IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11190 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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M/S WIPRO LTD.
Versus
STATE OF GUJARAT

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Appearance:
MR TUSHAR HEMANI SENIOR COUNSEL WITH MR KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1,2
MR UTKARSH SHARMA, AGP for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 09/03/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 The draft amendment, as prayed for, is allowed. The necessary incorporation shall be carried out at the earliest.

2 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

> *"(a) That this Honorable Court be pleased to issue a writ of certiorari or writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the notices, dated 31.07.2017 and 02.08.2021 (Annexure H colly), and letter dated 05.08.2021 (Annexure IA) issued by the respondent No.3 to the branch managers of SBI, Ashram Road, Ahmedabad and HSBC, C. G. Road, Ahmedabad and to any other bank where the petitioner No.1 has bank account; and"*
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> *(b) Pending hearing and final disposal of this petition, this Honorable Court by way of ad-interim and/or interim relief be pleased to restrain the respondents to recover any amount from bank account number 00000010503343023 of SBI Bank; bank account of number 051754687001 and 071006084004 of HSBC and from any other bank account of the petitioner No.1 with respect to the notices dated 31.07.2021 and 02.08.2021 (Annexure – H colly) or any other similar notices, if any issued to any banks where the petitioner No.1 has its bank account; and*
>
> *(b.1) Pending hearing and final disposal of this petition, this Honorable Court by way of ad-interim and/or interim relief be pleased to restrain the respondents to recover any amount from any bank account of the petitioner No.1 in HSBC Bank with respect to the letter dated 05.08.2021 (Annexure – IA); and*
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> *(c) Pending hearing and final disposal of this petition, this Honorable Court by way of ad-interim and/or interim relief be pleased direct the respondents to release the bank account number 00000010503343023 of SBI Bank; bank account of number 051754687001 and 071006084004 of HSBC attached vide notices 31.07.2021 and 02.08.2021 (Annexure – H colly) issued by the respondent No.3; and*
>
> *(d) Ex parte ad-interim relief in term of prayer 9(b) and 9(c) be granted; and*
>
> *(e) For costs, and*
>
> *(f) That this Honorable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."*

3 The writ applicant No.1 is a limited company incorporated under

the Companies Act and is engaged in the business of information technology services including the sale of hardware and software, the sale of consumer products and supply and installation of solar power generation plant. The writ applicant No.2 is serving as the Assistant Manager of Finance with the writ applicant No.1 – company.

4 The writ applicant – company was registered under the VAT Act and the Central Sales Tax Act, 1956 (for short, "the Central Act") for the relevant period.

5 The writ applicant No.1 carries its business operations under the following divisions:

> *"(i) Infotech Division which include supply of information technology services and sale of hardware and software.*
>
> *(ii) Consumer Division which include sale of lightings, toiletries, etc and*
>
> *(iii) Solar Division which include supply of solar generation and supply of power."*

6 The subject matter of challenge is the legality and validity of the notice issued by the State Tax Officer – II, Unit – 8, Ahmedabad dated 31st July 2021 to the Branch Manager, State Bank India, Ashram Road, Ahmedabad. The same reads thus:

> *"No.CTO-2/Unit-8/Recovery Branch/2021-22/OW-*
>
> *Office of the Asst. Commissioner of State Tax*
> *Unit-8, D-Block, 3rd Floor, M.S. Building,*
> *Lal Darwaja, Ahmedabad, Gujarat.*
> *Phone No.-079-25506351*
> *Dt:31/07/2021*

To,
The Branch Manager,
State Bank of India,
Ashram Road, Ahmedabad.

