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## Article on Provisional Attachment of Property including Bank Account

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### Article on Provisional Attachment of Property including Bank Account



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Contents

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## [PROVISIONAL ATTACHMENT OF ANY PROPERTY/ BANK ACCOUNT](#)

### Legal Provisions

**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.

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). (2)

Further the order for the Attachment of any Property including Bank Account to be done in DRC-22 as per Rule 159 of CGST Rules, 2017.

Assessee whose property/ bank account has been attached may file an objection within a period of seven days from the date of attachment. Pursuant to such objection, Commissioner may afford an opportunity of being heard. Commissioner if satisfied that the person property is not liable to be attached shall issue the Order in Form DRC-23 for the release of attachment.

### Legal Analysis

1. Proceedings must be pending u/s 62 or 63 or 64 or 67 or 73 or 74. Continuation of proceedings is must. If the proceedings started and not continued, then such attachment shall not be valid.
2. Commissioner and Officer above the rank of Commissioner can make the order for the Attachment. Attachment of property including bank account by officer subordinate to him shall be without jurisdiction
3. There must be formation of opinion. Opinion should be such that the taxable person shall not be available for recovery after the demand order has been issued.
4. Provisions relating to Section 83 is of attachment. Officer cannot withdraw the amount till the final order.
5. Attachment order shall be valid for only 1 year from the date of order of attachment. No attachment shall continue after the period of one year

6. No restriction for make fresh attachment order after the expiry of original attachment order.

### **Judicial Pronouncement**

#### **Commissioner's Opinion**

##### **Hon'ble Gujarat High Court in case of *Patran Steel Rolling Mill vs Asst. Commissioner of State Tax, Unit 2* [2018 (12) TMI 1441 - GUJARAT HIGH COURT]**

- a. Resorting to such drastic action (Provisional Attachment), the Commissioner is required to form an opinion
- b. For the purpose of arriving at such an opinion, the Commissioner should first form an opinion that the petitioner would not be in a position to pay the tax dues after the assessment proceedings are over
- c. Without recording any such satisfaction, the respondent could not have formed the opinion that it was necessary to resort to provisional attachment
- d. Respondents should consider the background and history of the dealer as well as his financial position
- e. The authorities should keep in mind that bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue
- f. Authorities should try to balance the interest of the Government revenue as well as a dealer to ensure that while the interest of the revenue is safeguarded, the dealer is also in a position to continue with his business.
- g. If the dealer is a fly by night operator or a habitual offender or does not have sufficient means to pay the dues that may arise upon assessment, such action may be justified

##### **Hon'ble Gujarat High Court in case of *Valerius Industries vs Union of India* [2019 (9) TMI 618 - GUJARAT HIGH COURT]**

1. Section 83 makes it abundantly clear that it is the Commissioner's opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of the order dated 15th January, 2018 passed in exercise of power under sub-section (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed thereunder. In our opinion, the answer has to be in the negative. Although there is no specific challenge to the order dated 15th January, 2015 passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, we are of the view that by virtue of such order, such impugned order of provisional attachment cannot be defended
2. It would be a big mistake on the part of the respondents to understand that the reasons to believe necessary for the purpose of carrying out inspection, search and seizure under Section 67 of the Act, 2017 would be sufficient enough for the purpose of formation of the opinion that it is necessary to provisionally attach the goods or other articles for the purpose of protecting the interest of the government revenue
3. Just because, a search has been undertaken resulting in seizure of goods by itself may not be sufficient to arrive at the subjective satisfaction that it is necessary to pass an order of provisional attachment to protect government revenue.
4. **52.**Our final conclusions may be summarized as under :

(1) The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

(2) The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be

used sparingly and only on substantive weighty grounds and reasons.

(3) The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.

(4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

(5) The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things: (i) whether it is a revenue neutral situation (ii) the statement of "output liability or input credit". Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.

### **Attachment Effective only when Proceedings are Pending**

**In the High of Gujarat in case of Kushal Ltd vs Union of India [2019 (12) TMI 1116 - GUJARAT HIGH COURT]**- Search proceedings were conducted at premises of the petitioners on 27.09.2018. Thereafter there was a visit by the respondents on 01.04.2019 leading the arrest of the second petitioner. Thereafter no search has been conducted at the premises of the petitioners. The search proceedings have, thereafter ended. Held that it may be that pursuant to search, inquiry or other proceedings under the Act may have been undertaken however such inquiry or other proceedings are not u/s 67 of the GST and hence it cannot be said that any proceedings are pending u/s 67 of the GST Act. Held further in the absence of pending of any proceedings u/s 62, 63, 64, 67, 73 or 74 of the GST Act order of the provisional attachment of bank account u/s 83 are without authority of law and rendered unsustainable.

**In a Writ Petition filed before High Court of Karnataka by M/S. ANANDBHAVAN PROPERTIES PRIVATE LIMITED VERSUS THE UNION OF INDIA THE MINISTRY OF FINANCE GOVERNMENT OF INDIA, THE COMMISSIONER OF CENTRAL TAX, [2019 (11) TMI 279 - KARNATAKA HIGH COURT]**. Petitioner has not been issued notice u/s 74. The pendency of proceedings u/s 83 of the Act would be only after issuance of notice. In the absence of issuance of notice u/s 74 or any other sections quoted in section 83 of the Act, one cannot draw interference that there is pending of any proceedings u/s 74 of the Act.

