2025 INSC 983

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 9543 OF 2025

KESARI NANDAN MOBILE **...APPELLANT**

VERSUS

OFFICE OF ASSISTANT COMMISSIONER OF STATE TAX (2), ENFORCEMENT DIVISION – 5 **...RESPONDENT**

J U D G M E N T

DIPANKAR DATTA J.

1. This civil appeal, by special leave, takes exception to the judgment and order dated 29th January, 2025[1] passed by a Division Bench of the High Court of Gujarat at Ahmedabad[2] dismissing a writ petition[3] presented before it by the appellant.

[1] impugned order
[2] Gujarat High Court
[3] R/Special Civil Application No.16339 of 2024

2. The writ petition was directed against provisional attachment orders dated 13th November, 2024 and 18th December, 2024 issued by the respondent in purported exercise of power conferred by Section 83 of the Central Goods and Services Tax Act, 2017[4]. The case run by the appellant in its writ petition was that prior to issuance of the impugned provisional attachment orders (dated 13th November, 2024 and 18th December, 2024), the respondent had issued provisional attachment orders dated 17th October, 2023 and 26th October, 2023; that the appellant had objected to such provisional attachment orders by submitting a representation dated 1st May, 2024 as permitted by Rule 159(5) of the Central Goods and Services Tax Rules, 2017[5]; that the respondent, despite receipt of such representation, did not decide the same and kept the same pending; that, in terms of sub-section (2) of Section 83 of the CGST Act, the provisional attachment orders dated 17th October, 2023 and 26th October, 2023 lapsed upon expiry of a year, i.e., with effect from 18th October, 2024, and 27th October, 2024, respectively; and that, despite having no jurisdiction conferred by law, the respondent proceeded to pass fresh provisional attachment orders dated 13th November, 2024 and 18th December, 2024 terming it as a 'RENEWAL' of the earlier orders. Accordingly, it was prayed that the provisional attachment orders dated 13th November, 2024 and 18th

[4] CGST Act
[5] CGST Rules

December, 2024 be quashed and set aside and the attachment lifted to enable the appellant operate its bank accounts.

3. The Gujarat High Court, while spurning the appellant's challenge, held in the impugned order that the law does not place any embargo for a second provisional attachment order to be issued after lapse of the earlier order and that the respondent, intending to safeguard the interest of the revenue, did not commit any breach of Section 83 of the CGST Act.

4. Legality and correctness of such reasons are under assail in this appeal.

5. Mr. Dave, learned counsel for the appellant, contends that the impugned order is indefensible. The reason assigned by the High Court is fundamentally flawed inasmuch as it travelled beyond the legislative intent and purpose of securing the interest of the revenue, overlooking that the life of a provisional attachment order is only for a year from the date it is issued.

6. Drawing a parallel with the provisions of the Central Excise Act, 1944[6] and the Customs Act, 1962[7], Mr. Dave further contends that both these taxing statutes provide for provisional attachment. In case of the Excise Act, Section 11DDA provides for provisional attachment. Sub-section (2) of Section 11DDA provides that the attachment shall cease to have effect after 6 months from the date of the order. This section

[6] Excise Act
[7] Customs Act

further provides that the attachment may be extended, such that the total period does not exceed two years. Similar to the Excise Act, Section 28BA of the Customs Act also provides for provisional attachment. Sub-section (2) of Section 28BA provides that the attachment may be extended for such period, not exceeding a cumulative period of two years. Juxtaposing these provisions with Section 83 of the CGST Act, it is the contention of Mr. Dave that there is no provision for extending the validity of a provisional attachment order under the latter enactment after its lapse. Absent such provision, and the attachment necessarily having lapsed after one year, he contends that the respondent could not have attached the bank accounts again.

7. Reliance is placed on an order dated 18th September, 2024, passed by a co-ordinate Bench of this Court in **RHC Global Exports Private Limited & ors. v. Union of India & ors.**[8], wherein the attachment of the bank account was lifted, and the account de-freezed, in view of the one-year period having expired.

8. Next, reliance is placed by Mr. Dave on an order dated 17th December, 2018 on delegation of powers to be exercised under Section 83 of the CGST Act. According to him, the appellant is covered by the jurisdiction of Range-I, Ghatak-3, Ahmedabad but the respondent, having jurisdiction at Vadodara, exercised jurisdiction beyond his authority and as such, the action is null and void.