A/C. No.00000010503343023 & any other deposits of said dealer

This is to inform to you that Government of Gujarat has to recover Rs. ***49,80,05,122/ +Interest as Assessment Due*** */ Re Assessment Due / Penalties / Interest for the Period of Financial Year of* ***2006-07(VAT), 2008-09(VAT), 2011-12(VAT/CST), 2012-13(CST), 2013 14/VAT/CST), 2014-15(VAT) from the Dealer M/S. WIPRO LTD. Whose Registration No. is 24073403460.*** *Kindly attach the balance of current/saving accounts and fixed depositsor any other kind of deposits based on the* ***PAN NO: AAACW0387R.*** *Also provide the KYC details for the same. You have to pay Rs.* ***49,80,05,122/-+ Interest*** *to the same dealer. You possess the Rs.* ***49,80,05,122/-+ Interest*** *on behalf of the said dealer. So, I State Tax Officer (2) Of Unit-8, Ahmedabad, as the power Vested to me U/s. 44.of Gujarat Value Added Tax Act-2003, order to Deposit Rs.****49,80,05,122/-+ Interest*** *with Prescribed Challan at Government Treasury (or by e payment mode) within Seven days on receipt of this Notice and also provide the details of closing balance to the State Tax Inspector who has come to your bank then issue Demand Draft in favour of* ***"SBI VAT A/C"*** *as per available closing balance of aforementioned dealer (Refer Section 44 and 67(9)(1) of Gujarat Value Added Tax Act-2003), Also do provide the details of "PAN INDIA SEARCH" (Refer Section 70 of Gujarat Value Added Tax Act-2003). If Failing to comply with orders of this notice you are liable to penalty of Rs.25,000/-(INR) (Refer Section 70 of Gujarat Value Added Tax Act-2003).*

Sd/-
Place : Ahmedabad *State Tax Officer (2)*
Date : 31/07/2021 *Unit-8, Ahmedabad."*

7 Identical two even dated notices as above came to be issued to the Branch Manager, HSBC Bank Limited, C. G. Road, Ahmedabad with respect to the account No.101053312001 and the third notice dated 2nd August 2021 to the Branch Manager, HSBC Bank Limited, C. G. Road, Ahmedabad with respect to the accounts Nos.051754687001 and 071006084004 resply. It appears that against the assessment orders, appeals are pending before the first appellate authority as well as the Tribunal. The details are as under:

Year	Acts	Tax paid with Return	Demand as per assessment	Relief granted in First Appeal, if any	Amount in dispute	Pre-deposit paid in cash	BG issued	Remarks
2006-07	VAT	3,34,14,366	12,47,363	Pending but recovery made	12,47,363	2,50,000		Already recovered
2008-09	VAT	6,35,82,876	3,36,198	Settled but recovery made	3,36,198	68,000		Settled under Amnesty Scheme.
2011-12	VAT	14,54,77,638	8,53,10,401	Pending	8,53,10,401		8,53,10,401	First appeal filed under the Gujarat VAT Act is pending for final disposal. Stay has been extended from time to time on the basis of BG.
	CST	5,45,746	56,35,861	Pending	56,35,861		56,35,861	First Appeal filed under the Central Sales Tax Act is pending for final disposal. Stay has been extended from time to time on the basis of BG.
2012-13	CST	28,03,785	1,43,47,972	28,50,080 recovery made	1,14,97,892	28,69,595		I. Second appeal and stay application therein are filed under the Central Sales Tax Act and they are pending for final disposal. ii. first

								appeal partly allowed.
	VAT	*4,62,75,147*	*9,96,37,460*	*No relief*	*9,96,37,460*	*1,99,27,492*		*Second appeal and stay application therein are filed under the Gujarat VAT Act and they are pending for final disposal.*
2013-14	*CST*	*7,45,954*	*5,03,99,794*	*4,51,58,941*	*52,40,853*	*1,10,69,259*		*I. Second appeal and stay application therein are filed under the Central Sales Tax Act and they are pending for final disposal.* *ii. First appeal is partly allowed. Pre-deposit made more than the amount confirmed in first appeal.*
2014-15	*VAT*	*48,22,098*	*8,75,51,140*	*No relief*	*8,75,51,140*	*77,88,753*	*7,97,62,387*	*Second appeal and stay application therein are filed under the Gujarat VAT Act and they are pending for final disposal.*
Total relating to disputed period		*29,76,67,610*	*34,44,66,188*	*4,80,09,021*	*29,64,57,167*	*4,19,73,099*	*17,07,08,649*	
2006-07, 2008-09 and 2012-13 amount already recovered.					*1,51,24,422*			

Therefore, outstanding after adjustment of recovered amt., pre-deposit & bank guarantee.	*6,86,50,997*			

8 We have heard Mr. Tushar Hemani, the learned Senior Counsel assisted by Mr. Kuntal A. Parikh, the learned advocate appearing for the writ applicants and Mr. Utkarsh Sharma, the learned A.G.P. appearing for the State respondents.

9 Mr. Hemani made the following submissions:

"(i) Indisputably, the respondent No.3 has not invoked the power under Section 45 of the VAT Act to attach the bank accounts of the writ applicant No.1 during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment.

