



2025:KER:7595

WA NO. 63 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 30TH DAY OF JANUARY 2025 / 10TH MAGHA, 1946

WA NO. 63 OF 2025

AGAINST THE JUDGMENT DATED 9.8.2024 IN WP(C) NO.19121
OF 2024 OF HIGH COURT OF KERALA

APPELLANTs/RESPONDENTS 1 & 2:

- 1 THE ADDITIONAL DIRECTOR GENERAL,
THE DIRECTORATE GENERAL OF GST INTELLIGENCE, THE
OFFICE OF THE ADDITIONAL DIRECTOR GENERAL, KOCHI
ZONAL UNIT, CENTRAL EXCISE BHAVAN, KATHRIKKADAVU,
KALoor P.O., KOCHI, PIN - 682017
- 2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH
BLOCK, NEW DELHI, PIN - 110001

BY ADV SHRI.SREELAL N.WARRIER, SC, GST
INTELLIGENCE (DIRECTORATE GENERAL -DGGI)

RESPONDENTS/PETITIONERS & RESPONDENTS 3-5:

- 1 ALI K.,
S/O.MUHAMMED, 15/192, KACHERI HOUSE, PARAPPURAM,
KONDOORKKARA, PALAKKAD, PIN - 679313
- 2 SAFEEQ K.,
AGED 35 YEARS
S/O.ALI KACHERI, 15/192, KACHERI HOUSE,
PARAPPURAM, KONDOORKKARA, PALAKKAD, PIN - 679313
- 3 STATE OF KERALA,





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REPRESENTED BY ADDITIONAL CHIEF SECRETARY (TAXES),
ROOM NO. 396, 1ST FLOOR, NEAR SOUTH CONFERENCE
HALL, MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM
GPO, PIN - 695001

4 STATE TAX OFFICER,
SQUAD NO. IV, STATE TAX (INTELLIGENCE), SGST
DEPARTMENT, PALAKKAD, PIN - 678001

5 THE STATE TAX OFFICER,
SGST TAX PAYER SERVICES CIRCLE, OTTAPALAM, MINI
CIVIL STATION, KANNIAMPURAM, OTTAPALAM, PIN -
679104.

OTHER PRESENT:

SR.ADV. K. I. MAYANKUTTY MATHER FOR R1 & R2,
ADV S PARVATHI FOR R1 & R2
SRI.V.K.SHAMSUDHEEN, SR.GP FOR R3-R5

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
30.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:





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‘C.R.’

J U D G M E N T

Easwaran S, J.

The appeal is preferred by the Revenue aggrieved by the judgment of the learned Single Judge holding that an order of provisional attachment issued under Section 83 of the Central Goods and Services Tax Act, 2017 cannot continue beyond a period of one year and that on the same set of facts, a fresh order of provisional attachment cannot be issued thereafter.

2. In the appeal before us, the Revenue contends that the interpretation placed by the learned Single Judge goes against the statute and, thereby, the interest of the Revenue is substantially prejudiced and thus requires reconsideration by this Court.

3. The short facts for the disposal of the appeal are as follows: The petitioners are the partners of 'SR Traders' dealing primarily in the trade of scrap. On 4.5.2023, a notice to show cause was issued in terms of Section 74 of the Central Goods and Services Tax Act, 2017 ('CGST Act', for short). Immediately thereof, the appellants issued a notice of provisional attachment over immovable properties as well as freezing of Bank accounts. The said action of the appellants were questioned before this Court in WP(C) No.12519/2023, which resulted in dismissal of Writ Petition by Ext.P3 judgment. On appeal preferred against





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Ext.P3 judgment, a Division Bench of this Court in W.A.No.1250/2023 (Ext.P4) allowed the writ petitioner to operate two accounts while confirming the order of attachment over the other accounts. Thereafter, after a period of one year, the first appellant issued a fresh order under Section 83(1) of the CGST Act and issued an intimation to the Sub Registrar's office intimating the order of attachment. Challenging re-issuance of the order of attachment, the petitioners approached the writ court. On consideration of the writ petition, the learned Single Judge held that Section 83 of the CGST Act has to be construed strictly and the statute does not authorise the authorities to re-issue the order of attachment which has ceased to have operational on expiry of one year. While forming an opinion, the learned Single Judge followed the settled rule of interpretation of statutes.

