

An important practical **judgement** pronounced on attachment of bank account by Gst Authorities

**Petitioner:** M/s RCI Industries & Technologies Ltd.  
**Respondents:** Directorate General of Goods and Service Tax Intelligence, Gurugram and Another  
**Pronounced By:** Punjab & Haryana High Court, Chandigarh  
**Pronounced On:** 18<sup>th</sup> February 2020  
**Citation No:** CWP No.18523 of 2019 (O&M)

**Issue Covered:** Attachment Of Bank Account

**Prayer/ Issues Involved:**

1. Impugned order dated 07.06.2019 be set aside/quashed by issuing writ of certiorari
2. Respondent be directed by issuance of writ of Mandamus to supply certified copies of documents seized by them during search dated 09.07.2018 at Head Office as well as godown
3. Respondent be further directed not to ask information from petitioner which is not in their possession and collect them from the seized papers which is already lying with them
4. Respondent to conclude the process of adjudication within the shortest possible time after issuing show cause notice and to pass a reasonable or speaking order
5. Restraining the Respondents from resorting to or taking any coercive measure action as there is no substitute for an assessment.

**Order Pronounced:**

1. The petitioner had been informed that the personal appearance of its Managing Director is not required as per Summons Dated 06.02.2020
2. Any future apprehension of arrest of any person, it is clarified that the respondents shall act in accordance with law.

3. Accounts seized include Cash Credit A/c (CC A/c) and the attachment would be **limited to the amounts which were lying** to the credit of CC A/c at the time of freezing
4. Any **Further credit** which may come into the A/c **would not** be under attachment

## **Our Comments:**

### *Reproduction of the Sections of CGST Act*

82. Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

83. (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

### *Procedure:*

If the Commissioner wants to provisionally attach any property (including bank account), he will pass an order in DRC-22 which will contain the details of the property attached. The commissioner can issue **DRC-22**, anytime after issuance of demand notice under Sections 63, 73 or 74. Similarly, such notice for attachment shall be made only after the issuance of assessment orders under Sections 62 or 64.

Upon receipt of this order, the taxpayer can file an objection against it stating that such property was not liable to attachment. This objection must be filed within seven days of attachment of the property. The Commissioner is then bound to give the taxpayer an opportunity of being heard. In case he is

satisfied with the response given by the taxpayer, he will release the attached property by passing an order in **DRC-23**.

In case the property attached is of a perishable or hazardous nature, the taxpayer will have to either settle the relevant tax dues or pay the market price for the property, whichever is lower. Upon settlement, the Commissioner will release such property by passing an order in DRC-23. If the taxpayer does not agree to either pay the market price of the property or settle the relevant tax dues, the Commissioner may dispose of the property and apply the proceeds against the dues of the taxpayer.

**Analysis:**

1. Pendency of Proceedings u/s 62, 63, 64, 67, 73, 74 is must.
2. Issuance of assessment order u/s 62 or 64 is a pre-condition.
3. Protection of the interest of the Government revenue is necessary.
4. Order must be in writing.
5. Order is only for PROVISIONAL attachment and not withdrawing the proceeds of the property.

**Related Citations:**

**Karnataka High Court in the case of M/s LC Infra Projects P Ltd- WRIT APPEAL NO.188 OF 2020 (T-RES)**

Issuance of a show Cause Notice is sine qua non to proceed with the recovery of interest payable under Section 50 of the GST Act and penalty leviable under the provisions of the GST Act and the Rules. Order of Bank attachment is set aside.

**Gujarat High Court in the case of M/s Alfa Enterprise V State of Gujarat- Special Civil Application No 16698 of 2019**

The order of attachment of bank account is prima facie without authority of law and the order of blocking of electronic credit ledger by making a computer entry; is not backed by any statutory provision; is not backed by any provision of law which empower the authorities to block the credit.

### **Bombay High Court in the case of Petition filed by Gehna Trading LLP – 95-HC-BOM-GST-2020**

Provisional attachment power is not a universal power given to the department and it has to be used in certain special situations. The court stated and assumed that the section 62, 63, 64, 67, 73 and 74 mentioned in section 83 of the Act are not applicable to the petitioner but issued summon as per the pursuant to the inquiry adding the M/s. Maps Global under section 67 of the Act, as per the summon. Therefore the judges said that the attachment powers might come to rescue the government revenue but are still not acceptable to apply them to any situation without properly understanding them.

### **Bombay High Court in the case of Kaish Impex P Ltd – W P No. 3145 of 2019**

Section 83 though uses the phrase '*pendency of any proceedings*', the proceedings are referable to section 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions.

### **Gujarat High Court in the case of Valerius Industries V UOI 2019**

HC analysed the powers of the Commissioner and section 2(25) defines Commissioner in the Board. The power of delegation u/s 5(3) is with the commissioner in the Board and not the Commissioner of Central Tax. The High Court questioned whether the Commissioner is having power to the officers noted in the said order under section 83. The High Court is of in the negative opinion for the question as to whether the power conferred upon the Commissioner could have been delegated to the three subordinate officers by virtue of the order dated 15.01.2018.

The High Court further held that the statutory requirement of 'reasonable belief' is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so without any fact, no belief can be formed. It is not required that the Authority is to state reasons for its belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which belief was formed.

In the absence of any cogent or credible material, if the subject satisfaction is arrived at by the authority concerned for the purpose of passing an order of provisional attachment, then such action amounts to malice in law. i.e., doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probably cause. The High Court held that any use of discretionary power exercised for an unauthorized purpose amounts to malice

in law. It is immaterial whether the authority acted in good faith or not. Just because a search has been undertaken resulting in seizure of goods by itself may not be sufficient to arrive at the subjective satisfaction that it is necessary to pass an order of provisional attachment to protect the government revenue.

#### Disclaimer

While every care has been taken to ensure the accuracy/ authenticity of the above, the readers are advised to recheck/ reconfirm the same from the original sources/ relevant departments. The company shall in no way be responsible for any loss or damage suffered to any person on account of the same. The views expressed are personal opinion, compilation and is no way, to be used for any legal opinion, matters