(ii) The respondent No.3 has failed to frame an opinion for the purpose of protecting the interest of the government revenue by attaching the bank accounts of the writ applicant no.1.

(iii) Further, the respondent No.3 has not brought on record any tangible material on the basis of which he would have framed an opinion that the writ applicant No.1 is likely to defeat the demand and therefore attachment is necessary for protecting the interest of government revenue.

(iv) The respondent No.3 has not served copy of order of attachment to the writ applicant No.1.

(v) Further, a final demand or liability against the petitioner No.1 has not been finalized so far because appeals together with stay applications under the VAT Act and the Central Act, for the periods for

which bank accounts have been attached, are pending before the appellate authorities including VAT Tribunal.

4.13 Further, it is submitted that without following procedure prescribed under Section 44 of the VAT Act the respondent No.3 has initiated recovery proceedings under the said section and threatened the bank managers of the said banks to issue Demand Draft of Rs.49,80,05,122/- + interest in favour of "SBI VAT A/C" from account of the writ applicant No.1.

(i) The respondent No.3 has initiated coercive third party recovery proceedings under Section 44(1)(b) of the VAT Act against the writ applicant No.1 during the pendency of its appeals and stay application filed therein under the VAT Act and the Central Act.

(ii) The respondent No.3 has not served copy of notices dated 31.07.2021 and 02.08.2021 to the writ applicant No.1 though it is a mandatory requirement under Section 44(1) of the VAT Act.

(iii) The respondent No.3 has failed to provide the calculation on the basis of which he has determined dues of Rs.49,80,05,122/- + interest for the period 2006-07 (VAT), 2008-09 (VAT), 2011-12 (VAT/CST), 2012-13(CST), 2013-14(VAT/CST), 2014-15(VAT)."

10 Mr. Hemani placed strong reliance on a recent pronouncement of the Supreme Court in the case of **M/s. Radha Krishan Industries vs. State of Himachal Pradesh [2021 SCC Online SC 334],** wherein the Supreme Court has observed as under:

"49. Now in this backdrop, it becomes necessary to emphasize that before the Commissioner can levy a provisional attachment, there must

be a formation of "the opinion" and that it is necessary "so to do" for the purpose of protecting the interest of the government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalization of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory pre-conditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that "for the purpose of protecting the interest of the government revenue, it is necessary so to do", it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.

50. By utilizing the expression "it is necessary so to do" the legislature has evinced an intent that an attachment is authorized not merely because it is expedient to do so (or profitable or practicable for the revenue to do so) but because it is necessary to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallized. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be

permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an assesses can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorize Commissioners to make preemptive strikes on the property of the assessee, merely because property is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue.

51. These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure. It also postulates the maintenance of a proportion between the nature and extent of the attachment and the purpose which is sought to be served by ordering it. Moreover, the words embodied in sub-Section (1) of Section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. While dealing with a similar provision contained in Section 4536 of the Gujarat Value Added Tax Act 2003 , one of us (Hon'ble Mr Justice MR Shah) speaking for a Division Bench of the Gujarat High Court in Vishwanath Realtor v State of Gujarat observed:

> *"8.3. Section 45 of the VAT Act confers powers upon the Commissioner to pass the order of provisional attachment of any property belonging to the dealer during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment. However, the order of provisional attachment can be passed by the Commissioner when the Commissioner is of the opinion that for the purpose of protecting the interest of the Government Revenue, it is necessary so to do. Therefore, before passing the order of provisional attachment, there must be an opinion formed by the Commissioner that for the purpose of protecting the interest of the Government Revenue during the pendency of any proceedings of assessment or reassessment, it is necessary to attach provisionally any property belonging to the dealer. However, such satisfaction must be on some tangible material on objective facts with the Commissioner. In a given case, on the basis of the past conduct of the dealer and on the basis of some reliable information that the dealer is likely to defeat the claim of the Revenue in case any order is passed against the dealer under the VAT Act and/or the dealer is likely to sale his properties and/or sale and/or dispose of the properties and in case after the conclusion of the*

assessment/reassessment proceedings, if there is any tax liability, the Revenue may not be in a position to recover the amount thereafter, in such a case only, however, on formation of subjective satisfaction/opinion, the Commissioner may exercise the powers under Section 45 of the VAT Act." (emphasis supplied)"

11 In such circumstances referred to above, Mr. Hemani prays that the impugned notices be quashed and set aside and the first appellate authority as well as the Tribunal may be directed to take up the appeals for hearing on their own merits.

