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February, 2023

President's Communiqué



Dear Professional Colleagues,

The Budget presented by Shri Nirmala Sitharaman is the first Budget in **AmritKaal**, which hopes to build on the foundation laid in the previous budget and the blueprint drawn for India@100. This year being the 75th year of Independence, the world has recognised the Indian economy as a 'bright star' and the G20 Presidency gives a unique opportunity to strengthen India's role in the world economic order.

Budget focuses on high infra-spend over the next ten years. FM has also given lot of tax incentives to the middle-class and upper middle class people of the society.

MCTC had organized a Public Meeting on the Union Budget 2023 at Goregaon Sports Club on 4th February, 2023. The benefit of the meeting was taken by more than 450 participants. The event was graced by Eminent Citizen of Malad Shri Kiran Patel, the noted industrialist and the Philanthropist as the Chief Guest. The Budget was critically analysed by Shri CA Dinesh Kanabar for Direct tax proposals, Advocate Bharat Raichandani for Indirect tax proposals & its Impact on the Capital Market was ably analysed by CA Manish Chokshi.

This was also the 25th Publication – Special Silver Jubilee Edition on Union Budget 2023 "Direct-Indirect Tax Proposals an Analytical Study" of the Finance Bill 2023. As per the tradition, this year also the publication was in hand within 72 hours of the presentation of the budget in the parliament containing clause by clause analysis of the provision of the Finance Bill, 2023 by more than 35 expert professionals and edited by 6 senior editors. The publication is a good reference for the taxpayers and the advisors for understanding the budget proposals. We received a good response for the publication and now have limited copies available for sale. Details of the locations where it is available for sale is printed elsewhere in the bulletin.

I once again urge members to participate in "Gift a Membership" programme of the Malad Chamber and give a unique gift providing opportunity for continuous learning for the life time while also helping the chamber to consolidate its membership.

You can teach a person a lesson for a day; but if you can teach him to learn by creating curiosity, he will continue the learning process as long as he lives." - Clay Bedford

Wishing you all a Happy Holi in Advance.

Regards

CA Ujwal Thakrar
President

Request: Members please send your Mobile No. & Email ID to update list of life members
Please send message on 7039006655 or email to maladchamber@gmail.com

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

Name	Designation	Contact Nos.	E-mail
CA Ujwal Thakrar	President	9819946379	ujwalthakrar@gmail.com
CA Khyati Vasani	Vice President	9833288584	khyativasani@yahoo.com
Adv. Jaideep Sonpal	Hon. Treasurer	9892005352	sonpalconsultants@gmail.com
Shri Jitendra Fulia	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

Life Membership Fees ₹ 2,500

Forthcoming Events

RAJUBHAI CHOKSHI ORATION FUND LECTURE	
Day & Date	Sunday, 26th February 2023
Topic & Speakers	CA Janak Vaghani : <i>Assessment & Issue of Show Cause Notice under GST Law</i> CA Natwar Thakrar : <i>Taxation of Charitable Trusts Including Recent Supreme court decision and Budget 2023 proposals</i>
Time	10.00 a.m. to 1.00 p.m.
Venue	Physical Meeting at Durgadevi Saraf Institute of Management Studies 6th Floor, Room No. 623, Opp. Bajaj Hall S. V. Road, Malad (West), Mumbai.

25th Silver Jubilee Budget Publication 2023 Available for Sale

Dear Colleagues,

Our 25th Silver Jubilee Budget Publication (INR 150 per book) is Available for Sale at the following address:

