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

+ W.P.(C) 257/2023

M/S VKS INDUSTRIES Petitioner

Through: Counsel (appearance not
given).

versus

COMMISSIONER, CENTRAL EXCISE
AND CGST

..... Respondent

Through: Mr Abhishek, Senior Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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13.02.2023

1. The petitioner has filed the present petition, *inter alia*, praying as under:

a) “issue a writ of Mandamus or any other appropriate writ or order, directing the Respondent to set aside his Order dated 06.02.2020 and defreeze the Petitioner’s Axis Bank Account No. 913020053428041 at the earliest.

b) award the cost of the writ petition;”

2. The petitioner is aggrieved by the action of the respondent attaching its Bank Account (Bank Account No. 913020053428041 with Axis Bank) on a provisional basis by an order dated 06.02.2020.

3. Section 83 of the Central Goods and Services Tax Act, 2017 (CGST Act), which enables provisional attachment of assets, including bank accounts, reads as under:

“83. Provisional attachment to protect revenue in certain cases.-(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, 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 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).”

4. It is not disputed that the provisional attachment order dated 06.02.2020 was passed in exercise of powers under Section 83 of the CGST Act. In terms of Sub-section (2) of Section 83 of the CGST Act, the provisional attachment would cease to have any effect after the expiry of the period of one year from the date of the said order. Thus, in terms of Section 83(2) of the CGST Act, the provisional attachment order dated 06.02.2020 ceased to be operative after 06.02.2021.

5. The learned counsel appearing for the respondent states that the counter affidavit has been filed. However, the same is not on record.

6. On a pointed query, whether the counter affidavit discloses any order other than 06.02.2020 attaching the Bank Account in question or extending the attachment, the learned counsel fairly states that no further orders have been passed.

7. We are unable to accept that the provisional attachment can be extended. However, even if it is assumed that the same can be – which we do not – there is no order extending the same.

8. After the provisional order dated 06.02.2020 was passed, a show cause notice dated 30.07.2021 was issued to the petitioner. Admittedly, the said show cause notice has not been adjudicated till date. Since the petitioner's relief is limited to the de-freezing of its Bank Account, we are refraining from examining whether the proceedings in relation to the said show cause notice can now continue.

9. In view of the above, the present petition is allowed. The order dated 06.02.2020 is no longer operative. Axis Bank shall, if there is no other order by any other authority freezing the petitioner's bank account, on the strength of this order, permit the petitioner to operate the Bank Account in question.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 13, 2023
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