12 On the other hand, this writ application has been vehemently opposed by Mr. Utkarsh Sharma, the learned A.G.P. appearing for the State respondents.

13 The stance of the respondents as reflected from the affidavit-in-reply duly affirmed on behalf of the State Tax Officer – II, Unit – 8, Ahmedabad is as under:

"7 I say and submit that the present petitioner is liable to pay tax for the period of Assessment Years 2006-07, 2008-09, 2011-12, 2012-13, 2013-14 for which details are provided as follows:

Sr. No.	*Assessment Years*	*Assessment orders passed on*	*Total dues under VAT/CST Acts*	*Appeals before 1st appellate authority*	*Appeals before Tribunal*	*Status of appeals*	*Time taken before 1st appellate authority*
1	*2006-07*	*31.03.11*	*12,47,363 VAT*	*08.06.2011*	*Not approached*	*Stay granted before 1st appellate authority till 30.03.2012.*	*30.09.2011*
2	*2008-09*	*06.11.2012*	*3,36,198 VAT*	*20.11.2012*	*Not approached*	*Rejected on 19.03.2018 before 1st appellate authority.* *Application made on 10.01.2020 under "Vera*	*15.12.2013* *30.06.2013* *31.08.2013* *15.11.2013*

						Samadhan Yojna" benefit availed.	
3	*2011-12*	*31.03.2016*	*8,53,10.401/-*	*03.05.2016*	*Not approached*	*Stay granted before 1st appellate authority till 30.09.2019*	*30.06.2017* *30.09.2019*
4	*2012-13*	*27.03.2017*	*1,85,80,473/- VAT* *Total dues 1,43,47,973/-* *Remaining dues 11,497,892/- CST*	*26.05.2017*	*16.07.2021*	*Stay till 31.10.2021 under VAT dues* *Appeal partly allowed by 1st appellate authority qua CST dues on 05.09.2019.* *Appeal before Tribunal pending*	*19.04.2019* *04.07.2019* *17.07.2019* *27.08.2019*
5	*2013-14*	*19.02.2018*	*9,96,37,459/- VAT*	*16.03.2018*	*28.07.2021*	*Appeal rejected on 23.12.2020 before 1st appellate authority* *Appeal pending, No stay granted before Tribunal.*	*27.06.2018* *13.08.2018* *14.08.2018* *16.08.2018* *05.10.2018* *04.02.2019* *28.09.2020*
6	*2014-15*	*18.03.2019*	*Total dues 8,75,57,140/- VAT* *Remaining VAT dues to be recovered 2,34,76,095/-*	*03.06.2019*	*28.07.2021*	*Partly allowed by 1st appellate authority* *appeal pending, no stay granted before Tribunal.*	*12.07.2019* *30.12.2019* *30.06.2019*

Details of notices issued for payment of tax liabilities"

Sr. No.	*Assessment year*	*Date of issuance of notice u/s. 44(b)*	*Total dues recovered*	*Notices returned back as the address by the petitioner is not updated on VAT portal.*
1	*2006-07*	*31.07.2021*	*2,04,562/-*	*07.08.2021*
2	*2008-09*	*31.07.2021*	*-*	*07.08.2021*
3	*2011-12*	*31.07.2021*	*-*	*07.08.2021*
4	*2012-13*	*31.07.2021*	*52,79,855/-*	*07.08.2021*

5	2013-14	31.07.2021	13,63,64,099/-	07.08.2021
6	2014-15	31.07.2021	3,29,81,019/-	07.08.2021

8 I say and submit that the issue involved in this matter pertains to Assessment Year 2006-07, 2008-09, 2011-12, 2012-13, 2013-14 hence, the provisions of the Gujarat Value Added Tax Act, 2003 would have applicability. It is further submitted that the respondent authorities have exercised the powers under Section 44 of the Gujarat Value Added Tax Act, 2003 whereby, the respondent department had addressed a letter/notice to State bank of India and HSBC Bank wherein, both the Banks were directed to handover an amount of Rs 49,80,05,122/- along with interest, the powers of section 44 which have been exercised by the authorities qua the bank accounts of the petitioner are those account which have been mentioned by the petitioner in its registration form, it is no toward that in the memo of the petition the petitioner has mentioned SBI bank of Ashram road where as the authorities have issued notice on State bank of India (SBI), Bangalore branch. The said notices dated 31.07.2017 which was received by the banks on 02.08.2021 did not specify attachment of the said bank accounts, as the provisions of Section 44 has been exercised which pertains to special mode of recovery. The bank accounts of the petitioner bearing account no. 051754687001 in HSBC bank and account no. 10503343023 in SBI Bank are defreeze on 06.08.2021. (Annexed herewith and marked as annexure R1 is the copy of order dated 06.08.2021 for defreezing the said bank accounts) And respondent authorities requested bank to deposit the said tax liabilities of the petitioner as mentioned in the notice. The relevant Sub-section which requires due consideration of this Hon'ble Court is Sub-section 1 Sub-clause (b). For the sake of convenience Section 44 Sub-section 1 Sub-clause (b) is reproduced herein below:

