Radha Krishan Industries v. State of Himachal Pradesh & Ors

Provisional attachment under Section 83 of the HPGST Act, 2017 (pari materia CGST Act) – pre-conditions for a valid opinion, the hearing mandated by Rule 159(5), and maintainability of a writ petition against an attachment order.

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

CASE DESCRIPTION / SUMMARY

Background

The appellant, a lead manufacturer at Kala-Amb, had claimed ITC of about Rs. 5.03 crore on invoices of its supplier GM Powertech, against whom a case of fake ITC was detected. An earlier attachment of the appellant's receivables was withdrawn on 30.01.2019. After the Commissioner delegated his Section 83 power on 21.10.2020, the Joint Commissioner on 28.10.2020 again provisionally attached the appellant's receivables from its customers Fujikawa Power and Deepak International. The appellant's objections were rejected on 06.11.2020 without a hearing, and the High Court of Himachal Pradesh dismissed the writ petition holding that an appeal under Section 107 was an alternative remedy.

Final Verdict

The Supreme Court held that the Joint Commissioner acted as a delegate of the Commissioner, so no appeal lay under Section 107(1) and the writ petition was maintainable. On merits, it held that **the power to order a provisional attachment is draconian in nature and the conditions prescribed by the statute for a valid exercise of the power must be strictly fulfilled**; the Commissioner **must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any**, and "necessary" postulates more than mere expediency, so pre-emptive strikes merely because property is available are impermissible. Under Rule 159(5) the assessee is entitled to dual safeguards – to file objections and to be heard – and the objections must be decided by a reasoned order. The attachment order disclosed no tangible material, showing clear non-application of mind; a second attachment on the same grounds after withdrawal of the first, without change in circumstances, was also impermissible; and once the final order under Section

74(9) was passed on 18.02.2021, the attachment had in any case to come to an end. The appeal was allowed and the attachment orders dated 28.10.2020 were set aside.

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