

Jurisprudence on Provisional Attachment of Bank Account

Hon'ble Supreme Court in M/s Radha Krishan Industries Versus State Of Himachal Pradesh & Ors.

- ✚ Writ Petition under Article 226 of the Constitution is maintainable in case of Provisional Attachment in spite of alternate remedy to file appeal.
- ✚ The power to levy a provisional attachment is draconian in nature.
- ✚ The order for attachment must be in writing
- ✚ An anticipatory attachment of this nature must strictly conform to the requirements, both substantive (Section 83) and procedural (Rule 159), embodied in the statute and the rules.
- ✚ The power to levy a provisional attachment has been entrusted to the Commissioner during the pendency of proceedings under Sections 62, 63, 64, 67, 73 or as the case may be
- ✚ Formation of opinion must be
 - before ordering a provisional attachment
 - based on “Tangible Material”
 - must give conclusion government revenue cannot be protected without ordering a provisional attachment. There must be live nexus
- ✚ Merely the proceedings were completed and demand has been confirmed against the another taxable entity would not satisfy the requirements of Provisional Attachment.
- ✚ Commissioner rejecting the objection filed by assessee must pass a reasoned speaking order
- ✚ Filing Objection against the Provisional Attachment and providing reasonable opportunity of being heard before rejecting the objection is cumulative.
- ✚ Opportunity of being heard to be given before rejecting the Objection filed by assessee against the Provisional Attachment Order.
- ✚ Appeal against the order of Provisional Attachment passed by Commissioner shall lie before Appellate Tribunal and not Appellate Authority as Commissioner is not Adjudicating Authority.
- ✚ Order of Provisional Attachment shall come to an end, once the order has been passed u/s 74(9) of HPGST Act, 2017