> "Section 44 - Special mode of recovery. -
>
> 44(1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require.
>
> (b) any person who holds or may subsequently hold monies for or on account of such dealer, to pay to the Commissioner, either forthwith upon the monies becoming due or being held or within the time specified in the notice (but not before the monies becomes due or is held as aforesaid) so much of the monies as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty or interest under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation. - For the purposes of this sub-section, the amount of monies due to a dealer from, or monies held for or on account of a dealer by any person, shall be calculated by the Commissioner after deducting therefore such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer to such person."

9 I say and submit that the respondents authorities have recovered a total amount of Rs. 17,48,29,535/- towards the tax liability of the petitioner for the above mentioned assessment years after giving opportunity to the petitioner by issuance of the notice under section 44 of the Gujarat Value Added Tax act, 2003, Details qua the same are provided in the above mentioned table, It is necessary to specify that all of the notices were returned as the petitioner had not corrected the postal address on the portal hence, the authorities were only having details of the earlier address of the petitioner (Annexed herewith marked as R2 Coolly are the copies of the registration form which reflects the postal address on which the said notices were issued, as well as the notices issued under section 44 of GVAT Act.) It is further required to be noted that as there was no stay granted recovery of the said amount was done by the respondent authorities. I say and submit at this juncture as stay was granted for assessment year 2011-12 the authorities has not initiated recovery proceedings and as on date the recoverable amount is Rs. 51,20,90,494/-which is with interest."

14 As against the aforesaid, the writ applicants have filed rejoinder stating as under:

"7 The contents of paragraph no.8 are denied. It is submitted that in the said reply, the assertion made by respondent no.3, that he had sent the impugned recovery notice dated 31.07.2021 to SBI Branch located in Bangalore, since it is the bank which petitioner no.1 has mentioned in its Registration Form is false for the following reasons:

7.1 Firstly, it is submitted that the Registration Form of petitioner no.1 as attached in R-2 (Colly.)', in the said Reply, does not mention the bank account details corresponding to SBI Bank's branch in Bangalore wherein the Respondent no.3 has alleged to have sent the impugned notice of recovery.

7.2 Secondly, the impugned notice dated 31.07.2021, attached in 'Annexure H (Colly.) along with the memo of the petition, issued by Respondent no.3, is clearly addressed to 'SBI Bank, Ashram Road, Ahmedabad".

7.3 Further, I categorically deny the assertion made in the said Reply that the impugned notices dated 31.07.2021 and 02.08.2021 received by the HSBC and SBI banks did not specify attachments of the said bank accounts as provisions of 'Section 44' have been exercised which pertains to 'special mode of recovery. It is submitted that the copies of the impugned notices as attached with the memo of the petition clearly show that the respondent has ordered the said banks to 'attach the balance of current/saving accounts and fixed deposit.

7.4 Furthermore, the respondent no.3 himself contradicts his above assertion, by stating in the reply, the fact that the bank accounts of petitioner no.1 are defreezed by his order dated 06.08.21. It is therefore, submitted, that if, respondent no.3 had not ordered for attachment of the bank accounts in the impugned notices, then the accounts would not have been de-freezed vide letter dated 06.08.2021 (attached in Annexure R-1' in the said Reply).

