

# Radha Krishan Industries v. State of Himachal Pradesh & Ors

*Validity of provisional attachment of receivables under Section 83 of the HPGST Act, 2017 whether maintainable under Article 226 and whether conditions precedent were strictly fulfilled.*

**Date of Order:** April 20, 2021  
**Case Law No:** GIB-SC-2021-03  
**Source:** GST INDIA Biz (www.gstindia.biz)

## CASE DESCRIPTION / SUMMARY

### • BACKGROUND

Radha Krishan Industries, a lead manufacturer registered under GST since July 2017, had purchased goods from GM Powertech, Kala-Amb. Investigation revealed GM Powertech had fraudulently claimed ITC from fake firms. GM Powertech's partners were arrested in December 2018 and a demand of Rs. 39.48 crores was confirmed against GM Powertech under Section 74(9). On 21 October 2020, the Commissioner delegated his powers under Section 83 to the Joint Commissioner. On 28 October 2020, the Joint Commissioner provisionally attached the appellant's receivables — Rs. 4 crores from Fujikawa Power and Rs. 2.91 crores from Deepak International — on the ground that appellant had fraudulently claimed ITC of Rs. 5.03 crores based on supplies from GM Powertech. Crucially, the Show Cause Notice against the appellant under Section 74(1) was issued only on 27 November 2020 — i.e., after the provisional attachment. The appellant filed objections on 4 November 2020 which were rejected on 6 November 2020 without granting any personal hearing. The appellant challenged the provisional attachment before the HP High Court under Article 226, which dismissed the writ petition holding that an efficacious alternative remedy by way of appeal under Section 107 of the HPGST Act was available. The appellant approached the Supreme Court.

### COURT OBSERVATIONS (Verbatim)

#### On nature of power of provisional attachment:

*"The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank*

*account... Each of these ingredients must be strictly applied before a provisional attachment on the property of an assessee can be levied."*

*"The Commissioner must be alive to the fact that such provisions are not intended to authorize Commissioners to make preemptive strikes on the property of the assessee, merely because property is available for being attached."*

**On necessity vs. expediency:**

*"By utilizing the expression 'it is necessary so to do' the legislature has evinced an intent that an attachment is authorized not merely because it is expedient to do so... but because it is necessary to do so in order to protect 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."*

**On tangible material:**

*"The formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue."*

**On pendency of proceedings:**

*"We are unable to accept the contention of the respondent that merely because proceedings were pending/concluded against another taxable entity, that is GM Powertech, the powers of Section 83 could also be attracted against the appellant. This interpretation would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively."*

**On the impugned order:**

*"The order of the Joint Commissioner contains absolutely no basis for the formation of the opinion that a provisional attachment was necessary to safeguard the interest of the revenue. No tangible material has been disclosed. The record clearly reveals a breach of the mandatory pre-conditions for the valid exercise of powers under Section 83 of the HPGST Act."*

**On Rule 159(5) – hearing:**

*"It is not open to the Commissioner, as has been stated in the present case, to hold the view that the only safeguard under sub-Rule 5 is to submit an objection without an opportunity of a personal hearing. Such a construction would be plainly contrary to sub-Rule 5 which contemplates both the submission of an objection to the attachment and an opportunity of being heard... Both the right to submit an objection and to be afforded an opportunity of being*

*heard are valuable safeguards."*

*"The Commissioner who hears the objections must pass a reasoned order either accepting or rejecting the objections."*

### **On maintainability of writ:**

*"The Joint Commissioner while ordering a provisional attachment under Section 83 was acting as a delegate of the Commissioner... the order passed by the Joint Commissioner as a delegate of the Commissioner was not subject to an appeal under Section 107(1) and the only remedy that was available was in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution. The High Court was, therefore, clearly in error in declining to entertain the writ proceedings."*

### **FINAL VERDICT**

Appeal allowed. Orders of provisional attachment dated 28 October 2020 set aside. High Court judgment dated 1 January 2021 quashed. Writ petition under Article 226 held maintainable and provisional attachment held illegal for non-fulfillment of conditions under Section 83 and breach of Rule 159(5).

#### **ADDITIONAL FOOTNOTES**

#### **CITATIONS REFERRED BY THE COURT**

<b>Case</b>	<b>Citation</b>
Whirlpool Corporation v. Registrar of Trademarks, Mumbai	(1998) 8 SCC 1
Harbanslal Sahnia v. Indian Oil Corpn. Ltd.	(2003) 2 SCC 107
Raman Tech Process Engg Co. v. Solanki Traders	2008 (1) R.C.R. (Civil) 195
Valerius Industries v. Union of India	2019 (30) GSTL 15 (Gujarat)
Jai Ambey Filament Pvt. Ltd. v. Union of India	2021 (44) GSTL 41 (Gujarat)
Patran Steel Rolling Mill v. Asst. Commissioner of State Tax	2019 (20) GSTL 732 (Gujarat)
Proex Fashion Pvt. Ltd. v. Government of India	WP(C) 11245 of 2020 dt. 6 Jan 2021 (Delhi HC)
UFV India Global Education v. Union of India	2020 (43) GSTL 472 (P&H)
Kaish Impex Pvt. Ltd. v. Union of India	(2020) 6 AIR Bom R 122
Bindal Smelting Pvt. Ltd. v. Addl. DG of GST Intelligence	2020 (34) GSTL 592 (P&H)
Nathanlal Maganlal Chauhan v. State of Gujarat	2020 SCC Online Guj 1811
Commissioner of Income Tax v. Kelvinator of India Ltd.	(2010) 2 SCC 723

<b>Case</b>	<b>Citation</b>
ITO Ward No. 162(2) v. Techspan India Pvt. Ltd.	(2018) 6 SCC 685
Vishwanath Realtor v. State of Gujarat	Special Civil No. 7210 of 2015 dt. 29 April 2015 (Guj HC)
Asst. Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline	AIR 2020 SC 2819
Seth Chand Ratan v. Pandit Durga Prasad	(2003) 5 SCC 399
Babubhai Muljibhai Patel v. Nandlal Khodidas Barot	(1974) 2 SCC 706
Rajasthan SEB v. Union of India	(2008) 5 SCC 632
Calcutta Discount Co. Ltd. v. ITO, Companies District I	AIR 1961 SC 372
CIT Gujarat v. M/s A Raman and Co.	AIR 1968 SC 49

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