PROVISIONAL ATTACHMENT OF PROPERTY UNDER SECTION 83 OF CGST ACT IN CERTAIN CASES

INTRODUCTION

In this article we have tried to analyze the fact that Section 83 of CGST Act can be applied if the Commissioner can freeze your bank account and attach the property if the Taxpayer and Any Person who commits any offence and the Commissioner wants to protect the Interest of the Revenue of the government he has the power to attach the property and bank account of the taxpayer provisionally.

Topics Covered

- Meaning Of Attachment of property
- Interpretation of Section 83 of the CGST Act
- Amendment through Finance Act, 2021

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- Guideline issued by CBIC
- Circumstances under which Sec 83 can be invoked
- Action to be taken by the Taxpayer and Time Limit
- Supreme Court Judgment

Meaning Of Attachment of Property

If the government attaches the property of a person, the person cannot transfer the said property to anyone else. Even if he does manage to transfer the attached property, the transfer shall be deemed void and thus not recognized by law. Even bank accounts can be attached he will not be allowed to transfer his funds to any other account.

Interpretation of Section 83 of the CGST Act

The COMMISSIONER can pass an order for attachment of property including bank accounts to protect the interest

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of the revenue. This order cannot remain enforce for more than a year.

(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)

Amendment through Finance Act, 2021

By Section 115 of Finance Act is the most DRACONIAN (Harsh) Provision and clause which is being provided under Provisional Attachment and Bank Account of the Taxable Person, when Government want to protect the

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Government Revenue. They have substituted Section 83(1)

Substituted Provision

Now the Provisional Attachment and the Bank Property can be done against of the Taxable Person and of any Person under Section 122(1a) of CGST Act.

Section 122(1a):- A Person who is causing to commit and retaining the benefit of four specified offences then Provisional Attachment can be done even the against the Property and Bank Account of such person engaged in these four specified offences

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Four Offences:-

a) Supply of Goods/Services without Invoice.
b) Issuance of Invoice without supply of Goods/Services
c) ITC (Input Tax Credit) wrongly availed or Utilized without actual receipt of Goods/Services

d) ITC on the basis of ISD (Input Service Distributor) wrongly distributed.

Now the situation alarming is earlier Section 83 was applicable to Section 62, Section 63, Section 64, Section 67, Section 73, Section 74 But now this Section 83 going to be applicable for whole Chapter XII (Assessment), Chapter XIV (Inspection, Search and Seizure), and Chapter XV (Demands and Recovery) even Provisional Assessment, Scrutiny of Returns can be a criteria for Provisional Attachment

Guidelines issued by CBIC

Circular No: - 359, Dated February 23, 2021 got issued and they have given 6 Parameters

i. Supply of Goods/Services without Tax Invoice (Cash Sale)
ii. Issuance of Tax Invoice without supply of Goods/Services (Fake Invoice)
iii. Availing Credit on such Invoice or utilizing such wrongful availed credit

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iv. GST collected but fails to pay beyond 3 months from the Due Date.

v. Erroneous Refund is being taken.

vi. Passing on the credit to Recipient and that tax has not been deposited with Government

It is saying that the **Proper Checking and verification** and this **provisional attachment power should not be used as a mechanical method/ ordinary method**. If it needs to be attached first attach Immovable Property and then only moveable property but when the commissioner is attaching movable property he cannot attach finished goods, raw material and should not disrupt the business. If business is stopped and not being allowed to continue then it is halt and that is not written in the law.

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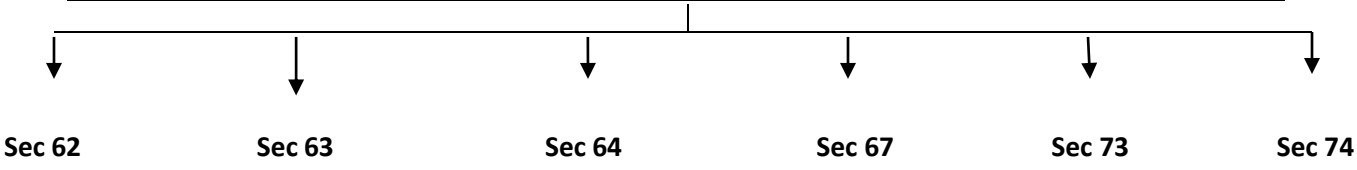
Circumstances under which Sec 83 can be invoked



Sec 62:- Deals with Assessment of Non- Filers of Returns (Registered)

Sec 63:- Deals with Assessment of Unregistered Persons.

Sec 64:- Deals with Summary assessment in certain special cases.

Sec 67:- Deals with proceedings related to search, inspection and seizure

Sec 73:- Deals with Demand raised when tax not paid or short paid or erroneously refunded in other than fraud, willful misrepresentation of facts

Sec 74:- Deals with Demand raised when tax not paid or short paid or erroneously refunded in case of fraud, willful misrepresentation of facts.

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Action to be taken by the Taxpayer and Time Limit

If the Commissioner wants to provisionally attach a property including bank account, he will pass a order in DRC – 22 which

will contain the details of details of the property attached. The commissioner can issue DRC – 22 anytime after issuance of demand notice under Sections 63, 73, or 74. Upon the 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 the attachment of the property. Then, the commissioner is then bound to give the Taxpayer an opportunity of being heard.

In case the commissioner is satisfied with the response given by the taxpayer, he will release the attached property by passing an order in DRC – 23.

Supreme Court Judgment

Radha Krishan Industries Limited v/s The State of H.P (Civil Appeal No 1155 of 2021 Dated April 20, 2021)

In this Supreme Court judgment the Honorable Court has set aside the judgment passed by the Honorable Himachal Pradesh High Court and the orders of Provisional attachment

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passed by the Joint Commissioner. Held that, the power to order a provisional attachment of the property of the taxable person including a bank account is **DRACONIAN (HARSH) in nature** and the conditions which are prescribed by the statue for a valid exercise of the power must be strictly fulfilled.

The Supreme Court also noted that the order of provisional attachment was passed before the proceedings against the Appellant were initiated under Section 74 of the HPGST Act. Section 83 of the HPGST Act requires that there must be pendency of the proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 against the taxable person whose property is sought to be attached.

The Court also stated that once the Final Order of assessment is passed under Section 74 of the HPGST Act, the order of provisional attachment must cease to subsist.

AUTHOR VIEW :-

According to my view if there is harassment to the Taxpayer in form of illegal search, Seizure and Detention, illegal Provisional Attachment just because the Commissioner is given power

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"**REASON TO BELIEVE**" where this term "REASON TO BELIEVE" is **not defined anywhere in the Act**. There should be proper check mechanism where a commissioner is using his power in a correct way or not. If not, then the Commissioner should be penalized and compensation should be given to the Taxpayer, it should not be this way to harass the Honest Taxpayer. There is provision which was proposed in Union Budget which is yet to be notified Under Section 83(1) which will give power to commissioner to attach the Property and Bank Account of Taxable Person and of Any Person this should be stopped before this provision comes into force. To protect the government revenue the Government should start proceedings under section 78 (Demand & Recovery), because if government would start proceedings section 83 this can hamper business and the honest taxpayer will be harassed.

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