

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 31<sup>st</sup> DAY OF AUGUST, 2022**

**BEFORE**

**HON'BLE MS. JUSTICE SABINA**

**&**

**HON'BLE MR. JUSTICE SUSHIL KUKREJA**

**CIVIL WRIT PETITION No.616 of 2022**

**Between:-**

**SARIKA INDUSTRIES PRIVATE LIMITED  
THROUGH ITS DIRECTOR AJAY RANA,  
SON OF SHRI MAN SINGH RANA, AGED  
ABOUT 41 YEARS, PLOT NO.111,  
HPSIDC, INDUSTRIAL AREA, BADDI,  
HIMACHAL PRADESH.**

**EMAIL: [SARIKAINDUSTRIES11@GMAIL.COM](mailto:SARIKAINDUSTRIES11@GMAIL.COM)**

**CONTACT NO.: 93153-28230**

**GSTIN: 02AASCS2638BIZK.**

**.....PETITIONER**

**(BY MR. MUKUL SINGLA AND  
MR. BHIM RAJ SHARMA, ADVOCATES)**

**AND**

- 1. STATE OF HIMACHAL PRADESH  
THROUGH ITS SECRETARY, DEPARTMENT  
OF EXCISE AND TAXATION, B-30 SDA  
COMPLEX KASUMPTI SHIMLA HIMACHAL  
PRADESH.**
- 2. JOINT COMMISSIONER, STATE TAXES  
AND EXCISE, SOUTH ENFORCEMENT  
ZONE PARWANOO, HIMACHAL PRADESH-  
173220. ....CONTESTING RESPONDENTS**
- 3. M/S EASTMAN AUTO POWER  
LIMITED THROUGH ITS DIRECTOR,  
NALAGARH, DISTRICT SOLAN, HIMACHAL  
PRADESH-174101. ....RESPONDENTS**

(MR. AJAY VAIDYA, SENIOR  
ADDITIONAL ADVOCATE GENERAL,  
FOR R-1 AND R-2,  
MR. TEK CHAND SHARMA, ADVOCATE  
FOR R-3)

---

This Petition coming on for admission this day, **Hon'ble Ms. Justice Sabina**, passed the following:

**ORDER**

Petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking mainly the following relief:-

*“1) Issue Writ of Mandamus directing the Respondent to permit the debtor of the Petitioner to make payment to the petitioner.”*

2. Mr. Mukul Singla, learned counsel for the petitioner has submitted that the petitioner had purchased input goods from various suppliers, including M/s GM Powertech in the year, 2018-19. Payment of Rs.10 Crores, which was to be received by the petitioner from M/s Eastman Auto Power Limited, was attached by respondent No.2 under Section 83 of the Goods and Services Tax, 2017 (hereinafter referred to as “the Act”). Learned counsel has further submitted that as per Clause 2 of Section 83 of the Act, provisional attachment shall cease to have effect after expiry of period of one year. In support of his arguments, learned counsel has based reliance on decisions of Punjab & Haryana High Court dated 10.11.2021 in **CWP No.13453 of 2020 (O&M)** titled as **M/s RSL Distilleries Pvt. Ltd. vs. Union of India &**

**ors.** and dated 9.2.2021 in **CWP No.1655 of 2021** titled as **A.K. International vs. Deputy Excise & Taxation Commissioner, Ludhiana & others.**

3. Mr. Ajay Vaidya, learned Senior Additional Advocate General, on the other hand, has opposed the petition.

4. Admittedly, in the present case, an amount of Rs.10.53 Crores, on account of payment liable to be received from respondent No.3 by the petitioner, was attached by respondent No.2 vide order dated 28.10.2020 (Annexure P-5).

5. Section 83 of the Goods and Services Tax, 2017 reads as under:-

***“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).”*

6. Thus, as per Clause (2) of Section 83 of the Act, every provisional attachment shall cease to have effect after expiry of period

of one year from the date of order made under sub-Section (1) of the Act. Since, in the present case, the order was passed under Section 83 (1) of the Act, on 24.10.2020, it ceases to have effect after expiry of one year. Consequently, the attachment order after a period of one year can be said to be unwarranted and illegal.

7. Accordingly, petition is allowed. The attachment order (Annexure P-5) dated 24.10.2020 shall cease to have effect after expiry of one year. Consequently, respondent No.3 is permitted to make the payment-in-question to the petitioner forthwith.

Pending miscellaneous application(s), if any, shall also stand disposed of.

**( Sabina )**  
**Judge**

**( Sushil Kukreja )**  
**Judge**

*August 31, 2022* (ks)