**In a Writ Petition filed before High Court at Madras by M/S. V.N. MEHTA & COMPANY VERSUS THE ASSISTANT COMMISSIONER, THE SUPERINTENDENT OF GST & CENTRAL EXCISE, THE STATE TAX OFFICER, THE MANAGER [2019 (11) TMI 766 - MADRAS HIGH COURT]**- Statement was obtained from the Petitioner stating as if the Petitioner availed the input tax credit on the strength of invoices of fake units which was subsequently retracted by the petitioner. Revenue stated that it is not necessary to issue show cause notice and mere admitted liability is enough for invoking the provisions of Section 79. Held except issuing proceedings u/s 79

no other proceedings was ever issued

### **Proceedings Pending with Third Party**

**In a Writ Petition filed before High Court of Bombay by M/S. GEHNA TRADING LLP AND DNB MULTITRADE INDIA PVT. LTD. VERSUS UNION OF INDIA AND ORS. /2020 (2) TMI 216 - BOMBAY HIGH COURT]-** Petitioner challenges the action of the respondents in provisionally attaching their bank account in view of the proceedings filed against one Yusuf Fauzdar Shaikh, proprietor of M/s. Fashion Creations, proceedings have been launched against the said taxable person and the Respondents were of the belief that amounts were being transferred to various persons, including the Petitioner. Petitioner submitted that there are no proceedings under Sections 62, 63, 64, 67, 73 and 74 against the Petitioner as mentioned u/s 83 of CGST Act. Writ Petition is allowed and the order passed by the Respondent dated 6 December 2019 attaching the bank account of the Petitioner is quashed and set aside:

### **Merely Issue of Summon u/s 70 is not sufficient for Attachment**

**2020 (1) TMI 933 - Bombay High Court- Kaish Impex Private Limited Versus The Union Of India, The Principal Chief Commissioner CGST** It is therefore not possible to accept the submission of the Respondents that even though specified proceedings have been launched against one taxable person, bank account of another taxable person can be provisionally attached merely based on the summons issued under section 70 to him. In view of our discussion as above, we hold that the order dated 22 October 2019 provisionally attaching the bank account of the Petitioner was without jurisdiction and is liable to be quashed and set aside.

### **Fresh Attachment after Expiry of Original Attachment Order**

**2020 (3) TMI 1179 - Calcutta High Court- M/s. Amazonite Steel Pvt. Ltd. & Anr., M/s. Corandum Impex Pvt. Ltd. & Anr., M/s. Cuprite Marketing Pvt. Ltd. & Anr. Versus Union of India & Ors.**

1. Section 83(2) is crystal clear that the provisional attachment shall cease upon expiry of one year. The failure to do the above is nothing short of being an act of highhandedness. In my view the above action is clearly in violation of the petitioners' rights for carrying on business under Article 19(1) of the Constitution of India and under Article 300A of the Constitution of India wherein the petitioners have been deprived of their property without authority of law. In light of the same, I direct the concerned respondent authorities to pay costs of ₹ 5 Lakhs to each of the three petitioner companies.
2. There is nothing in the section which indicates that upon completion of the prescribed period, a fresh order cannot be issued. In the view point of the Court, after the expiry of the time period, the appropriate authority may be of the opinion that such an attachment is further required to protect the interest of government revenue, and may therefore, issue a fresh order upon compliance of the formalities in Section 83(1).

### **No Attachment after Expiry of Attachment Order after One Year**

**2020 (3) TMI 617 - Gujarat High Court- Badal Shambhubhai Shah Versus The Directorate General of Goods and Service Tax Intelligence, Zonal Unit, Ahmedabad-** No attachment over the bank account can continue after the period of one year from the date of passing of the order under Section 83 of the Act, 2017, unless such order is renewed or fresh order is passed by the authority. The respondent Nos.3 and 4-Banks are directed to lift the attachment over the accounts of the petitioner, placed by the respondent No.1, by virtue of order dated 10.01.2019 passed under Section 83 of the Act, 2017 - Petition disposed off

**2020 (3) TMI 616 - Gujarat High Court- R.J. Enterprise Versus State Of Gujarat-** After taking instructions from the concerned Department makes a statement that the order of provisional

attachment has not been renewed or no fresh order has been passed - In such circumstances as on date, it cannot be said that the account of the writ-applicant is under any attachment.

### **Attachment of Bank Account having Positive Credit Balance**

**2020 (5) TMI 193 - Punjab and Haryana High Court- M/S. RCI Industries & Technologies Ltd Versus Directorate General Of Goods and Service Tax Intelligence, Gurugram and Another-**

The attachment would be limited to the amounts which were lying to the credit of the petitioner in CC A/c, at the time of freezing and any further credit which may come would not be under attachment.

By: [Rachit Agarwal](#) - May 12, 2020