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**NOTICE ATTACHING BANK ACCOUNT FOR SECOND TIME WITHOUT REASONS IS NON-EST IN LAW**

**"M/S R D ENTERPRISES V. UNION OF INDIA AND 3 OTHERS"**

Hon'ble Allahabad High Court in case of *M/S R D Enterprises v. Union Of India And 3 Others*<sup>1</sup>, held that provisionally attaching bank account for the second time without providing any fresh reasons for provisional attachment is draconian in nature and cannot be sustained in the eyes of law. Section 83 of Central Goods and Service Tax Act, 2017 allows the Commissioner to provisionally attach any property, including a bank account, and this attachment must be done through a written order and Section 83(2) of the Central Goods and Service Tax Act, 2017 imposes a time limit on the provisional attachment. It specifies that the provisional attachment will automatically cease to have effect after the expiry of one year from the date of the order.

Hon'ble Court referred to the decision of Hon'ble Supreme Court in case of *Radha Krishan Industries vs. State of Himanchal Pradesh*<sup>2</sup> wherein it was held that in relation to Section 83 of the Act that a second attachment of the bank account may be made under Section 83 of the Act, but the Department has to provide fresh reasons for the same.

Accordingly, Hon'ble Court held that as department failed to justify the reasons for such a provisional attachment and without such justification being provided by the Department, by way of specific reasons, such provisional attachment would be illegal, arbitrary and non est in law. Hence, provisional attachment order dated May 16, 2024 is quashed and set aside.

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<sup>1</sup> WRIT TAX No. - 978 of 2024

<sup>2</sup> (2021) 6 SCC 771

<sup>3</sup> Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

**Court No. - 40****Case :-** WRIT TAX No. - 978 of 2024**Petitioner :-** M/S R D Enterprises**Respondent :-** Union Of India And 3 Others**Counsel for Petitioner :-** Srijan Pandey, Swetashwa Agarwal**Counsel for Respondent :-** A.S.G.I., Krishna Agarawal, Parv Agarwal**Hon'ble Shekhar B. Saraf, J.****Hon'ble Manjive Shukla, J.**

1. Heard Sri Swetashwa Agarwal, learned counsel appearing on behalf of the petitioner and Sri Parv Agarwal, learned counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the provisional attachment order dated May 16, 2024 passed by the respondent authorities under Section 83 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act").

3. It is to be noted that the same bank account had been attached vide order dated February 16, 2023. After expiry of the period of one year, the writ petitioner had filed a writ petition seeking removal of the said attachment. Subsequent to the filing of the said writ petition, it appears that the attachment was removed and the same has been recorded in the order passed by the coordinate Bench of this Court dated May 6, 2024 in Writ Tax No.699 of 2024.

4. Surprisingly, ten days after passing the order by the coordinate Bench of this Court, a verbatim notice has been issued on May 16, 2024 without providing for any fresh reason for provisional attachment of the account for the second time. This notice even does not mention the fact that this

attachment is being done for the second time. Furthermore, no specific reasons have been provided for requirement of the Department for fresh provisional attachment of the bank account.

5. In our view, this kind of arbitrary action without providing any fresh reasons to the petitioner for provisional attachment is draconian in nature and cannot be sustained in the eyes of law. Section 83 of the Act is provided below :-

***"Section 83. 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. In **Radha Krishan Industries vs. State of Himanchal Pradesh and Others** reported in **(2021) 6 SCC 771** the Supreme Court has held in relation to Section 83 of the Act that a second attachment of the bank account may be made under Section 83 of the Act, but the Department has to provide fresh reasons for the same. Relevant paragraphs thereof are extracted below :-

*"75. Moreover, an order of provisional attachment was issued by the Joint Commissioner which was withdrawn on 30-1-2019, after considering the representations made by the petitioner. On the very ground, without any material change in circumstances, another order of provisional attachment came to be issued by another Joint Commissioner. Therefore, it was the contention of the petitioner before the High Court that the subsequent order of provisional attachment is in substance and effect an order reviewing the earlier order withdrawing the order of provisional attachment which was not permissible and therefore the subsequent order of provisional attachment is without jurisdiction. The High Court has not considered this aspect. Both the earlier and the subsequent orders of provisional attachment are on the same grounds. Therefore, unless there was a change in the circumstances, it was not open for the Joint Commissioner to pass another order of provisional attachment, after the*

earlier order of provisional attachment was withdrawn after considering the representations made by the petitioner. This is an additional ground to set aside the subsequent order of provisional attachment.

