

M/S Mansi Overseas vs Principal Commissioner Of Goods And ... on 24 January, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 146/2025

M/S MANSI OVERSEAS

Through:

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE

TAX EAST DELHI & ANR.

.....Respondent

Through: Mr. Atul Tripathi, SSC, CBI
for R-1.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER

% 24.01.2025

1. The writ petitioner impugns the order dated 26 December 2024 in terms of which its bank account maintained with the United Bank of India at its branch situate at A-81, C.R. Park, New Delhi - 110019 has come to be freezed by the respondents in purported exercise of powers conferred by Section 83 of the Central Goods & Services Tax Act, 2017.

2. It becomes relevant to note that the aforesaid order of provisional attachment was preceded by a communication dated 12 May 2020 pursuant to which the respondents had proceeded to order a debit freeze of the said account. That order continued to hold the field till it came to be quashed by us on 28 October 2024 upon a writ petition preferred by the petitioner being W.P.(C) 13720/2024. It CGST Act This is a digitally signed order.

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□. The petitioner has approached this Court aggrieved by the order dated 12 May 2020 in terms of which its bank account maintained with the United Bank of India

had come to be attached in purported exercise of powers conferred by Section 83 of the Central Goods and Services Tax Act, 2017.

2. Before us, it is conceded that the said provisional attachment could not have continued beyond a period of 12 months. Learned counsel appearing for the respondents, on instructions, further states that no fresh order under Section 83 has been issued.

3. Although we are informed that a Show Cause Notice [SCN] has come to be subsequently issued post conclusion of investigation, in our considered opinion, the mere issuance of that SCN would not sustain a continuance of the provisional attachment.

4. Accordingly, we allow the instant writ petition and quash the continuance of the provisional attachment order dated 12 May 2020. The respondents are directed to issue appropriate clarificatory directions and communicate the same to the Branch Manager of the United Bank of India forthwith. It is thereafter that a fresh order of provisional attachment came to be passed by the respondents on 26 December 2024 and which is impugned in these proceedings.

3. We had while initially entertaining the writ petition on 09 January 2025 required Mr. Tripathi, learned counsel appearing for the respondents, to produce the relevant records. From the records so produced, we find that the respondents have made the following noting in support of the action initiated under Section 83:

¶C. No.IV(Hq Prav) 12/Inq/GDE/G-1/32-33 May kindly peruse the note prepage. It follows that:-

(i) TPS did not respond to DRC01

(ii) TPS did not file any reply to the SCN

(iii) TPS did not attend the P4 given by the Adjudicating Authority.

(iv) the adjudicating authority has imposed penalties of more than Rs. 1 crore on both the TP's in the O-I-Os.

The adjudicating authority had earlier pleaded to secure the interest This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:39 of revenue, however the demand was not confirmed till then. Now, the same has been confirmed vide O-I-Os dated 20.12.2024 while the TPS have remained non-cooperative in the entire spectrum of adjudication. Hence, due material change of circumstances leading to confirmed demand and

continuous non corporation of TP's in a fraud case, it is submitted necessary action may be taken to protect the interest of revenue. Accordingly, proposed at [X]/NSP32 is submitted for perusal and approval/ direction please.

4. As is manifest from the above, the solitary reason which appears to have weighed upon the respondents to freeze the bank account is the original Show Cause Notice² having culminated in the passing of an Order-in-Original on 20 December 2024. It is further alleged that the petitioners had failed to render cooperation in the disposal of those show cause proceedings.

5. In our considered opinion, the reasons so assigned would clearly not justify the invocation of Section 83 in view of what we hold hereinafter. Section 83 of the CGST Act reads as follows:-

83. Provisional attachment to protect revenue in certain cases.-- [(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.] (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 sub-section (1).

6. The Supreme Court in its seminal decision of *Radha Krishnan Industries v. State of Himachal Pradesh and Others*³ had dealt with a challenge to a provisional attachment made under Section 83 of the SCN (2021) 6 SCC 771 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 Himachal Pradesh Goods and Services Tax Act, 2017⁴ and Rule 159 of the Himachal Pradesh Goods and Services Tax Rules, 2017⁵. In *Radha Krishnan*, the Supreme Court had sounded a note of caution observing that the powers conferred by Section 83 being drastic and far reaching, are required to be exercised sparsely and with extreme care and caution. While noticing the precedents rendered on the subject, the Supreme Court further observed that such power should be wielded by authorities only if there is a reasonable apprehension that the assessee in question may default in the payment of tax that may be computed upon the completion of assessment or if there be sufficient material which would lead one to reasonably infer that an assessee may thwart efforts to collect tax.

