs to be reversed.

4. During the investigation, it is brought to notice to the taxpayer that he has availed in-eligible Input Tax Credit U/s 17(5) (d) of MGST Act, 2017. He has availed input tax credit of Rs.47 Cr.in GSTR 3B & also temporary reversal of input tax credit at Rs.59 Cr. through GSTR 3B. The investigation visit is conducted on 10.04.2024 to 19.04.2024.
5. Summons to witness u/s 70 of MGST/CGST Act, 2017 was issued and statement is recorded.
6. The taxpayer attended to the summons and also responded to email.
7. During the proceedings, it was asked to the taxpayer to reverse ineligible ITC which is wrongly availed by him.
8. The taxpayer denied to reverse on the ground that -
 - a. In future if he intends to sale the property before occupancy certificate (OC), he will liable to pay tax.
 - b. In the light of Hon'ble Supreme Court in the matter of Safari Retreats.
9. This office brought to notice to the taxpayer that as per the legal provision he is a not promoter and therefore in future if he is converted himself a promoter, then he has to mandatorily obtain registration under RERA Act. From being that date, he is become a promoter, he is eligible to take ITC under the GST Act.
10. For his another query regarding the petition before the Hon'ble Supreme Court in the matter of Safari Retreats, this office has asked to him to reverse the ITC under protest.
11. However, the taxpayer pursued this office to inform him for legal provision under the GST Act for re-availment of ITC in the event of his payment/reversal under protest.

12. In the meanwhile, Hon'ble Supreme Court, in the matter of Safari Retreats, has delivered judgment citing ratio of functionality test for each and every Input credit. And at the same time, the GST Council has also recommended amendment to the words "plant and machinery" instead of "plant or machinery" in section 17(5)(d) in the light of above judgment.
13. In the light of the above development, the taxpayer is not at all entitled to avail ITC.
14. However, at the time of visit, taxpayer had availed ITC of 47 cr. which was pointed out by this office that it is wrong availment. Even then taxpayer has continued availing ITC in his Electronic Credit Ledger. As on date taxpayer has wrongly availed total ineligible ITC, in his Electronic Credit Ledger, Rs.151 Cr. The taxpayer may utilize the ITC to discharge his tax liability when it arises.

In order to protect the interest of revenue and in exercise of the powers conferred under section 83 of the Act, I, Nima Arora., Joint Commissioner of State Tax, Investigation Branch-B, Mumbai hereby provisionally attach an account No:-0063900 of Sumitomo Mitsui Banking Corporation at Sumitomo Mitsui Banking Corporation, Unit 601, 6th Floor, Platina Building, Plot No C-59, Bandra Kurla Complex, Bandra East, Mumbai-400051 for the aforesaid outstanding dues.

No payment mentioned above shall be allowed to be made to the said taxpayer without the prior permission of this department.

Given under my seal and hand on 28th day of January month of year 2025."

(emphasis supplied)

4. On perusal of this order, it is clear that the dispute, if at all, is purely a legal one. The power to order provisional attachment of a property of a taxable person [including a bank account] under Section 83 is draconian in nature and the conditions which are prescribed in the statute for the aforesaid exercise of power must be strictly fulfilled. The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion of the Commissioner that it is necessary so to do for the purpose of protecting the interest of the revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the revenue. This is clearly laid down by the Hon'ble Supreme Court in **Radha Krishan Industries (supra)**.

5. All this material is conspicuously absent in the present case. In fact, the impugned order proceeds on the basis that the GST Council has also recommended amendment to the words "plant and machinery" instead of "plant or machinery" in Section 17 (5)(d), in light of the Judgment passed by the Hon'ble Supreme Court in "Safari Retreats". In one sweeping line, the Joint Commissioner of State Tax has come to the conclusion that in order to protect the interest of the revenue, he is exercising powers under Section 83.

What was the material available to him to form an opinion that the assessee (the Petitioner) is likely to defeat the demand, if any, is nowhere mentioned and is nowhere on record.

6. This is more so in the facts of the present case, when one takes into consideration that the parent company of the Petitioner, *inter-alia* through the Petitioner, is one of the largest Foreign Direct Investors in the State of Maharashtra. In fact, in the Petition, it is stated that the Petitioner has a paid up share Capital of Rs. 11,981 crores and is presently constructing three projects worth Rs. 8,000 crores for which the Petitioner has not made any borrowings. In other words, these assets are free from any encumbrance. In these facts and circumstances, we fail to understand how the Commissioner of State Tax could have come to the conclusion that it was necessary for him to exercise the powers under Section 83 and attach the bank account of the Petitioner. It is clearly a colourable exercise of power.

7. Faced with these facts, we asked Ms. Chavan, the Addl.G.P. to take instructions. On taking the necessary instructions, Ms. Chavan stated that the impugned order will forthwith be withdrawn and the same shall be

intimated to the 4th Respondent-Bank immediately. We accept the said statement as an undertaking given to the Court.

8. Be that as it may, so that the account can be unfrozen immediately, out of abundant caution, we hereby set aside the impugned order dated 28th January, 2025 and direct that the 4th Respondent shall allow the Petitioner to operate the account forthwith.

9. Since the dispute in the present case is regarding the utilization of input tax credit, Mr. Sridharan, on instructions, has stated that if they are going to utilize the input tax credit, they will intimate the department three months in advance in that regard. The said statement is accepted.

10. The Writ Petition is accordingly disposed of. No order as to costs.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]