#### *E. Summary of findings*

**76.** For the above reasons, we hold and conclude that:

**76.1.** The Joint Commissioner while ordering a provisional attachment under Section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107(1).

**76.2.** The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable.

**76.3.** The High Court has erred in dismissing the writ petition on the ground that it was not maintainable.

**76.4.** The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.

**76.5.** 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.

**76.6.** The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.

**76.7.** 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.

**76.8.** In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal.

**76.9.** Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:

(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and

(b) An opportunity of being heard.

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard.

**76.10.** The Commissioner is duty-bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached.

**76.11.** A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end.

**76.12.** The appellant having filed an appeal against the order under Section

*74(9), the provisions of sub-sections (6) and (7) of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.*

*77. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1-1-2021 [Radha Krishan Industries v. State of H.P., 2021 SCC OnLine HP 4566] ."*

*(Emphasis added)*

6. Upon perusal of Sub-section 2 of Section 83 of the Act, it appears that such provisional attachment shall cease to have effect after the expiry of a period of one year. The department cannot be allowed simpliciter to issue a second notice, and thereafter, third and fourth and continue with the provisional attachment for four to five years without giving any fresh reason for the said provisional attachment. If the same was allowed, Sub-section 2 of Section 83 of the Act would become otiose and have no relevance whatsoever.

7. One may look into the judgment passed by the Calcutta High Court in the case of **Amazonite Steels Pvt. Ltd. vs. Union of India** reported in **2020 (36) G.S.T.L. 184 (Cal.)**, wherein the Court has held as follows:-

**"Epilogue:**

*"A tax collector should collect taxes from a taxpayer just like a bee collects honey from a flower in an expert manner without disturbing its petals" - Kautilya in Arthashastra.*

**38.** *The new regime under the GST Act, 2017 is a new legislative creation by which the Union Government along with all the State Governments have streamlined various statutes under which tax was earlier collected to enhance the ease of doing business by preventing multi-point taxation that was extremely cumbersome and time consuming for the citizens of India. The raison d'etre of the GST Act, 2017 is to reduce the burden of tax and also to simplify the procedures. This, however, is coupled with certain far reaching and drastic measures that would be applicable on persons who evade the payment of such taxes. One need not stress the importance of the responsibility that comes upon the Government officials who take such drastic measures upon the citizens of this country. Nonetheless, these drastic provisions come with a purpose, and that is to ensure collection of taxes so that the inequities in society may be reduced by the Government. Provisions such as provisional attachment are necessary to ensure that persons who intend to evade taxes and/or are a part of a mechanism to defraud the Government are nipped in the bud and appropriate taxes can be*

*collected from such persons."*

8. We are of the view that the legislature never intended this provision to be read in a casual manner, as the provision for provisional attachment is a drastic measure that the Department takes even before assessing the liability of the petitioner. This provision is in the nature of preventive detention in criminal cases where one detains a person without any offence having been committed.

9. In light of the above, it becomes extremely necessary for the Department to justify the reasons for such a provisional attachment and without such justification being provided by the Department, by way of specific reasons, such provisional attachment would be illegal, arbitrary and non est in law. In the present facts and circumstances of the case, we do not find recording of any such reasons.

10. Accordingly, the provisional attachment order dated May 16, 2024 is quashed and set aside. The bank concerned is directed to remove the attachment and immediately allow the petitioner to have access to the said bank account. Needless to mention, the Department shall be at liberty to proceed in accordance with law.

11. The writ petition is allowed.

**Order Date :- 12.9.2024**

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**(Manjive Shukla,J.)      (Shekhar B. Saraf,J.)**