

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPA No. 19463 of 2023

M/s Arramva Corporation & Ors.
Vs
The Additional Director General & Ors.

For the Petitioners	:- Mr. A. Majumder, Sr. Adv. Mr. D.N. Sharma, Adv. Mr. Saurabh Bagaria, Adv. Mr. Sailendra Jain, Adv. Mr. Saumya Kejriwal, Adv.
For the Respondent No. 6	:- Mr. Amitava Mitra, Adv. Ms. Antara Choudhury, Adv.
For the CGST authorities	:- Mr. K.K. Maiti, Adv. Mr. Tapan Bhanja, Adv.
For the State	:- Mr. Anirban Ray, Ld. Govt. Pleader Mr. Md. T.M. Siddiqui, Adv. Mr. T. Chakraborty, Adv. Mr. S. Sanyal, Adv.
For the Union of India	:- Mr. Smita Das De, Adv.
Judgement On	:- 21.12.2023

MD. NIZAMUDDIN, J.

Heard learned advocates appearing for the parties and considered affidavits, written notes of argument filed by the parties and the citations relied upon by them.

Petitioner has filed this writ petition challenging the impugned order of provisional attachment of the Bank account of petitioner No.1/partnership firm, dated March 22, 2023, under Section 83 of the CGST Act, 2017 passed by

the respondent no. 1/the Additional Director General, DGGI, Guwahati, being bank account (Bank A/c No. 50200052826471) maintained with the respondent no. 6 (HDFC Bank Ltd., Kolkata).

The main issues involved in this writ petition which require consideration are as hereunder:

(i) Whether this Court has got territorial jurisdiction under Article 226 of the Constitution of India to entertain this Writ Petition challenging the impugned provisional attachment order dated 22.03.2023, under Section 83 of the CGST Act, 2017 passed by the Additional Director General, DGGI, Guwahati/respondent no. 1 making provisional attachment of bank account of Petitioner No. 1 which is a registered person at Kolkata maintained with the HDFC Bank, Kolkata?

(ii) Whether in the facts and circumstances of the case respondent no. 1 has the jurisdiction to invoke Section 83 of the CGST Act for provisional attachment of bank account of the petitioner no. 1 without initiation of any proceeding or having pendency of any proceeding against the Firm/petitioner no. 1 which is a partnership firm in which respondent no. 3 is one of its partners against whom incriminating documents have been found in course of investigation of other entities in which also petitioner no. 3 is a partner?

(iii) Whether in view of Section 122 (1), 122(1A) of the CGST Act, 2017 read with Rule 159(5) of the CGST Rules, 2017, impugned order of provisional attachment under Section 83 of the CGST Act is legal and valid?

Facts involve in this case, in brief is that the Petitioner no. 1 is a partnership firm and petitioner no. 2 and 3 are its partners and the petitioner no. 1 is a Registered Taxable Person assessed under the GST, West Bengal (Kolkata having GST No. 19ABHFA3628C1ZO). The Petitioner no. 1 [PAN No. ABHFA3628C] has its principal place of business in Kolkata and is having a Bank account maintained in Kolkata with HDFC Bank at 11, Dr. U.N. Brahmachari Street Branch, Kolkata.

Petitioners have challenged the impugned action and order of provisional attachment under Section 83 of the CGST Act mainly on the ground that the condition precedent to initiate proceeding under Chapter XII, XIV and XV of the GST Act is absent in the present case and that no notice/proceeding was ever initiated and/or is pending under the said chapters in term of Section 83 (1) of CGST Act at the time of taking such coercive action of freezing of bank account of Petitioner No. 1 and submits that the power to order provisional attachment under Section 83 of the Act can only be exercised sparingly and in exceptional circumstances and cannot be used as a tool for witch-hunt expedition and on the basis of presumptions and assumptions and conjectures and surmises.

Petitioner submits that the formation of opinion clearly indicates that the impugned order of provisional attachment was taken without there being any proceeding pending under Chapters- XII, XIV and XV of the Act. The impugned provisional order of attachment in Form GST DRC 22 is non est in law as it revealed from the impugned attachment order which is not in proper format as per Rule 159(1) of CGST Rules.

Petitioner submits that Sub-Rules (1) and (2) of Rule 159 of the CGST Rules, 2017 statutorily require the competent authority being the jurisdictional Commissioner to issue an order of provisional attachment only in Form GST DRC-22 and not otherwise. The amendment made to Rule 159 of the CGST Rules which came into force with effect from January 1, 2022 statutorily requires the competent authority to furnish a copy of the order of provisional attachment to RTP. Petitioner submits that the order of provisional attachment dated March 22, 2023 would clearly indicate that the order of provisional attachment has not been issued in form GST DRC-22 and not provided to the RTP.

