

HC orders lifting of provisional attachment of bank account as power can't be used as a tool to harass assessee: HC

Facts of the case : Smita and Sons Coal (P.) Ltd. v. State of Gujarat - [2023] (Gujarat)

The petitioner was engaged in the business of trading in coal. The department issued summons for recording of statement and production of sales and purchase registers. The director of petitioner was unable to attend and requested for adjournment. However, the department has issued order for provisional attachment of bank account. The request was made to authority to release bank account however same was not released and it filed writ petition against the same.

The department submitted before the High Court that Summon was issued to petitioner to give statements and to produce documents on ground that ITC was availed on bogus and fake invoices by the seller. In order to protect interest of revenue, the bank account was attached because petitioner did not have any freehold property and there was nothing it could have offered. The petitioner contended that it had purchased goods from seller and its GST registration was also in tact when purchase had been made and GST was paid at time of purchase.

Decision of the case :

The Honorable High Court noted that the power under Section 83 is serious and harsh in nature. It should not be used as a tool to harass the assessee nor should be used in any manner that it may have irresistible detrimental effect on business. The Authority must ensure that action should not affect business activities of taxable person. However, the instant case, the department didn't follow proper procedure before issuing order of provisional attachment prescribed by CBIC.

Therefore, the Court set aside the impugned order and directed bank to not permit petitioner to operate account to extent of tax amount and release attachment on furnishing of bond for balance amount.