

## TAX INFO

Dated 20.12.2022

Latest update on GST Law: **Provisional attachment of property without initiation of proceedings is unsustainable** as given in judgement by **Gujarat High Court**.

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<b>Name of Petitioner</b>	Conceptual Trade
<b>Name of Respondent</b>	State of Gujarat
<b>Authority</b>	Gujarat High Court
<b>Date of Judgement</b>	19.10.2022
<b>Appeal No.</b>	R/Special Civil Application No. 7687 Of 2022

### **Brief Facts of the Case Law:**

The petitioner is engaged in the business of trading of garments, footwear, leather accessories, and is located at Mumbai and carries out the business from the address shown. The petitioner does not have any commercial presence in the State of Gujarat and is not registered under the Gujarat State Tax laws. The petitioner wanted to purchase certain goods from one M/s. Raja Traders situated at Ahmedabad and for that purpose the petitioner paid advance amount of approximately Rs. 20 lakhs but such goods were never supplied nor advance amount paid to M/s. Raja Traders was returned. The Assistant Commissioner, Ahmedabad issued the provisional attachment order dated 6.01.2022 in Form GST DRC-22 under section 83 of the CGST Act and GGST Act, 2017 addressed to the Branch Manager, IDFC First Bank, Kandivali (West) branch wherein Account No.10077040495 of the petitioner was ordered to be attached. It was contended in the said notice that M/s. Raja Traders and its syndicate availed GST refund fraudulently and that there was no transaction of sale or purchase with the petitioner though an amount was transferred by M/s. Raja Traders in the bank account of the petitioner with an intention to defraud the Government revenue which appears that contrary to the contention of the petitioner that amount was paid by the petitioner to M/s. Raja Traders for purchase of goods. M/s. Raja Traders situated at Ahmedabad is registered under the CGST Act and proceedings have been initiated under section 67(2) of the CGST Act to determine the tax or any other amount due from it. Thereafter, the summons dated 21.01.2022 under section 70(1) of the CGST and GGST Act were issued on the same grounds mentioned in the provisional attachment order dated 06.01.2022.

### **Contention of the Petitioner:**

As the petitioner operates from Mumbai, Maharashtra, the notice is without jurisdiction. He then proceeded to rely on section 83 of the Act that the original attachment thereunder was permitted provided proceedings under either of the sections 62, 63, 64, 67 or sections 73 and 74 were pending. For provisional attachment, there must be some material on record, to indicate that the assessment officer had formed an opinion on such basis. On the basis of the decision of **Patran Steel Rolling Mill v. Assistant Commissioner of State Tax, Unit-2[2019 (20) GSTL 732 (Guj)]**, it was submitted that the powers under section 83 should not be used in a manner which may have irreversible detrimental effect on the business of the assessee. It was next submitted that in **Jai Ambey Filament Pvt. Ltd. vs. Union of India [2021(44) GSTL 41 (Guj)]**, it was held that the subjective satisfaction needed for exercise of powers under section 83 should not be based on imaginary grounds but there must be available credible opinion that attachment was necessary.

### **Contention of the Department:**

It came to the knowledge of the authority that certain persons had created bogus companies and firms in the name of their relatives and they appointed themselves as directors and fraud was practised in respect of refund amount of Rs. 29 crores. Various companies were referred which according to the Department were engaged in such fraud and availing the credit and that they were not carrying out any business activities. It was stated that the search operation of M/s. Raja Traders was carried out on 28.12.2021 to 31.12.2021, various irregularities and illegal activities were highlighted including that no books of accounts were found at the registered office of M/s. Raja Traders and that the proprietor thereof was not known to anybody. The registration of M/s. Raja Traders was cancelled. It was then stated that the bank account of said M/s. Raja Traders revealed that it had received an amount of Rs.19,95,000/- from one Profusion Traders Pvt. Ltd. on 22.12.2011 at its Indusind Bank Account and Rs. 20,00,000/- was transferred on the same day in the IDFC Bank account of the petitioner. Such facts were banked upon to issue notice under section 83 and take action of freezing the bank account of the petitioner.

### **Findings and Decision of the Court:**

It is evident from the facts that the order of provisional attachment was passed before the proceedings against the appellant were initiated under Section 74 of the Act. Section 83 of the Act requires that there must be pendency of proceedings under the relevant provisions mentioned above against the taxable person whose property is sought to be attached. It is not acceptable that merely because proceedings were pending/concluded against another taxable entity, that is GM Powertech, the powers of Sections 83 could also be attracted against the appellant. This interpretation would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively. Given that there were no pending proceedings against the appellant, the mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act. The fundamental requirement remains valid that there must be proceeding pending before this section could be invoked and provisional attachment could be acted upon. The impugned notice was issued on 06.01.2022. The summons under section 70(1) of the CGST Act and GGST Act came to be issued only on 21.01.2022. The very invocation of powers and issuance of order dated 06.01.2022 was therefore in absence of any proceedings initiated. The powers under section 83 could not have been exercised. Therefore, the impugned order stands illegal when it seeks to provisionally attach the bank account of the petitioner. It was only on this ground that the impugned Order was liable to be set aside. However, the authorities may continue to proceed further pursuant to the summons dated 21.01.2022 and are at liberty to consider imposing the provisional attachment under section 83 of the CGST Act in accordance with law.

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