Petitioner submits that it would appear from statutory form being GST DRC-22 that the jurisdictional Commissioner or his delegate would have to disclose the nature of proceedings pending as on the date of issuance of the provisional

attachment. The impugned order dated March 22, 2023 does not disclose pendency of any proceeding under Chapters- XII, XIV and XV of the CGST Act.

Petitioner submits that impugned order of provisional attachment is an order entailing adverse civil or evil consequences against any RTP or other persons under Section 122(1A) of the CGST Act. Therefore, the provisions and the form are to be followed strictly. The Form GST DRC-22 also requires details to be specified in case where the order is sought to be issued against a person specified in Section 122(1A) of the Act which is absent in the instant case according to the petitioner.

Petitioner submits that at the stage of final hearing of the writ petition, the desperate attempt was made on behalf of the revenue to canvass the case before this Hon'ble Court that the order of provisional attachment has been made against the writ petitioner as it is a person specified in Section 122 (1A) of the Act.

Petitioner submits that since the impugned order does not, in any manner, indicate that the writ petitioner has been treated as a person specified in Section 122 (1A) of the Act, the provisional order of attachment is non est in the eye of law as it has not been issued in prescribed format in Form GST DRC-22.

Petitioner submits that even in the affidavit-in-opposition there is no indication whatsoever that the writ petitioner has been treated as persons specified in Section 122(1A) of the Act.

Petitioner submits that the writ petitioner being RTP within the jurisdiction of Kolkata Commissionerate cannot be subjected to an order of provisional attachment, merely because one of its partners is under investigation in connection with the affairs of other RTPs or other entities and no way connected to writ petitioner firm.

Petitioner submits that the Additional Director General, Guwahati Zonal Unit does not have the territorial jurisdiction to issue an order of provisional attachment against the petitioner who is exclusively RTP under the Kolkata Commissionerate and not under any other Commissionerate and in fact, the Alert Notice relied upon and annexed to the affidavit-in-opposition clearly does not authorise Guwahati Zonal Unit to issue order of provisional attachment order against the petitioner. The petitioner features in the List of 1494 alleged availed unit pertaining to the other jurisdiction in Annexure “C” to the Alert Notice. The Alert Notice is addressed to all the authorities under CGST authorities and DGGI authorities in India. Upon perusal of the paragraph 5 of the Alert Notice it would clearly indicate that Guwahati Unit notified the alleged transactions to the jurisdictional authorities so that the jurisdictional authorities could carry out appropriate investigation and take suitable action to safeguard the government revenue.

Petitioner submits that the organisation structure/jurisdiction chart in the website of the GST Department itself shows that jurisdiction of DGGI for Guwahati Zone and Kolkata Zone are different and does not have pan India jurisdiction.

Petitioner submits that the writ petition is maintainable. Further, even a fraction of case of action accrued within the State, the Court of that state will have jurisdiction to entertain the petition. High Court will have jurisdiction if cause of action wholly or in part arises within the territorial limits and relies on the following judgments in support of its contention:

(a) *Rejendra Chingaravelu* – (2010) 1 SCC 457 (para 9 & 10)

(b) *Om Prakash Srivastava Vs Union of India*- (2006) 6 SCC 207 (para 7 & 8)

(c) *Radhey Shyam Pandey Vs Union of India* in WPA 10668 of 2021 dated April 6, 2022 (para 5)

(d) *Nawal Kishore Sharma* – (2014) 9 SCC 3239 (para 9 to 15)

(e) Sri Pankar Panwar Vs Lalit Kala Ademi & Ors. reported in 2014 SCC Online Cal 14154 (para 3,23,28,34)

Petitioner submits that the impugned provisional attachment order dated March 22, 2023 passed under Section 83 of the CGST Act by the respondent no. 1 is absolutely illegal, arbitrary, perverse, contrary to law and wholly without jurisdiction and is liable to be quashed and/or set aside with a direction upon the respondents to immediately de-freeze the petitioner no. 1's bank account in question maintained with the respondent no. 6 (HDFC Bank Ltd., Kolkata).

