

Kesari Nandan Mobile v. Office of Assistant Commissioner of State Tax (2), Enforcement Division - 5

Whether a fresh or “renewed” provisional attachment can be issued under Section 83(1) of the CGST Act after the earlier attachment has ceased to have effect on expiry of one year under Section 83(2).

Date of Order: August 14, 2025
Case Law No: GIB-SC-2025-68
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CASE DESCRIPTION / SUMMARY

Background

The appellant's bank accounts were provisionally attached by orders dated 17.10.2023 and 26.10.2023. Its objection dated 01.05.2024 under Rule 159(5) was never decided. When the attachments lapsed by efflux of one year, the respondent issued fresh attachment orders dated 13.11.2024 and 18.12.2024 describing them as a 'renewal', alleging large-scale fraud and apprehension of non-recovery. The Gujarat High Court dismissed the writ petition, holding that the law places no embargo on a second attachment after the first lapses.

Final Verdict

Endorsing Radha Krishan Industries on Section 83(1), the Supreme Court held that an authority exercising this draconian power must be empowered by statute or by executive instructions; absence of a prohibition is no source of power. Unlike Section 11DDA of the Central Excise Act and Section 28BA of the Customs Act, Section 83 contains no provision for extension, and permitting a fresh order after lapse would render Section 83(2) otiose; a fresh order on substantially the same grounds would do indirectly what cannot be done directly - “old wine in a new bottle”. Provisional attachment is a pre-emptive measure, not a recovery tool, and one year is enough for the revenue to conclude its investigation. The Court held that **when a statute does not provide for an extension, renewal, re-issuance, revival - whatever be the nomenclature - the executive cannot overreach the statute**, approved the Kerala High Court in Ali K., and noted with concern that debit freezes continue after the statutory lapse, as also flagged in the GST Council's 53rd meeting agenda. **The impugned attachment orders were set aside and the bank accounts directed to be de-frozen forthwith**; the investigation may continue in accordance with law.

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