7. The Supreme Court while noticing the decisions of various High Courts in the aforementioned context had observed as follows:-

31. A body of precedent has emerged in the High Courts on the exercise of the power under Section 83 of the CGST Act [akin to the State GST Act (the SGST Act)]. The shared learning which emerges from these decisions of the High Court needs recognition. In *Valerius Industries v. Union of India* [*Valerius Industries v. Union of*

India, 2019 SCC OnLine Guj 6866 : (2019) 30 GSTL 15] , the Gujarat High Court laid down the principles for the construction of Section 83 of the SGST/CGST Act. The High Court noted that a provisional attachment on the basis of a subjective satisfaction, absent any cogent or credible material, constitutes malice in law. It further outlined the principles for the exercise of the power : (SCC OnLine Guj para 53) ¶53. ... (1) The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of Revenue. However, the subjective satisfaction should be based on some credible materials or information ... It is not any and every material, howsoever, vague and indefinite or distant, remote or far-fetching, which would HPGST Act HPGST Rules This is a digitally signed order.

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(2) The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.

(3) The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution. (4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective. (5) The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. (6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things : (i) whether it is a revenue neutral situation, (ii) the statement of Output liability or input credit . Having regard to the amount paid by reversing the input tax credit if the interest of the Revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.

32. In the same vein, in Jay Ambey Filament (P) Ltd. v. Union of India [Jay Ambey Filament (P) Ltd. v. Union of India, 2020 SCC OnLine Guj 3009 : (2021) 44 GSTL 41] , the Gujarat High Court

reiterated that the subjective satisfaction as to the need for provisional attachment must be based on credible information that the attachment is necessary. This opinion cannot be formed based on imaginary grounds, wishful thinking, howsoever laudable that This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 may be . The High Court further held, that on his opinion being challenged, the competent officer must be able to show the material on the basis of which the belief is formed.

37. Another case which is relevant for our purposes is the decision of the Bombay High Court in Kaish Impex (P) Ltd. v. Union of India [Kaish Impex (P) Ltd. v. Union of India, 2020 SCC OnLine Bom 125 : (2020) 6 AIR Bom R 122] . In this case, the taxation authorities were enquiring into fraudulent claiming of ITC on the basis of fictitious transactions by an export firm in Delhi, against whom proceedings under Section 67 of the CGST Act had been initiated. On tracing the money trail, the petitioner was summoned under Section 70 of the CGST Act and his bank accounts were provisionally attached under Section 83 of the CGST Act. On dealing with the question of whether the bank accounts of the petitioner could be attached, when there were no pending proceedings against him and proceedings were pending against another taxable entity, the High Court held that the proceedings referred to under Section 83 of the Act must be pending against the taxable entity whose property is being attached. The High Court noted that : (SCC OnLine Bom para 18) ¶8. [...] Section 83 though uses the phrase ¶pendency of any proceedings , the proceedings are referable to Sections 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions. Section 83 read with Section 159(2), and the form GST DRC-22 show that a proceeding has to be initiated against a specific taxable person, an opinion has to be formed that to protect the interest of the Revenue an order of provisional attachment is necessary. The format of the order i.e. the form GST DRC-22 also specifies the particulars of a registered taxable person and which proceedings have been launched against the aforesaid taxable person indicating a nexus between the proceedings to be initiated against a taxable person and provisional attachment of bank account of such taxable person. (emphasis supplied)

8. Section 83 of the CGST Act mandates that provisional attachment may be exercised in situations where the Commissioner is This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 of the opinion that ¶for the purpose of protecting the interest of Government revenue such an action ¶s necessary so to do . The Supreme Court in Radha Krishnan also recognised the triumvirate conditions embodied in the provision, which is that the attachment of property is intended to be provisional, i.e., ¶in aid of something else , the purpose of such attachment must be to protect the interests of the Revenue and that the conditions as laid down within the provision

must be met in order for such attachment to be deemed as a valid exercise of power. The pertinent observations rendered by the Supreme Court in the aforementioned context are as follows:-

D. Analysis

39. The essence of the present case lies in how the power to order a provisional attachment under Section 83 of the Hpgst Act is construed. Before interpreting it, the provision is extracted below for convenience of reference:

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 sub-section (1).