Mr. Majumder, learned Senior Advocate for the petitioner challenging the impugned order further submits as follows:

- (i) The impugned order of attachment dated 22.03.2023 has been issued in violation of Section 83 of the CGST Act since condition precedent under Chapter – XII, XIV and XV is absent and as such the respondent authority cannot assume jurisdiction over the petitioner.
- (ii) Alert Notice dated 07.09.2022 does not authorise the respondent authority to attach bank account of an entity outside the jurisdiction.
- (iii) The formation of opinion clearly indicates that the provisional attachment of Bank Account in question was taken without there being any proceedings pending under Chapter – XII, XIV and XV of the said Act.
- (iv) Merely because one of the partners is under investigation thereby the petitioner Firm cannot be subjected to investigation.
- (v) In terms of Hon'ble Supreme Court's order in the decision of Radha Krishnan the condition must be fulfilled for issuance of attachment of Bank Account.
- (vi) Provisional attachment is non est in the eye of law as it requires to issue only under Form GST DRC-22.

Petitioner in support of its contention relies on a decision of The Hon'ble Delhi High Court in the case of Sidhivinayak Chemtech –Vs- The Principal Commissioner, CGST: 2023 SCC Online Del 2913.

Petitioner submits that writ petition before this Hon'ble Court under Article 226 of the Constitution of India challenging the impugned order of provisional attachment, is maintainable, by relying on the Hon'ble Supreme Court's judgment in the case of Radha Krishnan Industries –Vs- State of Himachal Pradesh & Ors. (2021) 6 SCC 771 and submitting that the Hon'ble Supreme Court in the case of Radha Krishan Industries (supra) specifically dealt and construed the contour and ambit of Section 83 of the GST Act. Wherein it was held that the power to order a provisional attachment of the property of a taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of power must be strictly fulfilled.

Learned Advocate for the respondents opposing the writ petition submits that the writ petition is not maintainable before this Hon'ble Court since the impugned action taken by the respondent authorities is outside the territorial jurisdiction of this writ Court and in support of his contention relies on the decision of the Hon'ble Delhi High Court in the case of Bombay Snuff Pvt. Ltd. –Vs- Union of India, reported I 2006 (194) ELT 264 (Del.).

The respondent submits that during the course of investigation in respect of M/s. Vishal Metal and Mining Ltd. and M/s. NRS Steel Traders by way of search at the declared Principal place of its Business at Kolkata, records and documents pertaining to the petitioner M/s. Arramva Corporation were also recovered and it was also found that the petitioner has the same Principal Place of business at Kolkata as of others.

Respondents further submit that the Petitioner No. 1 is a partnership firm and its two partners are Shri Om Sharma and Shri Vishal Jain. Om Sharma and Vishal Jain are holding various portfolios in multiple firms. Shri Vishal

Jain is holding the post of Director in the company M/s. Vishal Metal & Mining Ltd. and is partner of M/s. NRS Steel as well as partner of M/s. Arramva Corporation.

Respondents submit that Shri Vishal Jain in his statement dated 02.02.2023 submitted that all the aforesaid firms are actually being operated by him either as Director or partner but is looked after by his father Shri Ashok Kumar Jain. Shri Om Sharma who is one of the partners of the Petitioner No. 1/Firm never responded to the summons dated 02.02.2023, 21.03.2023 and 15.05.2023.

Respondents submit that from the investigation of the aforesaid firms including petitioner/ M/s. Arramva Corporation it revealed that all those firms are being actually operated by Shri Ashok Kumar Jain and the said fact has been admitted by Shri Ashok Kumar Jain. The petitioners being M/s. Arramva Corporation was found to have availed ineligible ITC amounting to Rs.57,45,619/- on the strength of invoices without actual receipt of any goods from the fake/non-existent firms. The petitioners were found to have issued ineligible ITC of Rs.1,51,93,800/- without any actual supply of goods. Therefore the total amount involved in both availing and passing on fake input credit is Rs.2,09,39,419/-.

Respondents submit that the amount of Rs. 57,45,619/- was passed on two non-existent firms namely M/s. Majestum Sales Pvt. Ltd. and M/s. Nakul Enterprise which were operated and managed by Shri Anand Saraf who admitted such fact and was arrested.

Respondents submit that the fraudulent Input Tax Credit amounting to Rs. 1,51,93,800/- was passed on to M/s. A.B. Infra Pvt. Ltd. through 78 invoices without concomitant supply of goods by the petitioner. The said fact has been established through RFID based E-way Bills analytics and which has also been admitted by M/s. BAC Infra Pvt. Ltd. during the course of investigation. The

said ineligible availment of fake ITC by the petitioners was circulated through alert notice dated 07.09.2022.

Respondents submit that the officers of DGGI having been Pan India jurisdiction have found the operation of Syndicate of fake Firms and as such the DGGI, Guwahati Zonal Unit initiated action from Guwahati. No separate permission is required by the officers of DGGI for investigation against Tax Payers outside their zone as provided under Notification no. 14/2017-Central Tax dated 01.07.2017 and guidelines dated 17.05.2018 as well as clarification dated 22.06.2020 and as per Section 6(1) of CGST Act, 2017 the officers of DGGI, Guwahati Zonal Unit being Central Officers have jurisdiction over any state tax payer.

