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Attachment of the property under GST Regime



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The government under the new GST regime can attach the property of the assessee under Section 83 of Central Goods and Service Tax Act, 2017. The validity of such a provisional attachment order is one year from the date of provisional attachment order and shall cease to have effect after the expiry of the said period. This restricts the continuous and perpetual attachment of the property and control the abuse/arbitrariness of the power to provisionally attach by safeguarding the interest and rights of the assessee.

Recently, the Hon'ble Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh* [2021] 127 taxmann.com 26/86 GST 665 has termed the provisional attachment of the property of the taxable person including a bank account as draconian in nature. Such provisions regarding the provisional attachment of the property including bank account of the assessee requires the Assessing Authority to follow the provision in the strictest manner in order to balance between the protection of revenue and the interest of the assessee.

A Constructive Reason to believe before Attachment

The provision sets a sine qua non condition of the opinion of the Commissioner regarding the provisional attachment in case of reasonable apprehension of evasion of the tax liability by the assessee which may frustrate the proceedings. The opinion should be an outcome of application of mind by the authorities founded on the foundation of real and tangible information and not mere suspicion.

The Hon'ble Supreme Court in *Radha Krishan Industries (supra)*, held that:

"...The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

...

The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue."

The Hon'ble Supreme Court placed reliance on the judgment of Hon'ble Gujarat High Court in the case of *Valerius Industries v. Union of India* [2019] 109 taxmann.com 218 prescribes scope of Section 83 and describe the powers entrusted upon the Assessing Authority. The Hon'ble High Court stressed upon the necessity of formation of the opinion on subjective satisfaction based on the credible material or information supported by supervening factors and not vague and indefinite or distant remote or far fetching which would warrant the formation of the belief.

Interpretation of "protecting the interest of the Government revenue"

The Hon'ble Supreme Court in *Radha Krishan Industries (supra)*, has held that the expression means that the interests of the government revenue cannot be protected without ordering a provisional

attachment.

The power of the Assessing Authorities is regulated as the provisional attachment of the property of the assessee including bank account might be attached only if there is a reasonable apprehension that the assessee may default the ultimate collection of demand that is likely to be raised on completion of the assessment.

The Hon'ble Gujarat High Court in the case of *Valerius Industries (supra)* echoes the extreme care and caution required while attachment of the property to balance the protection of the assessee and the government revenue.

In *Pranit Hem Desai v. Additional Director General, DGGI* [2019] 110 taxmann.com 472/76 GST 529, the Hon'ble High Court, observed that the provision empowers the Assessing Authority to provisionally attach the property regardless of any outstanding demand, however, the pendency of a proceedings is an essential criteria.

Lapse of Validity Period of Provisional Attachment Order

The Section 83(2) provides a lifetime of a provisional order as one year from the date of order and after the expiration of the said period the provisional attachment order shall stand lapsed. This curbs the permanent attachment of the property of the assessee.

In *KMC Constructions Limited v. Principal Commissioner of Central Tax* [2021] 124 taxmann.com 276, the Hon'ble Court held that the continuation of provisional order after the expiration of statutory limit shall violate Article 14, 19(1)(g) and 300A of the Constitution of India.

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1. Majesty legal is law firm and aim of the present article is to provide assessee's rights and safeguard of revenue under GST regime and recent development as on 20.08.2022. The

opinions presented in the article are personal in nature and not to be deemed as legal advice.