40. The marginal note to Section 83 provides some indication of parliamentary intent. Section 83 provides for provisional attachment to protect revenue in certain cases. The first point to note is that the attachment is provisional--provisional in the sense that it is in aid of something else. The second point to note is that the purpose is to protect the revenue. The third point is the expression 'in certain cases' which shows that in order to effect a provisional attachment, the conditions which have been spelt out in the statute must be fulfilled. Marginal notes, it is well-settled, do not control a statutory provision but provide some guidance in regard to content. Put differently, a marginal note indicates the drift This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 of the provision. With these prefatory comments, the judgment must turn to the essential task of statutory construction. The language of the statute has to be interpreted bearing in mind that it is a taxing statute which comes up for interpretation. The provision must be construed on its plain terms. Equally, in interpreting the statute, we must have regard to the purpose underlying the provision. An interpretation which effectuates the purpose must be preferred particularly when it is supported by the plain meaning of the words used.

41. Sub-section (1) of Section 83 can be bifurcated into several parts. The first part provides an insight on when in point of time or at which stage the power can be exercised. The second part specifies the authority to whom the power to order a provisional attachment is entrusted. The third part defines the conditions which must be fulfilled to validate the power or ordering a provisional attachment. The fourth part indicates the manner in which an attachment is to be levelled. The final and the fifth part defines the nature of the property which can be attached. Each of these special

divisions which have been explained above is for convenience of exposition. While they are not watertight compartments, ultimately and together they aid in validating an understanding of the statute. Each of the above five parts is now interpreted and explained below:

41.1. The power to order a provisional attachment is entrusted during the pendency of proceedings under any one of six specified provisions : Sections 62, 63, 64, 67, 73 or 74. In other words, it is when a proceeding under any of these provisions is pending that a provisional attachment can be ordered.

41.2. The power to order a provisional attachment has been vested by the legislature in the Commissioner.

41.3. Before exercising the power, the Commissioner must be of the opinion that for the purpose of protecting the interest of the government revenue, it is necessary so to do .

41.4. The order for attachment must be in writing. 41.5. The provisional attachment which is contemplated is of any property including a bank account belonging to the taxable person. 41.6. The manner in which a provisional attachment is levied must be specified in the rules made pursuant to the provisions of the statute.

42. Under sub-section (2) of Section 83, a provisional attachment ceases to have effect upon the expiry of a period of one year of the order being passed under sub-section (1). The power to levy a provisional attachment has been entrusted to the Commissioner during the pendency of proceedings under Sections 62, 63, 64, 67, 73 or as the case may be, Section 74. Section 62 contains This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 provisions for assessment for non-filing of returns. Section 63 provides for assessment of unregistered persons. Section 64 contains provisions for summary assessment. Section 67 elucidates provisions for inspection, search and seizure.

9. Sub-section (1) of Section 83 of the CGST Act, similar to Section 83(1) of the HPGST Act, has mandated when the action of provisional attachment may be initiated, and which is only after the initiation of proceedings under relevant Chapters of the Act. It has also provided for who could exercise such a power and the manner in which such power may be exercised. However and perhaps more importantly, sub-section (1) of Section 83 embodies the threshold which must be met in order for such an action to be permissibly initiated and which would be for the relevant authority to be of the opinion that the action of provisional attachment is necessary for the purpose of protecting the interest of Government revenue .

10. Sub-section (2) of Section 83 also provides a statutory time limit over which a provisional attachment may continue to hold the field and which is prescribed to be one year from the date of

the order made under sub-section (1), beyond which the provisional attachment would cease to have effect.

11. Furthermore, and as succinctly recognised by the Supreme Court in a plethora of decisions, including the aforementioned paragraphs of Radha Krishnan, the language of taxation statutes must be interpreted in a literal manner and based on a plain reading of the provision. As a result, the prescriptions contained in the provision alone formulate the contours and the framework within which the validity of an action of provisional attachment is determined.

12. Adverting then to the principles underlying a valid exercise of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:40 power under Section 83, the Supreme Court held that the initiation of action by the Commissioner must be preceded by the formation of opinion that such action was necessitated for the purpose of protecting the interest of government revenue. It was further noticed that the power to provisionally attach was one which was draconian in nature that may be exercisable only during the pendency of proceedings under the relevant statutory provisions and which bring with it serious consequences, particularly for the assessee whose properties come to be attached. Therefore and particularly in light of the phraseology embodied in the statute, it was deemed apparent that the Legislature was conscious of the draconian nature of the power enshrined in the provisions, because of which it employed specific statutory language conditioning the exercise of such power. Such a formation of opinion, the Supreme Court noted cannot be left at the arbitrary whims of the Commissioner but must bear a proximate and live nexus to the protection of interest of the revenue. The salient observations rendered in Radha Krishnan in that regard are reproduced 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 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 This is a digitally signed order.