Respondents submit that the formation of an opinion by the Additional Director General, Directorate General of Goods and Services Tax Intelligence, Guwahati appointed under Section 3(d) of the CGST Act for initiation of action under Section 83(1) was based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue which could not have been done without ordering a provisional attachment. Before going to attachment of the petitioner's bank account the concerned authority has found that the petitioner is very much involved in the case of availing ITC without actual receipt of any goods from the fake/non-existent firms as well as issued ineligible ITC without any actual supply of goods as such it is opined for attachment of the bank account.

Respondents submit that in terms of Section 83 of the Act where after the initiation of any proceedings under Chapter XII, XIV and XV of the CGST Act 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 or any person specified in sub-section (1A) of Section 122 of the Act, in such manner as may be prescribed.

Chapter XII provides Assessment;

Chapter XIV provides Inspection, Search, Seizure and Arrest;

Chapter XV provides Demands and Recovery;

Respondents submit that as the documents and the records pertaining to the petitioner's company were found during the search and inspection which reveals availment of ineligible input tax credit by the petitioners, thereby in terms of Section 83 of the Act, the respondent authority has proceeded to provisionally attach the bank account of the petitioner for the interest of the revenue. The respondent authorities are also entitled to attach the bank account of the petitioner in terms of Section 122 (1A) of the CGST Act which is covered under Section 83 of the said Act.

Respondents submit that in terms of Notification dated 01.07.2017 as well as guidelines dated 07.05.2018 and clarification dated 22.06.2020 which clearly provides the jurisdiction upon the respondent authorities to take action and as such attachment of the bank account is legal and valid and within jurisdiction.

Respondents submit that the Form GST DRC-22 has been issued in accordance with law and as per proforma prescribed in law. In terms of the said prescribed proforma the said attachment order has been issued which will be evident from the attachment order dated 22.03.2023 which is as per first paragraph of the said proforma of Form GST DRC-22.

Respondents submit that in term of Rule 159(5) of CGST Rules, the petitioners have not filed any objection for such attachment dated 22.03.2023 and as such without availing the said remedy the petitioners have no right to challenge the attachment order by filing the writ petition on 8th August, 2023, after long lapse of near about five months from the date of attachment without explaining any delay.

Learned Advocate for the Respondents in support of its contention relies on an order of the Hon'ble Delhi High Court in the case of Hanuman Enterprise reported in 2023 (77) GSTL 32 (Del.) wherein it has been held that DGGI has the power to provisionally attach the bank account of a person if it is found that he is associated with other person wherein the said person is the Director of the petitioner company and appears to be in control of its affairs. In the present case the partners of the petitioner firm is also associated with different companies and firms and as such action taken by the respondent authorities against the petitioners cannot be construed as without jurisdiction or bad under Section 83 of the said Act.

Respondents by relying on a decision of the Hon'ble Bombay High Court in the case of Bharat Parihar [2023 (75) GSTL 129 (Bom.)] submit that it has been categorically held that sub-section (1) of Section 83 empowers the Commissioner for the purpose of protecting the interest of the revenue to provisionally attach any property, including bank account belonging to the taxable person or "any person" specified in Section 122(1A) of the Act in such manner as may be prescribed. The Hon'ble High Court further held that Section 122 (1A) of the Act provides that any person who retains the benefit of a transaction covered under clause (i, ii, iv or x) of Section 121 (1) of the Act and at whose instance such transaction is conducted shall be liable to a penalty of a sum equivalent to the tax evaded or ITC availed of or passed on thus power conferred under Section 83(1) of the Act can be exercised in respect of a person, who may not be within the territorial jurisdiction of Maharashtra GST Authorities.

Respondents further submit that in the said decision the Hon'ble Bombay High Court it has also been held that in so far as the jurisdiction of the Commissioner to exercise powers under Section 83 of the Act is concerned the said provisions of Section 83 are to be read with Section 122(1A) of the Act it would be required to be read in the context of the legislation itself namely the GST Act. As per Section 1(2) of the Act, the CGST Act is operational throughout

the country. This would have relevance in construing the jurisdiction of the Commissioner who has been defined under Section 2 (24) of the CGST Act, for the purpose of Section 83 (2) of the Act. Reading of the provision under Section 83(1) with Section 122 (1A) of the Act make it manifest that the Commissioner for the purposes of exercising power under Section 83 read with Section 122 (1A) of the CGST Act would have a power to take action against “any person” as Section 122 (1A) which mandates that even if such a person is outside his jurisdiction. Petitioner submits that there cannot be any other reading of the legislative scheme flowing to a conjoint reading of Section 83(2) read with Section 122 (1A) and Section 2 (24) of the Act, moreover, a contrary reading of the said provisions would defeat the legislative intention.