[8] IA No. 249406 of 2023 in SLP (C) Nos.15992-15994 of 2023

9. Mr. Dave then contends that perusal of the satisfaction notes prior to issuance of the initial and the later provisional attachment orders would show no significant differences. The appellant having objected to the satisfaction note by its representation dated 1st May, 2024 in terms of sub-rule (5) of Rule 159 of the CGST Rules, it was obligatory for the respondent to dispose of such representation. However, failure or omission to dispose of such representation on the one hand followed by issuance of the impugned provisional attachment orders based on more or less the same satisfaction note earlier issued amounts to gross misuse of powers by the respondent.

10. Finally, Mr. Dave contends that there is a cleavage of opinion on interpretation of Section 83 of the CGST Act. In **Additional Director General & anr. v. Ali K. & ors.**[9], the view taken by the High Court of Kerala at Ernakulam[10] is at variance with the view taken in the impugned order by the Gujarat High Court as well as the decision of the same High Court in **Shrimati Priti v. State of Gujarat through the Assistant Commissioner**[11], wherein a *pari materia* provision (Section 45 of the Gujarat Value Added Tax Act, 2003) was considered. The decision in **Ali K.** (supra) was delivered immediately after the impugned order; hence, one does not find its reference there. Our attention is drawn to paragraph 8 of the decision in **Ali K.** (supra), wherein the Kerala High Court was not persuaded to concur with

[9] 2025 SCC OnLine Ker 758
[10] Kerala High Court
[11] 2011 SCC OnLine Guj 1869

Shrimati Priti (supra) and held that adopting the interpretation placed by the Gujarat High Court would amount to conferring powers on the authorities to re-issue the order of attachment in respect of the same property over which the earlier order of provisional attachment ceased to have effect, which is not intended by the legislature. Further, the Kerala High Court held that there is clear absence of any enabling provision in Section 83 of the CGST Act, permitting the authorities to re-issue the order of attachment which ceases to have life beyond one year by operation of law.

11. Mr. Dave, therefore, prays that the impugned order be set aside together with the provisional attachment orders dated 13th November, 2024 and 18th December, 2024 and the appellant be permitted to operate his bank accounts.

12. *Per contra*, Ms. Priyanka, learned counsel for the respondent contends that the appellant is involved in large scale financial fraud, causing loss of revenue to the Government; that there exists an apprehension that the dues assessed by the department may not be realized; that there is also a reasonable apprehension that the appellant may dispose of its assets, making the recovery of dues owed by the appellant difficult. In such circumstances, having regard to the fraud committed by the appellant and the minimal chance of recovery of the outstanding dues, coupled with absence of any prohibition imposed by the CGST Act, the earlier provisional attachment order was renewed and that it does not suffer from any infirmity, far less any illegality. Accordingly, she

submits that the impugned provisional attachment order cannot be challenged on the ground that the law does not permit a renewal of the earlier order. It is, thus, prayed by her that the appeal be dismissed.

13. Learned counsel appearing for the appellant and the respondent have been heard and the materials placed on record are perused together with the decisions cited at the bar.

14. The question of law arising for decision in this appeal is: whether the CGST Act or any other law in force permits issuance of a second provisional attachment order under sub-section (1) of Section 83 of the CGST Act after the initial provisional attachment order issued thereunder ceases, by reason of efflux of a year from the date of its issuance, in terms of sub-section (2) thereof?

15. Our attention has been drawn to Section 83 of the CGST Act and Rule 159 of the CGST Rules.

16. Section 83 of the CGST Act reads:

> **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).

The manner and mode of attachment to be carried out under Section 83 of the CGST Act has been prescribed under Rule 159 of the CGST Rules. Rule 159 of the CGST Rules reads:

> **Rule 159**. Provisional attachment of property. -
> (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.
> (2) The Commissioner shall send a copy of the order of attachment in FORM GST DRC-22 to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
> (3) Where the property attached is of perishable or hazardous nature, and if the person, whose property has been attached pays an amount equivalent to the market price of such property or the amount that is or may become payable by such person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.
> (4) Where such person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable such person.
> (5) Any person whose property is attached may file an objection in FORM GST DRC-22A to the effect that the property attached was or is Not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC- 23.
> (6) The Commissioner may, upon being satisfied that the property was, or is No longer liable for attachment, release such property by issuing an order in FORM GST DRC-23.