7.5 However, it is submitted that section 44 of the GVAT Act pertains to only recovery from bank accounts and does not empower the authorities to attach the bank accounts of petitioner no.1. The bank accounts had been ordered to be attached by respondent no.3 and thereafter, they were attached by the HSBC and SBI banks. In other words, on specific direction for attachment by Respondent no.3, the said Banks did not allow petitioner no.1 to operate its Bank accounts. Therefore, not expressly mentioning reference to section 45 the GVAT Act cannot be treated as non-invocation of the provisions of Section 45 of the GVAT Act. The conduct of respondent no.3 implies that he had exercised powers under section 45 of GVAT Act. Also, the fact that on an order (dated 06.08.21), passed by respondent no.3, the bank accounts were released, establishes that powers under section 45 of the GVAT Act, which pertains to provisional attachment, were in fact exercised by the respondent no.3. Therefore, it is submitted that respondent no.3 has invoked the provisions of section 44 and section 45 of the GVAT Act.

7.6 Furthermore, no assessment proceedings were pending at the time of issuance of impugned notices to Petitioners' banks and therefore it is submitted that prerequisite conditions of section 45 of the GVAT Act have not been complied with by the Respondents for attaching bank accounts of the Petitioners.

7.7 In the above premises it is submitted that the Respondent no.3 has issued the impugned notices under section 44 and 45 of the GVAT Act without complying with the pre-requisite conditions mentioned therein. Therefore, the impugned notices are illegal and manifestly arbitrary, hence, consequential actions of the Respondents are also liable to be quashed and set aside.

8. The contents in Paragraph no. 9 are denied to the extent it is stated that the notices dated 31.07.2021 were forwarded to Petitioner no.1. It is submitted that the Respondent no.3 has failed to show any documentary evidences proving its assertion that notices was duly sent to the petitioners and also failed to show that they were returned back. It is submitted that the respondent no.3 has not acted in compliance with the mandatory pre-condition of serving copies of the impugned notices to petitioner no.1 at its "last known address" as required under section 44(1), before issuing the notices of recovery of money to the banks under section 44(1)(b) of the GVAT Act.

8.1 Moreover, assuming not accepting, if the notices were forwarded by the Respondent no.3 to the Petitioner no.1, they were not forwarded to the correct last known address of petitioner no. 1 for the following reasons:

(i) It is submitted that Petitioner no.1 got its Registration Certificate amended in September 2015 for a limited period and thereby, 1 Floor. P.G Warehouse, Bajrang Lane, Aslali Village, Ahmedabad (for short "Aslali") address was added to the Registration Certificate. (List of amendments and Amendment History detail are attached herewith and marked as Annexure M Colly.). Later the Petitioner no.1 removed 'Aslali' address from its Registration Certificate because it had no business whatsoever from 'Aslali'. This fact transpires from Registration Certificates dated 21.05.2016 issued under the GVAT Act and CST Act which are already attached as Annexure A and Annexure B with the memo of the petition. Thus, it is clear that the address of 'Aslali' has been replaced by address of '1" Floor, Chakravarti Complex, Navrangpura, Ahmedabad' (for short "Chakravarti") in Registration Certificate of the Petitioner no.1 since 2016 and Aslali address is not all part of the Registration Certificate of the Petitioner.

(ii) In view of above facts, all subsequent communications were made by the respondents to petitioner no.1 to either the 'Chakravarti' address or to '8th Floor, No.807-808, Venus Atlantis, Opp. Safal Pegasus, Prahaladnagar, Satellite, Ahmedabad. (for short, 'Venus Atlantis') address as mentioned in the table below:

Sr. No.	*Date*	*Document*	*Address*	*Annexure*
1	*01.12.2015*	*A letter addressed to petitioner no.1 by the respondents.*	*Venus Atlantis*	*N*
2	*18.03.2016*	*Notice in Form 309*	*Chakravarti*	*O*

3	*21.03.2016*	*Notice*	*Chakravarti*	*P*
4	*19.09.2017*	*Provisional Registration Certificate of petitioner No.1 was issued in Form GST Reg-06 whereby the registration of the petitioner was migrated from VAT to GST.*	*Venus* *Atlantis*	*Q*
5	*30.08.2017*	*Letter from petitioners to the respondents*	*Venus Atlantis*	*R*
6	*11.09.2018*	*Letter from petitioners to the respondents*	*Venus Atlantis*	*S*
7	*05.10.2018*	*Letter from petitioners to the respondents*	*Venus Atlantis*	*T*
8	*15.07.2019*	*Letter from petitioners to the respondents*	*Venus Atlantis*	*U*
9	*05.11.2020*	*Registration Certificate issued in Form GST REG-06 (GST Registration number being 24AAACW0387RIZT)*	*Chakravarti*	*V*
10	*09.11.2020*	*Appeal order passed under Gujarat VAT Act.*	*Venus Atlantis*	*W*
11	*04.06.2021*	*Letter from respondents to the petitioners.*	*Venus Atlantis*	*X*
12	*17.07.2021*	*Letter from the petitioners to respondents*	*Chakravarti*	*Y*
13	*13.10.2021*	*Letter from petitioners to the respondents.*	*Chakravarti*	*Z*

On perusal of above letters, notices and orders it is clear that the 'last known address' of petitioner no.1 with the respondent authorities is either 'Venus Atlantis' or 'Chakravarti'."