Respondents further submit that the Hon’ble Delhi High Court in the case of Indo-International Tobacco Ltd. reported in [2022 (67) GSTL 403 (Del.)] has held that Ahmadabad Zonal Unit having Pan India jurisdiction as Central Tax Officer, not prohibited in view of common thread allegedly found in this investigation.

Respondent rely on a decision of the Hon’ble Orissa High Court in the case of Shri Radharaman Alloys Pvt. Ltd. reported in [2021 (52) GSTL 5 (Ori.)] and the decision of the Hon’ble Punjab & Haryana High Court in the case of Megna Wires Pvt. Ltd. –Vs- Union of India reported in [2021 (51) GSTL 5 (Pun & Haryana)] on the same proposition of law by contending that the writ petition is not maintainable on non-availability of alternative remedy under Rule 159(5) of the CGST Rules, 2017.

Learned Advocate for the respondents while distinguishing the cases relied upon by the petitioner in the case of Siddhivinayak Chemtech Pvt. Ltd. through its Authorised Representative –Vs- Principal Commissioner, CGST and Ors. reported in 2023 SCC Online 2913, submits that in the said case attachment order of the bank account of the petitioner company was passed by the Principal Commissioner, CGST, Meerut Commissionerate who has no

jurisdiction over the petitioner and the said judgment has not dealt with the power of the Directorate General of Goods and Services Tax who has pan India jurisdiction and as such the ratio of the said judgment is not applicable in the present case as the same has not dealt with the power of the Commissionerate who has jurisdiction over the petitioners and further the said order is a consent order.

Learned Advocate for the respondents distinguishes the decision of the Hon'ble Supreme Court in the case of Radha Krishan Industries reported in 2021 (6) SCC 771 relied upon by the petitioner by submitting that the jurisdiction of Directorate General of Goods and Service Tax, has not been dealt with in the said decision who has all India jurisdiction as well as the action taken by the respondent authorities in this case is very much within their jurisdiction the said decision is not applicable in the facts of the present case. Therefore, the Hon'ble Court may be pleased to dismiss the said writ petition for the interest of justice.

Before reaching to the conclusion following provisions of the CGST Act and Rules which according to me are relevant and are quoted hereunder:

“Section 1. Short title, extent and commencement

.....

(2) It extends to the whole of India.

.....”

“Section 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper offices for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.”

Section 83. Provisional attachment to protect revenue in certain cases

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner revenue 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 or any person specified in sub-section (1A) of Section 122, 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).”

“Section 122. Penalty for certain offences

(1) Where a taxable person who –

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

.....
.....

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

.....
.....

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

.....
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.....

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”

“Rule 159 of the CGST Rules, 2017:

159. Provisional attachment of property

.....
.....

(5) Any person whose property is attached may, [file an objection in FORM GST DRC-22A] to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of

being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23.”

.....
Considering the submission of the parties and relevant provisions of law under CGST Act and Rules, 2017, relevant circulars and notifications and the judgments cited by the parties I am of the considered view that so far as objection of the respondents with regard to maintainability of the writ petition before this Court on the ground of lack of territorial jurisdiction is concerned, is not sustainable since cause of action is a bundle of fact and in the facts and circumstances of the present case I am of the considered view that part of cause of action arose within the territorial jurisdiction of this Court since petitioner’s bank account in Kolkata was attached though may it be by an authority in Guwahati and in view of the fact that petitioner is a registered person in Kolkata and as such writ petition before this Court against the impugned order passed by the authority at Guwahati is maintainable.

So far as challenge by the petitioner the legality and validity of the impugned order of provisional attachment under Section 83 of the Act on the ground of non pendency or initiation of any proceeding against the petitioner is concerned I am of the considered view on reading conjointly Section 1(2), Section 6(1), Section 83, Section 122(1) and Section 122 (1A), Clause (i), (ii), (vii) and (ix) thereunder and judgments referred above, relevant circulars and notification and taking into consideration materials found against the petitioners during investigation, CGST Guwahati authority’s action of attaching the bank account of the petitioner provisionally and the impugned order to this effect is very much legal, valid and within jurisdiction and is not liable to be interfered by this writ Court.

Accordingly this Writ Petition being WPA No. 19463 of 2023 is dismissed. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)