17. The decision of this Court in ***Radha Krishan Industries v. State of Himachal Pradesh***[12] was cited by the appellant before the Gujarat High Court. At the outset, adverting to the observations made in such decision is considered apposite. There, this Court considered the ambit of section 83 and while underscoring the draconian nature of the provision, observed thus:

[12] (2021) 6 SCC 771

> **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 "so 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 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.
>
> (emphasis ours)

18. We fully endorse the view of the coordinate Bench in ***Radha Krishan Industries*** (supra) insofar as sub-section (1) of Section 83 is concerned and observe that any further discussion in respect thereof would be mere repetition of what has firmly been established. However, what remains for consideration is how we interpret sub-section (2) of Section 83 which did not emerge for consideration there. A proper interpretation of sub-section (2) would necessarily involve

considering the severe or stringent nature of power conferred by sub-section (1).

19. A plain reading of sub-section (2) of Section 83 could leave none in doubt that any order of provisional attachment, issued under sub-section (1), would cease to have any effect after a period of a year. The provision, as it stands, does not require employment of other interpretation rules beyond a literal interpretation to understand it. The appellant, thus, seeks a declaration that there being no provision for renewal, any such exercise is a nullity in law.

20. The legal question we are tasked to answer would require us to consider whether it is open to an authority, which is required to adhere to the CGST Act and the CGST Rules scrupulously while exercising the draconian power of attaching a bank account, to act in any manner for issuing a second provisional attachment order on the specious ground that there is no embargo placed by the statute in that behalf.

21. We may profitably refer to certain decisions of this Court for guidance.

22. **State of Odisha v. Satish Kumar Ishwardas Gajbhiye**[13] is not a decision relatable to powers of taxation but to holding of a preliminary inquiry, prior to initiation of disciplinary proceedings. However, we refer to this decision because it has approvingly quoted the dictum of the High Court at Calcutta of ancient vintage in **Maniruddin Bepari v.**

[13] (2021) 17 SCC 90

Chairman of the Municipal Commissioners[14]. We prefer to quote the relevant passage from this Court's decision hereunder:

> **12.** ... A statutory authority can do only such acts which are permissible under the statute and the authority cannot be permitted to do something which is not provided in law. This principle was formulated by the Calcutta High Court nine decades ago in *Maniruddin Bepari* v. *Chairman of the Municipal Commissioners*, in which it was inter alia held:
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> > "It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statute which creates it."
>
> (emphasis ours)

23. The principle of yesteryears, considered to be of immense substance and worth that a statutory authority, without statutorily conferred power, has no power to act in a particular manner, however, has to be read, in the present context, in light of what the Constitution of India ordains. Ever since the Constitution was enacted and with the march of administrative law, we feel that the age-old principle may not hold good in all circumstances.

24. An instructive passage is found in the decision of the Constitution Bench of this Court in **Rai Sahib Ram Jawaya Kapur v. State of Punjab**[15] on the extent of executive powers that the Constitution reserves for the Central/State executive to exercise. It reads:

> 7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is

[14] 1935 SCC OnLine Cal 296
[15] AIR 1955 SC 549

provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

> "Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws:
> Provided that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 172 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr Pathak's contention.

25. This proposition finds considerable support from another Constitution Bench decision of this Court in **Lohia Machines Ltd. v. Union of India**[16] wherein it was held that the legislature having exercised its essential function, a certain margin of latitude is always allowed to the executive in working out the details of exemption in a taxing statute. This Court referred to **Pt. Banarsi Das Bhanot v. State of Madhya**

[16] (1985) 2 SCC 197

Pradesh[17], to emphasize the inherent power of the executive, where it ruled thus:

> Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the Executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like.

26. We understand the law to be clear that not all laws are provided by statutory enactments and law making could extend to orders passed by the executive in relation to matters where the Parliament/a State Legislature has the authority to enact laws, and the Parliament or a State Legislature, as the case may be, has even not enacted any such law; but, importantly, the inherent executive power cannot be exercised, in respect of any matter covered by statutory law/rules, in a manner inconsistent therewith. While so, law is also well-settled that the inherent executive power could be exercised to supplement the statutory law, but not supplant it.

27. In **Sant Ram Sharma v. State of Rajasthan**[18], a Constitution Bench of this Court also ruled as follows:

> 7. ... It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.
>
> (emphasis ours)

[17] AIR 1958 SC 909
[18] AIR 1967 SC 1910

28. Bearing these principles in mind, we now proceed to answer the question noted in paragraph 14 above based on our understanding that for an authority to exercise a power, it must either be empowered by the statute or authorized by executive instructions; if the power is not conferred by statute, executive instructions or any other instrument which is law within the meaning of Article 13, it cannot be justified by arguing that the exercised power is neither prohibited by the statute nor by executive instructions.