- **ANALYSIS:**

15 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should quash and set aside all the impugned notices with a direction to

the first appellate authority as well as to the Tribunal to take up all the appeals filed by the writ applicants for hearing and dispose them off on their own merits within a period of two months from today.

16 However, before closing this order, we must once again eradicate the misconception of law in the mind of the department as regards Section 44 of the GVAT Act, 2003. All the impugned notices issued to the banks is on the basis of Section 44 of the GVAT Act. This is also evident from the affidavit-in-reply filed on behalf of the department. Recently, in the case of **Shri Shakti Cotton Pvt. Ltd. vs. The Commercial Tax Officer [Special Civil Application No.12788 of 2021 decided on 23rd March 2022]**. We had the occasion to explain the scope and true purport of Section 44 of the GVAT Act. We quote the relevant observations as under:

> *"12. Section 44 of the GVAT Act reads thus :*
>
> > *"44. (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may at any time or from time to time , by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require, —*
> >
> > *(a) any person from whom any amount of monies is due, or may become due, to a dealer on whom notice has been served under sub-section (1), or*
> >
> > *(b) any person who holds or may subsequently hold monies for or on account of such dealer, to pay the Commissioner, either forthwith upon the monies becoming due or being held or within the time specified in the notice (but not before the monies becomes due or is held as aforesaid) so much of the monies as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty or interest under this Act, or the whole of the money when it is equal to or less than that amount.*
> >
> > ***Explanation.-*** *For the purposes of this subsection, the amount of monies due to a dealer from, or monies held for or on account of a dealer by any person, shall be calculated by the Commissioner after deducting there from such claims, if any, lawfully*

subsisting, as may have fallen due for payment by such dealer to such person.

(2) The Commissioner may amend or revoke any such notice or extended the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer, and the receipt thereof by the Commissioner shall continue a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer for tax, penalty and interest, whichever is less.

(5) Where a person to whom a notice under this section is sent objects to it by a statement in writing that the sum demanded or any part thereof is not due or payable to the dealer or that he does not hold any monies for or account of the dealer, the Commissioner shall hold an inquiry and after giving to such person or dealer a reasonable opportunity of being heard, make such order as he thinks fit.

(6) Any amount of monies which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as an arrears of land revenue.
(7) The Commissioner may apply to the court in whose custody there is monies belonging to the dealer for payment of the amount of such monies towards the outstanding amount of tax, interest and penalty payable by the dealer."

13. The aforesaid provisions of Section 44 of the GVAT Act are almost pari materia to Section 226(3) of the Income Tax Act, 1961 (for short, "the Act, 1961"). Section 226(3) reads thus:

"226. Other modes of recovery:

…

...

(3) (i) The Assessing Officer or Tax Recovery Officer may, at any

time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer or Tax Recovery Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub- section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub- section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer], and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.

(iv) Save as otherwise provided in this sub- section, every person to whom a notice is issued under this subsection, shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub- section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this subsection is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his

own liability to the assessee on the date of the notice or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub- section or extend the time for making any payment in pursuance of such notice.

(viii) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub- section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub- section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222."

14. The above referred Section 226(3) of the Act, 1961 is modelled upon the provision of the Australian Act, Section 218. It is need less to reproduce the corresponding provision in the Australian Act. At page 1099 of "Income-tax Law and Practice (Commonwealth)" by Challener and Greenwood, second edition, it is observed as follows in discussing the scope of the Australian enact merit: "The purpose of Section 218 is to enable the Commissioner to collect unpaid taxes from persons owing money to the tax-payer without having to proceed to judgment and issue execution. Thus, sub-section (1) authorises the Commissioner to give notice to any person mentioned in (a), (b), (c) on (d) of the sub-section to pay to the Commissioner either forthwith or at or within a time specified in the notice, not being a time before the money becomes due or is held, such amount as is sufficient to pay the tax due and any financial costs. or the whole of the money if it is not greater than (he amount due. A copy of the notice is to be forwarded to the tax-payer.

