

TAX INFO

Dated: 19.10.2020

Latest update on GST Law: Information regarding **Power for provisional attachment of bank account under GST provisions is not absolute** based on the **Judgement issued by Punjab & Haryana High Court**.

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Power for provisional attachment of bank account under GST provisions is not absolute

Name of Petitioner	Bindal Smelting Pvt. Ltd.
Name of Respondent	Additional Director General, Directorate General of GST Intelligence
Name of Court	Punjab & Haryana High Court
Appeal Number	CWP No.31382 of 2019 (O&M)
Date of Judgement	20.12.2019

Facts of the Case:

The Petitioner is manufacturing lead ingots, red oxide and grey oxide. On 27.03.2018, officials of Respondent/GST Directorate searched premises of the Petitioner and during search seized record. The Respondent time to time directed Petitioner to supply different documents which Petitioner supplied but failed to provide transporter bilty and weighment slips. The Respondent recorded statements of officials of Petitioner and conducted further investigation. The Respondent during investigation found that Petitioner has purchased scrap batteries from different suppliers which included 16 suppliers, who are not traceable. The Petitioner during July' 2017 to March' 2018 had availed ITC amounting to Rs.13.38 Crore on the basis of invoices of 16 suppliers, who are not traceable.

The Respondent vide order dated 10.07.2019 provisionally attached Over Cash Credit (for short 'OCC') Account of the Petitioner. The Petitioner in terms of Rule 159 of CGST Rules, 2017 made a representation to the Respondent, who vide communication dated 23.10.2019 declined to accede request of the Petitioner to lift attachment of bank account.

Contention of Petitioner:

Petitioner contended that he had till date had utilized credit limit to the tune of Rs. 6.42 Crore, thus there is debit balance in the account and its attachment amounts to closure of business because in the present era it is not possible to carry on business activities without bank account. Till date, no show cause notice has been issued under Section 73 or 74 of the CGST Act, thus any demand prior to show cause notice and its adjudication is bad and beyond the jurisdiction of Respondent.

Reply of Respondent:

The Ld. Counsel contended that the Petitioner has not actually purchased inputs from 16 suppliers and these suppliers are not traceable, thus Petitioner is liable to pay ITC amounting to Rs.13.38 Crore, which has been wrongly availed. The bank account has been attached only to safeguard the interest of government revenue and contention of Petitioner that attachment of account amounts to closure of business is untenable.

Observations:

In the present case the attached account is Over Cash Credit account and Petitioner had debit balance of Rs.6.42 Crore, thus question arises that whether continuation of attachment would protect interest of revenue or not. The contention of Respondent that they have power to attach bank account irrespective of nature of account cannot be countenanced. Respondent can attach an account only if there is some balance in the form of FDR or savings. In case a property is mortgaged with bank and value of property is less than outstanding dues of bank, provisional attachment is meaningless and action remains only on paper. In the absence of record showing that interest of revenue is protected by attaching property or bank account, action deserves to be declared as taken without application of mind and formation of opinion on the basis of cogent material. Thus, attachment of current account having debit balance does not protect interest of revenue, instead merely ruins the business of a dealer. Such an action of attachment of "over cash credit" account for the sake of recovery of confirmed demand, may in some peculiar case, may be still permitted but not at the stage of pending investigation.

Judgement:

The impugned order dated 10.07.2019 and order dated 12.09.2019 in the teeth of intent and purpose of Section 83 of CGST Act, 2017 is bad and present petition deserves to succeed and accordingly allowed.

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