BORIVALI B. D. VASANI & CO. Level 5, Vini Elegance, L.T. Road, Borivali West, Above Tanishq, Mumbai-400 092. Phone : 022 2899 8888	MALAD CA VIRESH SHAH & COMPANY C-401, Krishna Apartment, Behind Milap Apartment, Opp. HP Petrol Pump, S. V. Road, Malad (West), Mumbai-400 064. CA Viresh Shah - 9820780070 Office - 28018520 / 9372206844
KANDIVALI JATIN MEHTA & CO. 2nd Floor, Office No. 1, Sanghvi Chambers, Above Bank of India Kandivali (W), Mumbai-400 067. Phone No. : 28010367/68	MALAD JIGNESH SAVLA AND ASSOCIATES Flat 2, 1st Floor, Somaiya Shopping Centre, Sainath Road, Malad (West), Mumbai-400 064. Above Govindas Hotel. Phone No.: 022 28890477/022 20891192
BORIVALI A P RUPARELIA & ASSOCIATES 304, Goyal Shopping Arcade, L T Road, Opp. Borivali Platform No. 3, Borivali (West), Mumbai-92. Phone : 022 66990015	MALAD BRIJESH CHOLERA & CO. Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (West), Mumbai-400 064.
ANDHERI N. G. THAKRAR & CO. 803, Atrium 2, Behind Courtyard Marriot Hotel, Andheri Kurla Road, Andheri (East), Mumbai-400 093. Phone : 9819946379	GOODS AND SERVICES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA Library 104, 1st Floor, GST Bhavan, Mazgaon, Mumbai-400 010. Phone : 23737153


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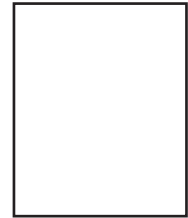
The Malad Chamber of Tax Consultants

Regd. Office: B/6, Star Manor Apartment, 1st Floor, Anand Road Extn.,
Malad (West), Mumbai- 400064. E-mail: maladchamber@gmail.com. Mobile: 7039006655.

Admin Office: C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064



MEMBERSHIP FORM



Date:..... /..... /.....

To,

The Hon. Joint Secretaries,
The Malad Chamber of Tax Consultants, Mumbai.

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of *The Malad Chamber of Tax Consultants* with the following particulars:

1. NAME OF MEMBER MR/MRS/MISS:
2. FATHER'S / HUSBAND'S NAME:
3. QUALIFICATIONS:
4. MEMBERSHIP NO., if any (with name of the association):
5. PERSONAL DATA:
- DATE OF BIRTH:...../...../..... BLOOD GROUP:.....
- SPOUSE'S NAME: SPOUSE'S DATE OF BIRTH...../...../.....
- MARRIAGE ANNIVERSARY:...../...../.....
- PROFESSION: ADVOCATE CA ITP ICWAI ICSI GSTP/STP
6. OFFICE NAME:.....
- OFFICE ADDRESS:
- PIN CODE: STATE:..... TEL. NO: FAX NO:
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7. RESIDENTIAL ADDRESS:
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- TEL. NO: FAX NO: MOBILE NO:
8. COMMUNICATION TO BE SENT TO:OFFICE RESIDENCE

The amount of ₹ 2,500/- by Cheque/Draft No. dated /...../..... drawn on

9. Bank Detail for Online Payment

Beneficiary Name: The Malad Chamber of Tax Consultants.

Bank Name: HDFC Bank Ltd. – Marve Road, Malad West Branch, Account No. 00471000136285;
IFS Code: HDFC0000047.

10. Kindly register on this google form link also for faster processing of membership - <https://bit.ly/mctc-e-regn>

UNDERTAKING

I, do hereby declare that whatever stated herein above is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and Constitution of the Association, as amended from time to time.

.....
(Signature)

DIRECT TAXES - Law Update

Haresh P. Kenia



1. Income Tax Return Forms for AY 2023-24

CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2023-24 vide Notifications No. 04 & 05 of 2023 dated 10.02.2023 and 14.02.2023. These ITR forms will come into effect from 1st April, 2023 and have been notified well in advance in order to enable filing of returns from the beginning of the ensuing Assessment Year.

In order to facilitate the taxpayers and to improve ease of filing, no significant changes have been made to the ITR Forms in comparison to last year's ITR Forms. Only the bare minimum changes necessitated due to amendments in the Income-tax Act, 1961 (the 'Act') have been made. There are no changes as regard, manner of filing of ITR Forms as compared to last year

2. Frequently Asked Questions (FAQS) On E-Verification Scheme, 2021

- The CBDT has released a set of 24 clarifications and FAQs on the e-Verification Scheme 2021, announced in Notification 137/2021.
- The FAQs on the e-Verification Scheme, 2021 aim to provide general guidance in understanding the procedures and processes of the e-Verification Scheme, 2021 issued vide Notification no. 137/2021 dated 13.12.2021. These are presented in an easy-to-understand manner without using the technical wordings of the Income Tax Act, to the extent possible.
- These FAQs are informative and advisory in nature and are subject to updation as required. These should not be used as a basis for any legal interpretation of the e-Verification Scheme, 2021 or the Income Tax Act, 1961. The taxpayers may like to take an informed decision on their tax matters in this regard.

