

## **Amendment to Section 83- Too Much Power Vested in Tax Officials without Safeguards!**

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One of the proposals announced by the Finance Minister in the Union Budget 2021-22 is the amendment proposed under Section 83 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). This Section empowers GST officers to attach the property of a tax payer on provisional basis in order to protect the interest of revenue. As per the existing provision, the Commissioner can order for provisional attachment of any property, including bank account, of any taxable person, during the pendency of any proceedings under Section 62, 63, 64, 67, 73 or 74 of the CGST Act. Such provisional attachment shall be valid for a period of one year from the date of order of such attachment. The Section also mandates prescribing of the manner of provisional attachment. Rule 159 has been framed to provide for procedure to be followed in this regard.

Section 11DDA of the Central Excise Act, 1944 and Section 73C of the Finance Act, 1944 (erstwhile Service Tax law) were pari-materia to the existing Section 83 of the CGST Act and had used the same expression, i.e. "during the pendency of proceedings under Section ----". The Central Government had also framed Service Tax (Provisional Attachment of Property) Rules, 2008 and had issued detailed instructions (Circular No. 874/12/2008-CX, dated 30-6-2008 issued with respect to Section 11DDA of the Central Excise Act and Circular No. 103/6/2008-S.T., dated 1-7-2008 issued with respect to Section 73C of the Finance Act) prescribing number of safeguards to be taken while resorting to such extraordinary powers to ensure that these are used with maximum care and cautions. The said Rules and instructions, amongst other things, had also provided that such power was to be exercised only after issue of show cause notice, grounds for apprehension that property could be disposed off by the tax payer to be stated while taking approval of Commissioner, issue of notice before attachment, allowing hearing, passing of order, type of cases only where such powers could be exercised were incorporated, personal property not to be attached, etc.

The language of present Section 83 also has similar wordings 'during the pendency of proceedings' under the specified Sections and the Commissioner could take action for provisional attachment of property. It means that once a notice has been issued under Section 62 (assessment for non-filers), Section 63 (assessment for unregistered person), Section 64 (summary assessment), Section 73 (short paid taxes) or Section 74 (short paid taxes in cases of suppression, etc), the tax officials could invoke the power of provisional attachment of property. It was reasonable and logical too as only after ascertaining the nature of alleged offence and quantification of estimated demand, action could be taken to attach

property.

Now let us see what has been proposed in the Budget 2021. It has been proposed to amend Section 83 to enlarge the scope of power of provisional attachment. The proposed amendment provides that after the initiation of any proceeding under Chapter XII, XIV or XV, the Commissioner can resort to provisional attachment. These Chapters deals with following subjects:

- Chapter XII: Assessment
- Chapter XIV: Inspection, search, seizure & Arrest
- Chapter XV: Demand and recovery

By amending the expression “during the pendency of proceedings” to “after initiation of any proceedings”, the powers of tax officials have been enhanced to resort to such extraordinary powers even after initiation of any proceedings. It means that as against the earlier powers to initiate proceedings only after issue of show cause notice, now the officers can attach the property immediately after issuance of summons for initiating investigation. At this stage, the tax officer would not have come to any conclusion about exact nature of alleged offence or quantum of evasion. Moreover, now, even during scrutiny of returns, such powers could be invoked. In effect, the tax officials can attach the property and bank accounts of the assessee even without issuing a show cause notice to them. Such a move can be regarded as extremely dangerous for the assessees because the tax officials can order for attachment of bank accounts or other property in normal routine cases like of dispute of classification, ITC related provisions, valuation, etc. The proposed amendment appears to have given unwieldy powers to tax officials which can be misused to harass tax payers. It is our knowledge that even today, without any legal provision, such powers are being used during pendency of investigation where tax officials have issued order for attachment of bank account and properties. Even personal properties of partners have also been placed under attachments. Moreover, the Government has not taken any step to put in place any safeguards to prevent misuse of these powers as was done in 2008 when similar provision was introduced for the first time. It appears to me that due to many cases of fake and bogus invoices being detected by the tax officials recently, all the taxpayers have been placed under the category of ‘dishonest tax payers’ and most of the amendments made in last few months, including in the budget, are reflecting complete lack of trust between the tax department and the businesses.

I am of the firm view that this amendment cannot cross the bar of fundamental rights under Article 14 and 19 of the Constitution and Courts are likely to strike down the amendment.

## **Conclusion**

The proposed amendment is likely to be misused against bonafide taxpayers and specially the MSME sector who lack robust legal support. It is suggested that the amendment is rolled back and even for existing provision, proper safeguards be put in place, to prevent its misuse, on the lines of Service Tax (Provisional Attachment of Property) Rules, 2008 and instructions as referred above are issued to avoid harassment to taxpayers.