

Power of provisional attachment under GST is draconian in nature

M/S Radha Krishan Industries v. the State of HP [Civil Appeal No 1155 of 2021 dated April 20, 2021]

This Appeal was filed against the judgment and order of the Hon'ble Himachal Pradesh High Court ("HP HC") wherein, the Court dismissed the writ petition challenging orders of provisional attachment on the ground that an alternate and efficacious remedy is available to the Appellant and held that when a statutory forum of appeal exists, an appeal should not be entertained ignoring the statutory dispensation. The Appellant challenged the orders of provisional attachment, issued by the Revenue Department attaching the Appellant's receivables from its customers for alleged involvement in illegal claim of Input Tax Credit ("ITC") amounting to INR 5,03,82,554/- during 2017-18 and 2018-19, while invoking Section 83 of the Himachal Pradesh Goods and Services Tax Act, 2017 ("HPGST Act") and Rule 159 of Himachal Pradesh Goods and Services Tax Rules, 2017 ("HPGST Rules").

The Hon'ble Supreme Court of India observed that the Hon'ble HP HC has erred in dismissing the writ petition on the ground that it was not maintainable and set aside the judgment passed and the orders of provisional attachment. Held that, 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.

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