

Enterprises vs. Assistant Commissioner State Tax 28 August 2023

Issue Involved

Whether cash credit facility can be attached by provisional attachment order?

Held that

Cash credit facility is not a debt and hence cannot be attached; However, writ petition rejected taking note of remedy is available in GST law.

Case Reference

[2023] 151 taxmann.com 111 (Calcutta)



Facts of the Case:

Revenue:

- Department contended that some of the documents of the petitioner were fake and hence ITC should be disallowed and penalty for the same should be imposed.
- Notice u/s 83 has been issued by the department to the bank of the petitioner to provisionally attach the cash credit facility.

Petitioner:

- o Petitioner is a partnership firm.
- State tax officials carried out book and record inspections in accordance with Section 67 of the WBGST Act, and an INS-01 form was issued with proof of fictitious export invoices and false purchases.
- o In response, the department filed SCN asking why-
 - ITC of Rs.57,96,325 (CGST) and Rs.57,96,325 (SGST) should not be disallowed.
 - Interest u/s 50(1) should be paid.
 - Penalty amounting to Rs.14,49,081 (CGST) and Rs.14,49,081 (SGST) should not be levied.
- Later, the department issued DRC-014 to the petitioner's bank, attaching the firm's provisional cash credit facility. However, the petitioner argued in opposition that the cash credit facility is not a debt and cannot be attached unless there is a threat to the interest of Revenue.

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Summary:

In general, a High Court would not accept a Writ Petition under Article 226 of the Indian Constitution if the Act itself provides an aggrieved party with the same relief. The petitioner has sufficient legal authority to object to the release of their bank account under the provisions, thus the High Court is unwilling to grant relief under its writ jurisdiction; the Writ Petition is dismissed.

Notes to News & Updates:

Please note that Facts of the Case and Queries are as summarized by us based on our reading of case law and our interpretation based on law prevailing as on the judgement date. No assurance is being given on the correctness of the facts, and our opinion / analysis is given solely based on facts provided herein above.

Please note that this news and update is prepared by author for spreading knowledge, and the view is a matter of interpretation, and law is subject to various interpretations. The application of law and impact can vary widely based on the specific facts and interpretation of statute. Our views expressed above is based on facts and assumptions indicated above. No assurance is given that the authorities and/or Courts will concur with our views. We do not accept any liability, for any loss or damage caused as a result of any action taken on the above opinion expressed by us.

We hope you will find the above in order and we shall be too glad to provide any other assistance as may be required. In case you are looking specific expert help in relation to matters connected to this update or otherwise, please feel free to write to us on vaibhavjain@mehragoelco.com; mg@mehragoelco.com

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