3. CBDT Notifies Centralised Processing of Equalisation Levy Statement Scheme, 2023

The Central Board of Direct Taxes, vide Notification No. 3/2023 dated 07.02.2023, in exercise of the powers conferred by section 168 (2) Finance Act, 2016, hereby notified the Centralised Processing of Equalisation Levy Statement Scheme, 2023 for processing of statement furnished under section 167 of the Act.

The Scheme contains the following broad features and provides for -

- Scope of the Scheme
- Furnishing of Equalisation Levy Statement
- Invalid Equalisation Levy Statement.
- Processing of Equalisation Levy Statement
- No personal appearance in the Centre
- Service of notice or communication
- Power to specify procedure and processes

Readers may refer to complete text of the notification for further details

4. UNION BUDGET 2023

A BILL to give effect to the financial proposals of the Central Government for the financial year 2023-2024.

The Finance Minister, as part of the Union Budget 2023-24, has announced a number of direct tax and indirect tax proposals/ amendments.

- Common Income Tax Return (ITR) Form
- Increase of Tax Rebate limit to ₹ 7 lac
- Increase of Tax Exemption Limit/ Slab to 3 lac
- New Income Tax Rates/ Slabs (New Regime)
- Benefit of Standard Deduction to be extended to New Tax Regime
- Reduction in Highest rate of Surcharge from 37% to 25%
- Enhanced Limits for Presumptive Taxation of MSMEs and Professionals
- Capping of Deduction u/s. 54 and 54F at ₹ 10 crore
- Higher Cash Withdrawal Limit of 3 Crore u/s. 194N for Cooperatives
-

Readers may refer to complete text of the Finance Bill 2023 for further details



DIRECT TAX CASE LAWS

*Compiled by CA Rupal Shah
(Partner at RHDB & Co LLP)*



ACIT Vs Hotel Leela Venture Ltd

Citation: ITA NO 4453/Mum/2013, ITAT Mumbai 10 August 2022

'Losses as per Sec 79 cannot be carried forward by virtue of Sec 72A in case of Amalgamation'

Facts :

Assessee being a company file its return of income for the AY 2007-08 after claiming brought forward losses of the company "M/s. Kaovalam Hotels Ltd" (K) which is amalgamated with the assessee company w.e.f. 01-04-2006. K had brought forward losses for the AY 2006-07 which assessee company set off in its return of income for the AY 2007-08.

AO of the assessee disallowed the brought forward loss of K on the ground that the AO of the K has specifically said in his Assessment order that K is a closely held company and therefore brought forward loss cannot be carried forward by company K. AO of the Company K passed his order on the basis of section 79 of the act.

On first appeal, CIT(A) passed the order in the favour of the assessee stating that the Section 72A is a specific provision it has to be preferred over the general provision of the Section 79. Ld. CIT(A) relied on decision in the case Tata Autocomp System Ltd. vs. ACIT 2(3), wherein the Hon'ble ITAT held that specific provision would prevail over the general provisions.

Being aggrieved by the order of the CIT(A) revenue file an appeal before Tribunal.

Held

The AO of K has already rejected the claim of carry forward of the business loss as per section 79 of the Act and same cannot be available to the assessee for the set off u/s 72A of the Act until and unless said finding of the AO is reversed by the higher appellant authorities. As on the date assessment order of K for AY 2006-07 is in operation and has not been reversed by the higher appellant authorities.

Since the assessment order of K has not been reversed till date assessee company cannot carry forward the loss as per the provision of the section 72A of the act.

Order by the CIT (A) has been set aside and directed the AO to give the effect of the set off of business loss consequent to the decision of appellant authority in the case K.

Atul Chandrakant Kirloskar (Appellant) Vs DCIT (Respondent).

Citation: IT APPEAL NO. 3093 (PUN) OF 2017,06 JUNE 2022

'Tax on Father's love?'

