

22 September 2023

## Issue Involved

- Fraudulently transfer of ITC.
- Availing ITC through fraudulent means using dummy companies.

## Held that

- Principal Commissioner, CGST, Meerut did not have jurisdiction in respect of territories where petitioner's principal place of business was located and had no jurisdiction to pass attachment order in respect of petitioner as 'the taxable person'.
- Assets of a person falling under Sub-section (1A) of Section 122 of CGST Act, 2017 can be attached only by a Commissioner who exercises jurisdiction in respect of said taxable person.
- Petitioner's bank accounts could not be attached on mere suspicion that Petitioner Company was a dummy unit.
- Formation of opinion by Commissioner under Section 83 of CGST Act, 2017 should be based on credible material having live link with formation of opinion.
- Term 'Commissioner' as used in Section 83 of CGST Act, 2017 would necessarily refer to Commissioner who exercises jurisdiction under CGST Act in respect of 'the taxable person' Provisions of Section 13(8)(b) and Section 8(2) of IGST Act are legal, valid and constitutional and are confined in their operation to provisions of IGST Act only and same cannot be made applicable for levy of tax on services under CGST and MGST Acts.

## Case Reference

[2023] 150 taxmann.com 481 (Delhi)

## Facts of the Case:

### Revenue:

- The Adjudicating Authority rejected the petitioner's application for refund of ITC, considering the services rendered by the petitioner as intermediary services with the place of supply in India.
- The Appellate Authority upheld the decision of the Adjudicating Authority, stating that the services required the personal presence of the recipient of services or the person acting on its behalf, making them located in India as per the provisions of the IGST Act.

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## Petitioner:

- The petitioner is a proprietary firm engaged in providing marketing and promotion services to its overseas customers, who are engaged in manufacturing and/or selling goods.
- M/s. Sidhivinayak Chemtech Private Limited, a company engaged in the trade of industrial chemicals.
- Filed a writ petition challenging a provisional attachment order passed by the Principal Commissioner, Central Goods & Service Tax (CGST) Commissionerate, Meerut.
- The attachment order provisionally attached the petitioner's bank account based on allegations of fraudulent use of Input Tax Credit (ITC) by M/s Best Crop Science Pvt. Ltd. and M/s Best Crop Science LLP.
- The petitioner argued that the attachment order lacked jurisdiction as the respondent did not have territorial jurisdiction to issue such an order.
- They contended that the order did not provide valid reasons for the attachment or refer to any tangible material justifying the need to protect the revenue's interest.
- The petitioner also claimed that their business operations fell under the jurisdiction of Gautam Buddha Nagar Commissionerate and not the Meerut Commissionerate. Jurisdictionality and validity of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017.

## Summary:

In the case of Sidhivinayak Chemtech (P) Ltd vs Principal Commissioner CGST, Sidhivinayak Chemtech (P) Ltd a chemical company filed a writ petition challenging a provisional attachment order and its subsequent confirmation order passed by the respondent authorities. The petitioner argued that the order lacked jurisdiction, as the respondent did not have territorial jurisdiction over the petitioner's places of business. They also contended that the order did not provide valid reasons or tangible evidence to protect the government's interest. The court found that the respondent lacked jurisdiction to pass the order, as it did not cover the petitioner's places of business. The court emphasized that the power of provisional attachment is draconian and can only be exercised if necessary to protect the government's interest.

The court held that the order and its confirmation were without jurisdiction and set them aside. The court directed the respondent to release the petitioner's bank account and ordered the petitioner's objections under relevant rules to be decided after an opportunity to be heard. As a result of lack of jurisdiction and inadequate grounds for attachment, the court decided in favor of the petitioner and invalidated the order as well as its confirmation.

### 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](mailto:vaibhavjain@mehragoelco.com) ; [mg@mehragoelco.com](mailto:mg@mehragoelco.com)

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