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Server on 14/02/2025 at 22:54:40 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.

51. These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality.

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Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure. It also postulates the maintenance of a proportion between the nature and extent of the attachment and the purpose which is sought to be served by ordering it. Moreover, the words embodied in sub-section (1) of Section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. While dealing with a similar provision contained in Section 45 of the Gujarat Value Added Tax Act, 2003, one of us (Hon'ble M.R. Shah, J.) speaking for a Division Bench of the Gujarat High Court in Vishwanath Realtor v. State of Gujarat [Vishwanath Realtor v. State of Gujarat, 2015 SCC OnLine Guj 6564] observed : (Vishwanath Realtor case [Vishwanath Realtor v. State of Gujarat, 2015 SCC OnLine Guj 6564] , SCC OnLine Guj para 26) ¶26. Section 45 of the VAT Act confers powers upon the Commissioner to pass the order of provisional attachment of any property belonging to the dealer during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment. However, the order of provisional attachment can be passed by the Commissioner when the Commissioner is of the opinion that for the purpose of protecting the interest of the Government Revenue, it is necessary so to do. Therefore, before passing the order of provisional attachment, there must be an opinion formed by the Commissioner that for the purpose of protecting the interest of the Government Revenue during the pendency of any proceedings of assessment or reassessment, it is necessary to attach provisionally any property belonging to the dealer. However, such satisfaction must be on some tangible material on objective facts with the Commissioner. In a given case, on the basis of the past conduct of the dealer and on the basis of some reliable information that the dealer is likely to defeat the claim of the Revenue in case any order is passed against the dealer under the VAT Act and/or the dealer is likely to sale his properties and/or sale and/or dispose of the properties and in case after the conclusion of the assessment/reassessment proceedings, if there is any tax liability, the Revenue may not be in a position to recover the amount thereafter, in such a case only, however, on formation of subjective satisfaction/opinion, the Commissioner may exercise the powers under Section 45 of the VAT Act. This is a digitally signed order.

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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 advertng 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.

13. Accordingly, the Supreme Court in Radha Krishnan had ultimately come to hold as follows:-

E. Summary of findings

76. For the above reasons, we hold and conclude that:

76.1. The Joint Commissioner while ordering a provisional attachment under Section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107(1). 76.2. The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable.

76.3. The High Court has erred in dismissing the writ petition on the ground that it was not maintainable.

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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 22:54:41 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. 76.8. In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal. 76.9. Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:

(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and

(b) An opportunity of being heard.

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard.

76.10. The Commissioner is duty-bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached.

76.11. A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end. 76.12. The appellant having filed an appeal against the order under Section 74(9), the provisions of sub-sections (6) and (7) of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.

77. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1-1-2021 [Radha Krishan Industries v. State of H.P., 2021 SCC OnLine HP 4566] .

14. Bearing in mind the principles elucidated by their Lordships in This is a digitally signed order.

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15. The respondents, in clear contravention of the requirements laid down in Radha Krishnan, have been unable to demonstrate any reasonable apprehension that the writ petitioner herein was at risk of defaulting on payment of any demands that may come to be imposed. On the contrary, the only reasons adduced by the respondents for the initiation of Section 83 proceedings was that the writ petitioner had failed to file any response to the DRC-01 or the SCN, did not attend the hearing of the adjudicating authority and allegedly refused to cooperate with the respondents during the adjudication of show cause proceedings.

16. We are thus of the considered opinion that such reasoning abjectly fails to meet the thresholds as engrafted within the provision, of the respondents being required to form an opinion that it is

necessary to provisionally attach the property so as to protect the interest of government revenue.

17. As observed by the Supreme Court in Radha Krishnan, the draconian nature of the provision and the grave consequences that are suffered by a person whose property is provisionally attached This is a digitally signed order.

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18. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the impugned order of provisional attachment dated 26 December 2024. We direct the respondents to issue appropriate clarificatory directions in light of our decision rendered herein for the de-freezing of the bank account of the writ petitioner and communicate the same to the Branch Manager of the United Bank of India, C.R. Park, New. Delhi-110019 forthwith.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 24, 2025/kk This is a digitally signed order.

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