Facts:

In the current AY 14-15, assessee let out his property to Daughter and offered annual rent of 5,500/- under Income from House Property.

During assessment, AO observed that during previous AY 13-14, same property was let out for six months to a third party for rent of six months at 11 lakhs. Thus, AO estimated Annual Let out value (ALV) of property at ₹ 22 Lakhs and passed the order after addition of ₹ 22 lakhs for the AY 2014-15.

On first appeal before CIT(A), Assessee contended that relatable municipal value is only 6140 and hence the rent income from daughter of 5,500/- should have been accepted by assessee. However, assessee was not able to satisfactorily explain that for previous year, how he was able to get such a high rent from Volkswagen India Pvt Ltd.

CIT(A) upheld the order of AO, stating that the AO has not picked-up any extraneous data to compute the ALV, but has only considered what has been shown by the assessee in form of actual rent received for Six Months during the F.Y. 2012-13 relevant to A.Y. 2013-14.

Held

It is an undisputed fact that for F.Y. 2012-13 relevant to A.Y. 2013-14, the same property of the assessee fetched a rent of 22 lakhs per annum with the actual rent received of 11 lakhs for Six Months from Volkswagen India Pvt. Ltd. We find that same property was let out to the daughter of the assessee in F.Y. 2013-14 relevant to the present Assessment Year under consideration for a meagre amount of 5,500/- per annum as rent.

The Id. AR of the assessee repeatedly contends that it is for the AO to prove why there has been such discrepancy in the rent amount. The legal scenario is very clear that once such a discrepancy has been demonstrated and examined by the Department, the onus is on the assessee to establish the reasons for such disparity in rental income.

As per Hon'ble ITAT, the AO has not considered any outside property comparable rents nor has taken into consideration any other extraneous circumstances but has only considered the disparity of rent in assessee's own property, on one hand what he had received during the A.Y. 2013-14 and on the other, what he has received in A.Y. 2014-15. Thus, it is the duty of the assessee to explain this disparity with possible reasons and materials on record, otherwise, the tax levied on such income is justified.

Appeal by the assessee is dismissed.



Whether Department has Unbridled Power to Provisionally attach the Bank Account of a Person under the GST Act?

Compiled by CA Bhavin Mehta

It is learnt that recently some of revenue officer have started issuing threats to the taxpayers that unless tax payable (as per revenue officer), including differential tax amount due to mis-match of ITC as per GSTR-3B and GSTR-2A/2B, is paid by the taxpayer, their bank accounts would be attached. Supreme Court in the case of **Radha Krishan Industries vs. State of Himachal Pradesh reported in 2021 (48) G.S.T.L. 113 (S.C.)** has delivered benchmark decision on provisional attachment.



The power of attachment is prescribed in section 83 of the CGST Act. Section 83 is extracted below:

Section 83. Provisional attachment to protect revenue in certain cases.-

¹[(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 or any person specified in sub-section (1A) of section 122, 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).

¹Substituted by Finance Act, 2021, w.e.f. 1.1.2021 vide Notification No. 39/2021-CT dated 21.12.2021.

The power of provisional attachment under section 83 is a drastic power and must be exercised with extreme care and caution. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions contained in chapters XII, XIV and XV. The essential attributes of section 83 and its analysis is given below:

- (i) Formation of opinion by Commissioner to attach the property: Before the Commissioner can have a provisional attachment of the property, there must be a formation of **“the opinion”** and that **‘it is necessary so to do’** for the purpose of protecting the interest of the revenue. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue. Necessity postulates that the interest of the revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. The Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. Each of these components of the statute is integral to a valid exercise of power. Upon forming such opinion, the order is required to be issued in writing for attachment of the property. The manner of attachment is prescribed in Rule 159 of CGST Rules, wherein Commissioner shall pass an order in Form DRC-22 to that effect mentioning therein, the details of property which is attached. The person whose property is attached is empowered to file an objection within 7 days on the ground that the property was or is not liable to attachment. After granting an opportunity of being heard, the Commissioner may release the property.
- (ii) To protect the interest of revenue: - The order of provisional attachment may be justified, if the authority empowered under law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on credible materials or information. The Commissioner should have sufficient material on record to justify that the **taxpayer or specified person¹** is about to dispose of the whole or part of its property to thwart the ultimate collection of tax. The existence of relevant material is pre-condition to the formation of an opinion by the Commissioner. Such power should be used sparingly and only on substantive weighty grounds and reasons. Mismatch of ITC cannot be considered as threat to the interest of revenue to form an opinion that taxpayer or specified person shall be disposing off assets.

