



2025:AHC:170051-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4630 of 2025

M/S Soraza Recycling Private Limited

.....Petitioner(s)

Versus

Union Of India And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Nishant Mishra, Vedika Nath
Counsel for Respondent(s)	: A.S.G.I., Dhananjay Awasthi, Krishna Agarawal, Krishna Mohan Asthana, Maneesh Mehrotra, Saumitra Singh

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRAVEEN KUMAR GIRI, J.

(Judgment dictated in open Court by Shekhar B. Saraf, J.)

1. Heard Mr. Nishant Mishra, learned counsel appearing on behalf of the petitioner, Mr. Krishna Agarawal, learned counsel appearing on behalf of the respondent Nos.2 & 3 and Mr. K.M. Asthana, learned counsel appearing on behalf of the respondent No.4.
2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the provisional attachment carried out by the revenue with regard to two bank accounts of the petitioner under Section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').
3. The prayers made out in the writ petition are as follows:-

"A- Issue a writ, order or direction in the nature of certiorari quashing the impugned orders of provisional attachment in Form DRC-22 dated 23.07.2025 (Annexure-1 & 2) passed by respondent no. 2, provisionally

attaching bank account No.120033996329 maintained with Canara Bank, Kotdwar Branch and bank account bearing No.25430200000000263 maintained with Indian Overseas Bank, Kotdwar Branch;

B- Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.07.2025 (Annexure-3) of respondent no. 3 blocking the electronic credit ledger of the petitioner to the tune of Rs.1,95,57,339/-;

C- Issue a writ, order or direction in the nature of mandamus commanding the respondents to forthwith allow operations of both bank accounts of the petitioner forthwith unblock the credit ledger of the petitioner;

..."

4. Mr. Nishant Mishra, learned counsel appearing on behalf of the petitioner submits that the reasons provided in the attachment notice are absolutely false and contrary to the facts. He submits that the reason for attachment has been stated to be that proceedings have been launched against the aforesaid taxable person under Section 74 of the Act. He further submits that till date, no show cause notice has been issued under Section 74 of the Act. He also submits that Section 83 of the Act, being a draconian provision wherein the bank accounts of the petitioner has been attached resulting in complete halt in the business of the petitioner, is to be applied in rare instances and only after proper reasons for the same are provided by the authorities.

5. Per contra, Mr. Krishna Agarawala, learned counsel appearing on behalf of the revenue passes on the instructions and states that a search was carried out in the premises of the petitioner and the investigation against the petitioner is an ongoing process. He submits that Section 74 proceedings shall be initiated against the petitioner at the earliest. He, accordingly, supports the attachment order passed on July 23, 2025 stating that the authorities are of the view that the petitioner may alienate a sum of money that is lying in his bank accounts.

6. Upon hearing counsel appearing on behalf of the parties, we firstly

place on record Section 83 of the Act which reads as follows:-

"83. Provisional attachment to protect revenue in certain cases. - (1)

Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, 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 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 subsection (1)."

7. A plain reading of the above section reveals that the provisional attachment should only be carried out to protect the interest of the Government when the authorities find it necessary to do so, and such order of attachment is required to be in writing. The Supreme Court and this Court in catena of judgments have categorically held that the reasons provided in the attachment notice must be proper. Lack of reasons would result in quashing of the provisional attachment as a valuable right of the petitioner is threatened by the said provisional attachment.

8. Before proceeding further, one may have a brief look at the exposition of law on the subject matter at hand. The Supreme Court in **Radha Krishan Industries v. State of H.P.** reported in (2021) 6 SCC 771 has categorically held that opinion for provisional attachment must be based on existence of some tangible material and should not be based on mere discretion of authorities. Furthermore, the Court has crystallised its findings and concluded in relation to formation of opinion for provisional attachment under Section 83 of the Act The relevant paragraphs of the judgment are quoted hereinbelow:

"49. Now in this backdrop, it becomes necessary to emphasise that before the Commissioner can levy a provisional attachment, 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 government revenue. 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. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalisation of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory preconditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that “for the purpose of protecting the interest of the government revenue, it is necessary so to do”, it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.

50. By utilising the expression “it is necessary so to do” the legislature has evinced an intent that an attachment is authorised not merely because it is expedient to do so (or profitable or practicable for the Revenue 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. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallised. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. 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 authorise Commissioners to make pre-emptive strikes on the property of the assessee, merely because property is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue.

52. We adopt the test of the existence of “tangible material”. In this context, reference may be made to the decision of this Court in *CIT v. Kelvinator of India Ltd.* [*CIT v. Kelvinator of India Ltd.*, (2010) 2 SCC 723] S.H. Kapadia, J. (as the learned Chief Justice then was) while considering the expression “reason to believe” in Section 147 of the Income Tax Act, 1961 that income chargeable to tax has escaped assessment *inter alia* by the omission or failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of “tangible material” and that “reasons must have a live link with the formation of the belief”. This principle was followed subsequently in a two-Judge Bench decision in *CIT v. Techspan (India) (P) Ltd.* [*CIT v. Techspan (India) (P) Ltd.*, (2018) 6 SCC 685] While advertent to these decisions we have noticed that Section 83 of the Hpgst Act uses the expression “opinion” as distinguished from “reasons to believe”. However for the reasons that we have indicated earlier we are clearly of the view that 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.

