

# TAX INFO

*Dated 17/01/2022*

Latest update on GST Law: Information regarding **Provisional attachment of a cash credit account is not allowed** as given in **Judgement by Gujarat High Court.**

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<b>Name of Petitioner</b>	Manish Scrap Traders
<b>Name of Respondent</b>	Principal Commissioner
<b>Court</b>	Gujarat High Court
<b>Date of Judgement</b>	05/01/2022
<b>Appeal No.</b>	R/Special Civil Application No. 76 Of 2022

## Facts of the Case:

The order of provisional attachment of a cash credit account running in the name of the petitioner maintained with the Axis Bank was passed in the Form GST DRC-22 dated 29.11.2021 by the Department in exercise of powers under the provisions of Section 83 of the CGST Act, 2017 to protect the interest of the revenue.

## Contention of Petitioner:

The law as regards the provisional attachment of a cash credit account is no longer res integra. Way back in the year 2016, **in the case of Kaneria Granito Ltd. vs. Assistant Commissioner of Income Tax, Special Civil Application No.14497 of 2014 decided on 27.06.2016**, a Co-ordinate Bench of this Court took the view that a cash credit account cannot be provisionally attached.

## Decision of the Court:

The cash credit account in the case on hand could be said to have been opened to enable the petitioner to borrow the money from the Bank for the purpose of its business. Any money therefore, that the Bank may make available to the petitioner would necessarily be in the nature of a loan or a cash credit facility. In either case, it would be in the nature of borrowing by the petitioner from the Bank. In such circumstances, the Bank and the petitioner do not have the debtor – creditor relationship.

**The decision of this Court in the case of Kaneria Granito Ltd. has been followed in various other matters of the present type over a period of time. Various orders have been passed over a period of time condemning the action on the part of the department in provisionally attaching the cash credit account in exercise of powers under Section 83 of the Act.**

The Court finds that the Principal Commissioner, CGST is in contempt and he owes an explanation for conveniently over-looking the well settled position of law on the next date of hearing.

**Suresh Aggarwal, Advocate**

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