4. Heard Sri.Sreelal Warriar, the learned counsel appearing for the appellants.

5. The learned counsel appearing for the appellants primarily contended that though Sub-Section (2) of Section 83 of CGST/SGST Act provides that the attachment will cease to operate after a period of one year from the date of issuance of the same, nothing prevents the authorities from issuing a fresh order of attachment. In support of his contention relied on the decision of the Division Bench of the Gujarat High Court in **Shrimati Priti W/o Anil Amrutlal Gandhi v. State of**





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Gujarat thro' Assistant Commissioner in Special Civil Application No.862/2011 dated 11.3.2011 [2011 SCC Online Guj 1869], wherein a pari materia provision under Section 45 of the Gujarat Value Added Tax Act, 2003 was considered and it was held that nothing prohibits the authority from re-issuing the attachment orders on expiry of one year period mentioned therein. The learned counsel further pointed out that in cases where the investigation cannot be completed within a period of one year as provided under sub-Section (2) of Section 83, the interest of the Revenue will be prejudiced and therefore, it is in order to protect the interest of the Revenue that the order of attachment can be re-issued. The learned counsel would further point out that the interpretation placed by the learned Single Judge is contrary to the statute for which purpose, it was enacted. By referring to the preamble of the Act and also the provisions of Article 265 of the Constitution of India, the learned counsel for the appellants submitted that interpretation which would defeat the purpose of the statute has to be avoided and thus the learned Single Judge erred in rendering the impugned judgment.

6. We have bestowed our anxious consideration to the submissions of the learned Counsel for the appellants.

7. Section 83 of the CGST Act reads as under:





- **“83. Provisional attachment to protect revenue in certain cases.—** (1) Where, after the initiation of any proceeding 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).”

Although Section 83 underwent an amendment by the Finance Act 2021, the provision of sub-Section (2) remained unamended. This shows that the Parliament intended to confer the validity on the order of attachment only for a period of one year from the date of issuance of the order. Hence, on expiry of a period of one year, the provisional attachment loses its efficacy and automatically pales into insignificance. We are not impressed by the argument of the learned counsel for the appellants that in order to protect the interest of the Revenue, it has to be construed as conferring power on the authorities to issue fresh orders of attachment. Accepting the argument of the learned counsel for the appellants would certainly amount to supplying words to the statute. It is in this context that we should consider the principles laid down by the Division Bench of the Gujarat High Court in



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Shrimati Priti W/o Anil Amrutlal Gandhi (supra). A reading of paragraph 13 of the decision of the Gujarat High Court shows that the Division bench held that though the order of attachment will expire within a period of one year from the date of issuance of the same, nothing prevents the authority from re-issuing the same, since to hold otherwise would be supplying words into the statute.

8. We are unable to persuade ourselves to concur with the views held by the co-ordinate bench of the Gujarat High Court in **Shrimati Priti W/o Anil Amrutlal Gandhi** (supra). In fact, in our considered view, adopting the interpretation placed by the Gujarat High Court, will amount to conferring the power on GST authorities to re-issue the order of attachment in respect of the same property over which the earlier order of provisional attachment ceased to have effect which is not intended by the legislature. Moreover, the same would amount to supplying words into the statute, which is impermissible under law. It is well settled in taxation laws, there cannot be any intendment in a taxing statute. Courts are required to interpret the words in a taxing statute strictly. Nothing can be read in and nothing can be read out of the statute. (**Cape Brandy Syndicate v. Inland Revenue Commissioners [(1921) 1 K.B.64] – per Rowlatt J.**)

9. We must note that the view taken by us is also guided by the principles governing the **doctrine of “eminent domain”**. The





doctrine of eminent domain will apply where the State tries to deprive its citizens of the right over the property without due process of law. The right of property is not merely confined to the rights over the immovable properties, but also over any materialistic matter. We must also remember that the right to hold property is a constitutional right which is protected under Article 300A of the Constitution of India. Therefore, it is all the more reason why the State should be cautious when dealing with the property rights of citizens.

10. Keeping in mind the principles governing the doctrine of eminent domain, when we look into the statute, i.e. CGST/SGST Act, we do not find any enabling provision which permits the authorities to re-issue the order of attachment which had ceased to operate by operation of law. Normally, an attachment of property belonging to a citizen is part of execution proceedings that follow an adjudication. A provision providing for provisional attachment before adjudication has, therefore, to be interpreted strictly being in the nature of an exception to the general rule, more so in a taxing statute. We are also equally not impressed with the argument of the learned counsel for the appellants that it is with a view to protect the interest of the Revenue that the interpretation sought to be placed by the Revenue has to be accepted. In our considered view, there are sufficient safeguards under the statute which would protect the interest of the Revenue which requires





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no elaboration. Suffice to say, it is not only through a provisional order of attachment that the interest of the Revenue is protected.

11. We also further noticed that the learned Single Judge has extensively considered the position of law flowing out of the decision of the Hon'ble Supreme Court in **Radha Krishna Industries v. State of Himachal Pradesh and Others [(2021) 6 SCC 771]**, in which the provision of Section 83 of the Himachal Pradesh GST Act was interpreted and was held that the provisional order of attachment ceases to have effect after a period of one year. We see no reason to take a different view than what is expressed by the learned Single Judge.

In the light of the principles discussed above, we are of the considered view that the appellants have not made out any case which requires us to call upon the respondents/writ petitioners on notice to answer the contentions in the appeal. The writ appeal thus lacks merits and accordingly, the same is dismissed. No Order as to costs.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.,
JUDGE

jg