Any person making payment pursuant to such a notice is deemed to have been acting under the authority of the taxpayer and is indemnified in respect of the payment (sub-section 4), whilst any person failing to comply with such a notice is guilty of an offence (subsection 2). For a case in which Section 218 was considered, Re, Whiting 1951 VLR 205 has been referred to. We have not been able to get at this report and we do not know the decision therein."

15. The plain reading of Section 44 of the GVAT Act would indicate that it provides a machinery for the VAT department to collect tax arrears from the debtors of the assessees (dealers). It is in substance the familiar garnishee proceedings under the Civil Procedure Code. The basic foundation would appear to be the substance of a relationship of a debtor and creditor, between the garnishee and the assessee.

16. Under clauses (a) and (b) of sub-section (1) of Section 44 of the GVAT Act, the Commissioner is empowered to issue notice requiring any person from whom any amount of money is due or may become due or who subsequently holds money on account of such dealer in respect of the arrears of tax, penalty or interest under the GVAT Act. A plain and simple reading of the aforesaid provisions will suggest that the power under the same is to be exercised when there is a person who has debtor-creditor relationship with the dealer and from whom his money is due or may become due to him or the person who holds or may subsequently hold money for or on account of such dealer."

"20. We may also refer to a Division Bench decision of this High Court in the case of Green Berry Foils India Limited vs. State of Gujarat (Special Civil Application No.15644 of 2018, decided on 17th October 2019), more particularly, paragraphs 18 and 19 respectively :

> *"18. On a plain reading of the provisions of section 44 of the GVAT Act, it is clear that the same are in the nature of garnishee proceedings and can be invoked against any person from whom any amount is due, or may become due, to a dealer. Such dealer should be a person to whom notice has been served under sub-section (1) of section 44 of the GVAT Act. The third respondent in the affidavit-in-reply filed by it has not made reference to any such notice having been issued to it nor has any averment to that effect been made in the affidavit-in-reply filed on behalf of the first respondent. Therefore, the basic requirement for invoking the provisions of section 44 of the GVAT Act, viz. service of notice to the dealer under sub-section (1) thereof, has not been satisfied.*
>
> *19. Another aspect of the matter is that a condition precedent for issuing notice under section 44 of the GVAT Act to the second respondent bank is that the said bank should be holding or may*

subsequently hold monies on account of such dealer. The expression "dealer" has been defined under section 2(10) of the GVAT Act to mean any person who, for the purpose of or consequential to his engagement in or, in connection with or incidental to or in the course of business buys, sells, manufactures, makes supplies or distributes goods directly or otherwise, whether for cash or deferred payment, or for commission, remuneration or otherwise and includes the categories of persons enumerated thereunder. In the present case, it is not the case of the first respondent that the bank was holding any monies on account of the dealer, viz. the third respondent herein. Therefore, the impugned order dated 26.9.2018 directing the second respondent bank to deposit a sum of Rs.17,67,45,934/- along with interest at the rate of 18% per annum, does not meet with the requirements of section 44 of the GVAT Act.""

17 Thus, in the absence of any debtor – creditor relationship, the department could not have asked the bank to debit the accounts of the writ applicant – company and credit a particular amount as specified in the notices to the treasury of the State Government.

18 We may also observe that ordinarily, when appeals are pending before the first appellate authority or the Tribunal, as the case may be, with an application seeking stay towards recovery of the tax, then, in such circumstances, the department should not proceed to take coercive steps for the recovery of the amount incurred by the dealer under the GVAT Act. This statement of ours should not be construed as an absolute proposition of law, but, the department is expected to at least wait for the final outcome of the appeals on their own merits, more particularly, when the appeals are already admitted.

19 The Administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing the remedies which are available to assessees for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The

remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the GVAT Act, 2003.

20 In the result, this writ application succeeds and is hereby allowed. The impugned notices are hereby quashed and set aside. The appellate authority as well as the Tribunal is directed to take up all the appeals for hearing and dispose them off on their own merits within a period of two months from today. The parties are directed to cooperate with the first appellate authority as well as the Tribunal for effective and expeditious disposal of the appeals. We clarify that we have otherwise not expressed any opinion on the merits of the case.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

CHANDRESH