[¹**Specified person:** The person on whose instance (i) the supplies of goods or services is undertaken without issue of invoice; or (ii) the invoice is issued without supply of goods or services; or (iii) ITC is taken or utilized without actual receipt of goods or services; or (iv) ITC is distributed or taken in contravention of ISD provision stipulated in section 20 of CGST Act; and such person has retained the benefit of any of the above transaction]

- (iii) Pendency of any proceeding under chapter XII, XIV and XV is a pre-condition for invoking the provision of section 83:- Though section 83 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. Chapter

XII pertaining Assessment covers under its scope section 59 to section 64, wherein the relevant sections in respect to initiation of proceeding is stipulated under section 62 (Assessment of non-filers of returns), section 63 (Assessment of unregistered person) and section 64 (Summary assessment in certain special cases). Chapter XIV pertains to inspection, search, seizure and arrest and the provisions stipulated in section 67. Chapter XV pertains to Demands and Recovery, wherein the relevant section in respect of initiation of proceeding is section 73 (tax not paid, short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or willful misstatement or suppression of facts) and section 74 (tax not paid, short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or willful misstatement or suppression of facts). The bank account of the taxable person can be attached against whom the proceedings under anyone of the section mentioned above is initiated and pending. In other words, without initiating the proceedings under anyone of the above referred section, attachment cannot be made. 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.

- (iv) Provisional order cease to subsist: A provisional attachment ceases to have effect upon expiry of a period of one year of the order being passed under section 83(1) of the Act. The attachment order can be passed during pendency of proceedings under section 62 or 63 or 64 or 67 or 73 or 74. Therefore, once the final order of assessment is passed under section 73 or 74 the order of provisional attachment come to end.
- (v) Appeal against provisional attachment order: Section 107 and section 112 of CGST Act does provide remedy to challenge the provisional order passed by the 'Commissioner of Central Tax'. Therefore, the only efficacious remedy is to file writ petition before jurisdiction High Court under Article 226 of the Constitution.

A provisional attachment order passed by the 'Commissioner of State Tax' does not have alternative remedy for challenging such provisional attachment order before the Appellate Authority. Appeals to the Appellate Authority can be filed against the order passed by the 'adjudicating authority'. The adjudicating authority defined under the State Goods and Service Tax Act does not include the 'Commissioner' as adjudicating authority. The definition of 'adjudicating authority' as defined in section 2(4) of MGST Act is reproduced below:

“(4) “adjudicating authority” means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the Commissioner, Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;”

Therefore, the recourse to file appeal against the provisional attachment order passed by the State Tax Commissioner is to file writ petition before the jurisdictional High Court under Article 226 of the Constitution.

The provisional attachment order passed by the delegate of the Commissioner in pursuance of delegation effected by section 5(3) of the Act does not provide appeal against such order under section 107 or 112 and therefore the recourse shall be writ petition before High Court.

(vi) Judicial decisions:

(a) The Supreme Court in **Radha Krishan Industries (supra)**, concluded its finding as under:

72. For the above reasons, we hold and conclude that

- (i) The Joint Commissioner while ordering a provisional attachment under Section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107(1);
- (ii) The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

- (iii) The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;
 - (iv) The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;
 - (v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.
 - (vi) The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;
 - (vii) The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue;
 - (viii) In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal;
 - (ix) Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:
 - (a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and
 - (b) An opportunity of being heard;
There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard;
 - (x) The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;
 - (xi) A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; and
 - (xii) The appellant having filed an appeal against the order under section 74(9), the provisions of sub-sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.
- (b) In **Valerius Industries vs. Union of India reported in 2019 (30) G.S.T.L. 15 (Gujarat)**, the Gujarat High Court laid down the principles for the construction of Section 83 of the SGST/CGST Act. The High Court noted that a provisional attachment on the basis of a subjective satisfaction, absent any cogent or credible material, constitutes malice in law.
- (c) In **Patran Steel Rolling Mill vs. Assistant Commissioner of State Tax Unit 2 reported in 2019 (20) G.S.T.L. 732 (Gujarat)**, the Gujarat High Court cited two instances in which provisional attachment would be apposite, these being where the assessee is a ‘fly by night operator’ and if the assessee will not be able to pay its dues after assessment.