“76.4. 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.

76.5. 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.

76.6. 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.

76.7. 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.”

(Emphasis added)

9. This court in **R.D. Enterprises v. Union of India** reported in 2024:AHC:149247-DB penned by one of us has held that this provision being draconian in nature necessitates the formation of an opinion based on cogent reasons before exercising power for provisional attachment. The relevant paragraphs of the judgment are quoted hereinbelow:

“7. One may look into the judgment passed by the Calcutta High Court in the case of Amazonite Steels Pvt. Ltd. vs. Union of India reported in 2020 (36) G.S.T.L. 184 (Cal.), wherein the Court has held as follows:—

“Epilogue:

“A tax collector should collect taxes from a taxpayer just like a bee collects honey from a flower in an expert manner without disturbing its petals” - Kautilya in Arthashastra.

38. The new regime under the GST Act, 2017 is a new legislative creation by which the Union Government along with all the State Governments have streamlined various statutes under which tax was earlier collected to enhance the ease of doing business by preventing multi-point taxation that was extremely cumbersome and time consuming for the citizens of India. The raison d’etre of the GST Act, 2017 is to reduce the burden of tax and also to simplify the procedures. This, however, is coupled with certain far reaching and drastic measures that would be applicable on persons who evade the payment of such taxes. One need not stress the importance of the responsibility that comes upon the Government officials who take such drastic measures upon the citizens of this country. Nonetheless, these drastic provisions come with a purpose, and that is to ensure collection of taxes so that the inequities in society may be reduced by the Government. Provisions such as provisional attachment are necessary to ensure that persons who intend to evade taxes and/or are a part of a mechanism to defraud the Government are nipped in the bud and appropriate taxes can be collected from such persons.”

8. We are of the view that the legislature never intended this provision to be read in a casual manner, as the provision for provisional attachment is a drastic measure that the Department takes even before assessing the liability of the petitioner. This provision is in the nature of preventive detention in criminal cases where one detains a person without any offence having been committed.

9. In light of the above, it becomes extremely necessary for the Department to justify the reasons for such a provisional

attachment and without such justification being provided by the Department, by way of specific reasons, such provisional attachment would be illegal, arbitrary and non est in law. In the present facts and circumstances of the case, we do not find recording of any such reasons.”

10. In the backdrop of the abovementioned judgments, we delineate below one of the provisional attachment letters issued to the petitioner:-

"To,

*The Branch Manager,
Canara Bank,
L I S A Building, Najibabad Road,
P O Kotdwara-246149.*

Subject:- Provisional attachment of property under section 83 of the CGST Act, 2017.

It is to inform that M/s Soraza Recycling Private Limited (PAN No. ABICS3958D), Khasra No. 373, Village Ravali, Dhaulana, Hapur, Uttar Pradesh, 245301 bearing registration No. 09ABICSS3958D1Z1 is a registered taxpayer under the CGST Act 2017. Proceedings have been launched against the aforesaid taxable person under Section 74 of the CGST Act 2017 to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has bank A/C No.120033996329.

In order to protect the interests of revenue and in exercise of powers conferred under section 83 of the Act, I, Jitendra Kumar, Commissioner of CGST, Noida hereby provisionally attach the aforesaid account/property and all other bank accounts associated with PAN No ABICS3958D.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

Further, the KYC documents and statement of abovesaid Bank Account

No. since inception may also be provided for necessary action at this end.

Digitally signed by

Jitendra Kumar

23.07.2025

(Jitendra Kumar)

Commissioner."

11. Upon a perusal of the said letter, the only reason that emanates is that the present provisional attachments are required to be made as proceedings have been launched against the aforesaid taxable person under Section 74 of the Act. There is not a whisper of any specific requirement or ground at the present stage or formation of any reasoned opinion for provisionally attaching the said bank accounts. Secondly, as it appears from the facts, no proceedings have been initiated under Section 74 of the Act. In light of the same, we are of the view that there is no reason provided for the provisional attachment notice and the alleged supportive reason that has been provided is a completely ludicrous one. If the reason that provisional attachment is being done as proceedings have been initiated under Section 74 of the Act is allowed to stand, then in all proceedings wherein show cause notice is issued under Section 74, provisional attachment would become valid. The law as laid down in the abovementioned judgements makes it patently clear that a proper opinion has to be formed based on adequate reasons for such a draconian action to be taken. In the present case, such reasons are definitely lacking and the impugned order is absolutely perverse and arbitrary. In light of the same, both the provisional attachment notices are without any basis in law and are required to be quashed and set-aside. We, accordingly, quash and set-aside the provisional attachment notices dated July 23, 2025 with a direction upon the authority concerned to have the same released within a period of 48 hours from date. We make it clear that the order passed in Court today shall not in any way hinder the authorities from issuing a fresh notice under Section 83 of the Act in accordance with law.

12. With regard to blocking of the electronic credit ledger, the authorities are directed to look into the reply of the petitioner, grant a personal hearing, and thereafter, pass a reasoned order in accordance with law. The

entire process of passing a reasoned order on the issue of blocking of the electronic credit ledger should be completed within a period of two weeks from date.

13. With the above directions, the writ petition is disposed of.

(Praveen Kumar Giri,J.) (Shekhar B. Saraf,J.)

September 22, 2025
Rakesh