

Radha Krishan Industries v. State of Himachal Pradesh & Ors

Provisional attachment of property and receivables to protect revenue—scope and limits of power under GST law. (Section 83, HPGST Act, 2017; Article 226 of Constitution)

Date of Order: April 20, 2021
Case Law No: GIB-SC-2021-03
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CASE DESCRIPTION / SUMMARY

Case Facts:

The appellant, a GST-registered manufacturer, was linked to a supplier involved in fraudulent input tax credit claims. The tax authorities provisionally attached the appellant's receivables from customers under [Section 83](#) of the HPGST Act to safeguard revenue. Earlier attachment had been withdrawn, but fresh attachment orders were issued in October 2020. The High Court dismissed the writ petition on the ground of alternate remedy, leading to the present appeal before the Supreme Court.

Court Decision:

- Writ petition under Article 226 is maintainable despite alternate remedy in cases of lack of jurisdiction, violation of natural justice, or improper exercise of power.
- Power under Section 83 is drastic and extraordinary and must be exercised strictly in accordance with statutory conditions.
- Provisional attachment can be invoked only during pendency of proceedings under specified sections (62, 63, 64, 67, 73, 74).
- Formation of opinion by the Commissioner must be based on tangible material and must show necessity to protect revenue.
- There must be a live nexus between material and necessity of attachment; mere apprehension is insufficient.
- Attachment must satisfy the principle of proportionality and should not be excessive or arbitrary.
- Authorities must ensure procedural safeguards, including consideration of objections under Rule 159.
- The Court held that the High Court erred in dismissing the writ petition solely on the ground

of alternate remedy.

Cases Referred by Court:

- *Whirlpool Corporation v. Registrar of Trademarks, Mumbai*
- *Harbanslal Sahnia v. Indian Oil Corporation Ltd.*
- *Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.*
- *Raman Tech Process Engg Co. v. Solanki Traders*
- *Valerius Industries v. Union of India*
- *Jai Ambey Filament Pvt. Ltd. v. Union of India*
- *Patran Steel Rolling Mill v. Assistant Commissioner of State Tax*
- *Proex Fashion Pvt. Ltd. v. Government of India*
- *Kaish Impex Pvt. Ltd. v. Union of India*
- *Commissioner of Income Tax v. Kelvinator of India Ltd.*

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