- (d) In **Jai Ambey Filament Pvt. Ltd. vs. Union of India reported in 2021 (44) G.S.T.L. 41 (Gujarat)**, the Gujarat High Court reiterated that the subjective satisfaction as to the need for provisional attachment must be based on credible information that the attachment is necessary. This opinion cannot be formed based on “imaginary grounds, wishful thinking, howsoever laudable that may be.” The High Court further held, that on his opinion being challenged, the competent officer must be able to show the material on the basis of which the belief is formed.
- (e) In **S. S. Offshore Pvt. Ltd. vs. Union of India reported in 2022 (56) G.S.T.L. 388 (Bom.)**, the Hon’ble Court relying on the **Radha Krishan Industries (supra)** concluded “True it is, Section 83 of the CGST Act read with Rule 159(1) of the CGST Rules empowers a Commissioner to protect the interests of the revenue by way of provisional attachment, but such provisional attachment cannot be ordered without fulfilment of the condition(s) precedent, as referred to above. In the absence of fulfilment of such conditions(s) precedent, the respondent No. 3 could not have protected the interest of the revenue in the manner she proceeded to pass the impugned order”.
- (f) In **Sree Meenashi Industries vs. Additional Chief Secretary/Commissioner of Commercial Tax, Chennai reported in 2022 (65) G.S.T.L. 457 (Mad.)**, the Hon’ble Madras High Court observed that the Commissioner’s order of provisional attachment not indicating on what basis he has decided to invoke Section 83 of TGST, whether the Commissioner has formed an opinion to do so, before forming such opinion, what are all the tangible material available before him or placed before him, so as to enable him to form such an opinion, all these aspects have not been even indicated in the order of provisional attachment. This kind of exercise of power under Section 83, which, in the words of the Hon’ble Supreme Court, is a draconian one, cannot be approved as it does not meet the requirement of fair play and strict adherence of the provisions of the Act as interpreted by the Hon’ble Supreme Court in the judgment cited supra in Radha Krishan case.
- (g) The Delhi High Court, in **Proex Fashion Private Limited vs. Government of India [W.P. (C) 11245 of 2020, dated 6 January, 2021]** outlined the following statutorily stipulated conditions for the invocation of Section 83 of the SGST Act:
- “(i) Order should be passed by Commissioner;
 - (ii) Proceeding under Section 62 or 63 or 64 or 67 or 73 or 74 should be pending;
 - (iii) Commissioner must form an opinion;
 - (iv) Order should be passed to protect interest of revenue;
 - (v) It must be necessary to attach property.”
- (h) In **Kaish Impex Private Limited vs. Union of India reported in 2020 (34) G.S.T.L. 3 (Bom.)** the taxation authorities were enquiring into fraudulent claiming of ITC on the basis of fictitious transactions by an export firm in Delhi, against whom proceedings under Section 67 of the CGST Act had been initiated. On tracing the money trail, the petitioner was summoned under Section 70 of the CGST Act and his bank accounts were provisionally attached under Section 83 of the CGST Act. On dealing with the question of whether the bank accounts of the petitioner could be attached, when there were no pending proceedings against him and proceedings were pending against another taxable entity, the High Court held that the proceedings referred to under Section 83 of the Act must be pending against the taxable entity whose property is being attached.

Conclusion: The power under Section 83 of the Act should neither be used as a tool to harass the person nor should it be used in a manner which may have an irreversible detrimental effect on the business of that person. The consequence of a provisional attachment is serious. It displaces the person whose property is attached from dealing with the property. Where a bank account is attached, it prevents the person from operating the account. The person is seriously prejudiced by the inability to utilize the proceeds of the account for the purpose of business. The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.



Inauguration of Silver Jubilee Edition of Budget Book



Lecture Meeting on Budget proposals of Direct & Indirect Tax provisions and Capital Markets held on 4th February, 2023, at Goregoan Sports Club, Malad West





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