

Widened the scope of Section 83 of the CGST Act (Provisional Attachment of Property/ Bank Account) w.e.f. January 01, 2022

Background:

The Hon'ble Finance Minister, in Union Budget 2021-22, proposed changes vide the Finance Bill, 2021, that amends the Central Goods and Services Tax Act, 2017 ("the CGST Act") with respect to provisional attachment of property/bank account. Accordingly, amended Bill was passed in Rajya Sabha, the upper house, and it received presidential assent vide Finance Act, 2021.

Notification:

The CBIC vide **Notification No. 39/2021–Central Tax dated December 21, 2021** notified the below mentioned amendments made vide Section 115 of the Finance Act, 2021 w.e.f. January 01, 2022:

Substitution of Sub-Section (1) in Section 83 - Provisional attachment to protect revenue in certain cases – Section 115 of the Finance Act, 2021	
Current provisions	Notified provisions
<i>"(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."</i>	<i>"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed."</i>

Our comments:

Provisional Attachment of Property/ Bank Account:

Section 83(1) of the CGST Act that deals with provisional attachment of any property to protect revenue, has been amended in a manner, to widen the scope of the power to provisionally attach any property by replacing specified Sections covered therein with complete Chapters of the CGST Act. Also, it is provided that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII (assessment), Chapter XIV (inspection, search, seizure and arrest) or Chapter XV (Demands and Recovery) till the expiry of a period of one year from the date of order made thereunder.

In addition, the Commissioner is now empowered to provisionally attach, property belonging to any persons who retain the benefits arising out of an offence or at whose instance the offence is committed.

The scope of Section 83(1) of the CGST Act has been widened, so as to provide for provisional attachment of property in case of any action being initiated by authorities pertaining to assessment, inspection, search, seizure & arrest and demand & recovery, whereas, earlier, the attachment could only be made while during the pendency of any proceedings under specified Sections viz., Section 62 (assessment of non-filers of returns) or Section 63 (assessment of unregistered persons) or Section 64 (summary assessment in certain special cases) or Section 67 (power of inspection, search and seizure) or Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act.

Thus, while earlier the provisions listed were more of those undertaken to check tax evasions (inspection, search, seizure, adjudication of SCN), the amended provision provides for such coercive measure even in case of regular proceedings in case of regular taxpayers like scrutiny of returns, provisional assessment, access to business premises etc. Further, such power can now be exercised even at the stage of summon.

Seemingly, such wide powers can increase the misuse of this provision by Revenue even more, when casual exercise of powers under Section 83 is still under scanner of various High Courts which have time and again held in plethora of judgments that an order of provisional attachment cannot be as a matter of course. It is one of the drastic measures which the authority may be compelled to take if the situation demands for the purpose of protecting the interest of the Government Revenue. Recently, the Gujarat HC in ***Vinodkumar Murlidhar Chechani v. State of Gujarat [R/Special Civil Application No. 12498 of 2020 decided on February 3, 2021]*** has directed Government to issue appropriate instructions or guidelines at the earliest w.r.t to excise of power of provisional attachment

under Section 83 of the CGST Act. Thus, some strict framework for exercising Section 83 needs to be put in place.

To know more, kindly watch our video “Whether GST Dept can provisionally attach Property/Bank Account of any Person-Budget 21” by CA Bimal Jain-
<https://www.youtube.com/watch?v=CSg6v3jmXbM>

The Notification can be accessed at: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

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