

TAX INFO

Dated 10/09/2022

Latest update on GST Law: **AO must pass provisional attachment order under GST only after recording his opinion or referring to any tangible material** as given in judgement by **Allahabad High Court**.

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Name of Petitioner	Varun Gupta
Name of Respondent	Union Of India
Court	Allahabad High Court
Date of Judgement	29.08.2022
Appeal No.	WRIT TAX No. - 858 of 2022

Brief Facts of the Case Law:

The petitioner is a proprietor of M/s. S G Plastic Industries and engaged in manufacturing of plastic granules. Earlier, Bank account of the petitioner was attached under Section 83 of CGST Act, 2017 by order dated 22.10.2021, against which the petitioner filed Writ Tax No. 448 of 2022 (Varun Gupta Versus Union of India and another) and the writ petition was allowed by order dated 11.05.2022 on the ground that no proceeding under Section 74 of CGST was pending as on the date of attachment. Consequently, the Department has passed the order dated 18.05.2022 intimating the Bank that the attachment has been quashed but on the very next day, the impugned order dated 19.05.2022 has been passed stating that the proceedings under Sections 67 and 74 has been launched against the petitioner. However, the Department have admitted before the Court on 14.07.2022 that "no proceedings under Sections 74 of the CGST Act, 2017 has yet been initiated".

Findings and Decision of the Court:

Plane reading of Section 83 of the CGST Act leaves no manner of doubt that firstly, there is necessity of the formation of opinion by the Commissioner; secondly, the opinion must be formed before ordering a provisional attachment; thirdly, the opinion must indicate that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourthly, the order must be in writing for the attachment of any property of the taxable person; and fifthly, observance of the Rules by the Commissioner in regard to the manner of attachment.

Each of these components of Section 83 are integral to a valid exercise of power. The statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue. The expression "it is necessary so to do" clearly evidences an intent of the legislature that an attachment is authorized not merely because it is expedient to do so but because it is necessary to do so in order to protect interest of the government revenue. The word "necessary" postulates that the interest of the revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. Thus, a more stringent requirement than a mere expediency, has been provided in Section 83. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue. This necessarily requires existence of tangible material before the Commissioner so as to enable him to form his opinion for provisional attachment of the property of an assessee / person including bank account, which may indicate a live link to the necessity to order a provisional attachment to protect the interest of the

Government Revenue. Each of the afore noted ingredients of Section 83 must be strictly applied and complied before a provisional attachment on the property of an assessee can be made.

In the impugned provisional attachment order, there is absence of the aforesaid ingredients of Section 83. Therefore, the impugned order having been passed by the Department by arbitrarily exercising his power, cannot be sustained. Therefore, it deserves to be quashed.

Facts of the present case clearly reveals that no proceedings under Section 74 of the C.G.S.T. Act, 2017 has yet been initiated. That apart, the Department while passing the impugned order, has neither recorded his opinion nor referred to any tangible material which necessitated him to pass the impugned provisional attachment order so as to protect the interest of the Government revenue. The basic ingredients required for passing the impugned order under Section 83 of the CGST Act as also authoritatively pronounced by Hon'ble Supreme Court in the case of Radha Krishan Industries (supra) and binding upon the Department under Article 141 of the Constitution of India, have been deliberately and completely ignored by the Department. Despite the earlier order having been quashed by this Court, the Department has chosen to pass the impugned order on the very next day of withdrawing the earlier order. The impugned order has been passed in a most arbitrary and illegal manner and in complete disregard of provisions of Section 83 of the C.G.S.T. Act read with Rule 159 of the C.G.S.T. Rules 2017 and the law laid down by Hon'ble Supreme Court in the case of Radha Krishan Industries (supra). Consequently, the impugned order cannot be sustained and deserves to be quashed with exemplary cost.

Thus, the impugned order dated 19.05.2022 under Section 83 of the C.G.S.T. Act 2017 passed by the Department was quashed. Writ petition was allowed with cost of Rs. 50,000/- which shall be paid by the Department to the petitioner within two weeks.

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