

GST UPDATES

1. Waiver of penalty till 30th June, 2021 in case of non-compliance of QR code for B2C transactions – Notification No 06/2021-Central Tax dated 30th March, 2021

Where the aggregate turnover of any taxable person exceeds Rs. 500 Crore in any financial year commencing from 2017-18 he shall be required to declare dynamic QR code on all the B2C invoices raised. This is in line with Notification No 14/2020-Central Tax dated 21st March, 2020. Failure to do so shall attract penalty under section 125 of CGST Act. However, the penalty has been waived by notification no 89/2020-Central tax dated 29th November 2020 provided the provision of declaring QR code shall be complied on or before 01st April, 2021. Again, by Notification No 06/2021 – CT the time limit for compliance of QR code is extended to 30th day of June, 2021.

2. Case Law updates

i. Mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act - M/S RADHA KRISHAN INDUSTRIES VERSUS STATE OF HIMACHAL PRADESH & ORS. - 2021 (4) TMI 837 - SUPREME COURT - Civil Appeal No 1155 of 2021 (Arising out of SLP(C) No 1688 of 2021)

- Issue in this case is whether the orders of provisional attachment issued by the department is in consonance with the conditions stipulated in section 83 of HP GST Act.
- **Fact of the case:** A detection case was registered against GM Powertech, one of the suppliers of the appellant and the partners of GM Powertech was arrested on 03rd December, 2018 on the ground of fraudulent claim of ITC from fake firms in Delhi and Kanpur.
- The appellant received a memo by an e-mail dated 15 December 2018 from the third respondent directing it to be present on 17 December 2018 for explaining the allegedly illegal claim of ITC made during 2017-18 and 2018-19. By its letter dated 17 December 2018, the appellant contended that it had validly claimed ITC as it fulfilled the conditions under Section 16 and other provisions of the HPGST Act and the CGST Act.
- On 21 October 2020, the Commissioner of State Taxes and Excise, Himachal Pradesh (“second respondent/Commissioner”) delegated his powers under Section 83 of the HPGST Act to the third respondent. In exercise of the powers delegated by the Commissioner, the third

respondent issued two orders of provisional attachment DRC-22 vide Memo No EXN-JCSTE/SEZParwanoo/2020-21/1171 and EXN-JCSTE/SEZ Parwanoo/2020-21/1167 (“orders of provisional attachment”) dated 28 October 2020 attaching the receivables of the appellant from its customers, Fujikawa Power and M/s Deepak International. The attachment order issued to Fujikawa Power under Rule 159(1) of the HPGST Rules noted that it owed about 4 crores to the appellant. The order states that the appellant was found to be involved in an ITC fraud amounting to 5.03 crores during 2017-18 and 2018-19.

- On 4 November 2020, the appellant filed a representation and objections against the attachment and denied liability. By an order dated 6 November 2020, the third respondent rejected the objections of the appellant. The third respondent stated that collectively payments “only” worth 4.92 crores from both of the appellant’s customers were attached.
- On 27 November 2020, the third respondent issued a notice to show cause to the appellant under Section 74(1) of the HPGST Act for recovering the ITC, interest and penalty. The notice was issued on the basis that the appellant had claimed ITC on the supplies received from GM Powertech and since the inward supplies made by GM Powertech were found to be fake, the appellant’s claim of ITC was also in question.
- The orders of provisional attachment and the order passed by the Commissioner on 21 October 2020 delegating his powers under Section 83 of the HPGST Act to the third respondent, were challenged by the appellant before the High Court in a writ petition (Writ Petition No. 5648 of 2020) under Article 226
- While dismissing the writ petition, the High Court held that it was undisputed that the third respondent and the Divisional Commissioner, who has been appointed as Commissioner (Appeals) under the GST Act, are constituted under the HPGST Act, and therefore, it is assumed that there is no illegal or irregular exercise of jurisdiction. The High Court further observed that even if there is some defect in the procedure followed during the hearing of the case, it does not follow that the authority acted without jurisdiction, and though the order may be irregular or defective, it cannot be a nullity so long it has been passed by the competent authority.
- The dismissal of the petition challenging the orders of provisional attachment is in question in the present proceedings

- **Rulings: Following points are explained by the court**

- (i) 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);
- (ii) The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;
- (iii) The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;
- (iv) 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;
- (v) 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.
- (vi) 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;
- (vii) 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;
- (viii) 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;
- (ix) 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;
- (x) 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;
- (xi) 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; and
- (xii) 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.
- For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1 January 2021.
- The writ petition filed by the appellant under Article 226 of the Constitution shall stand allowed by setting aside the orders of provisional attachment dated 28 October 2020.