29. Not to speak of a statutory conferment of power, there is a complete absence of any executive instruction consistent with the legislative policy and intendment of the CGST Act authorizing renewal of a lapsed provisional attachment order. Viewed from either angle, issuance of the provisional attachment orders by the respondent under challenge before the Gujarat High Court appears to be indefensible as rightly contended by Mr. Dave.

30. That apart, having regard to the draconian nature of power conferred on the revenue by sub-section (1) of Section 83 of the CGST Act to levy a provisional attachment, the terms of the entire section have to be construed in a manner so that sub-section (2) of Section 83 is not effectively reduced to a dead letter. We are reminded of the maxim *ut res magis valeat quam pereat*. It is an interpretive doctrine that a legal text, specially a statute, should be interpreted in a way that gives the document force rather than makes it fail. Conceding power to the revenue to issue a fresh provisional order of attachment after the initial

order has lapsed by operation of law or to renew the same would render the text of sub-section (2) of Section 83 otiose and accepting the reason assigned by the Gujarat High Court would permit the revenue to exercise a power which is not the statutory intendment. We, therefore, see no reason to read Section 83 in a manner to confer any additional power over and above the draconian power conferred by sub-section (1) and upon lapse as ordained by sub-section (2).

31. Moving further, fresh issuance of a provisional attachment order premised on substantially the same grounds as the earlier one would be in disregard to the safeguard provided in sub-section (2). The age-old principle, that an act which cannot be done directly cannot be done indirectly, would apply in its entirety. To permit any other interpretation would result in an abuse of law and due process. If we were to accept the reason assigned by the Gujarat High Court in the impugned order that the law does not place any embargo, it would stand to reason that the authority - not stopping after the 1st renewal order ceases to have effect in terms of sub-section (2) of Section 83 - might continue to issue repeated renewal orders. Repeated or continuous issuance of a provisional attachment order under the garb of 'renewal' could lead to a serious anomaly. With no change in circumstances, repeated orders in the garb of renewal would be contrary to the plain reading of sub-section (2) and akin to filling old wine in a new bottle.

32. Besides, a reading of the statute in its entirety would reveal that the provisional attachment is a pre-emptive measure to protect the

interests of government revenue. It cannot function as a recovery measure; for that, the statue has other provisions. Certainly, a period of one year, as ordained by the legislature, is enough for the revenue authorities to conclude its investigation; if not, the legislature could have provided for a renewal or an extended period as in the Excise Act and the Customs Act. Sub-section (2) of Section 83 does not provide for any exception to the rule. Any explanation given by the respondent for issuing a renewal would be in the teeth of the established procedure. Once the inquiry culminates into a final demand, recourse must be had to the provisions under the section which provide for recovery of the assessed tax, penalty, interest, etc. This also provides opportunity to the assessee to challenge the same before the appropriate authority. Short-circuiting the procedure by pursuing a provisional attachment as a means to recover the tax due, as a natural consequence, would frustrate the intent and purpose of the statute.

33. We have looked at the order passed by this Court in **RHC Global Exports Private Limited** (supra). We are mindful of the fact that the order sought to be relied upon was passed while disposing of an interim application and that the special leave petition itself is pending adjudication. However, nothing much turns on it. The view taken by this Court therein, though not based on elaborate reason, has our respectful concurrence in view of our aforesaid discussions.

34. Noticing the argument of Mr. Dave of there being a cleavage of opinion, we have read the decision of the Kerala High Court in **Ali. K.** (supra).

The view taken in **Ali. K.** (supra) appears to us to be acceptable and we approve it.

35. In fact, despite the statute having provided for a lapse after one year, it has been observed that debit-freeze continues for long after that, compelling the citizens to approach the high courts for an order seeking lifting of attachment which, by the statute, already stands lifted. [*See* ***Aashna Singhal v. Commr. of GST***[19], ***Merlin Facilities (P) Ltd. v. Union of India***[20], ***Arpit Trading Co. v. Commr. of GST***[21], ***Sutantu Care (P) Ltd. v. Superintendent of CGST***[22], ***Futurist Innovation & Advertising v. Union of India***[23], ***Yash Metal Impex (P) Ltd. v. Commr. (CGST)***[24], ***Ravid Multiventures (P) Ltd. v. Union of India***[25]].

36. It would seem rather incongruous and redundant that parties must approach the high courts to seek enforcement of a law already in force. The deliberate non-compliance by the revenue to implement statutory protection would undermine the rule of law and render the action not only susceptible to vulnerability but also being set at naught.

37. Prior to ending our discussion, it would be necessary to notice that the challenge of the present nature has been recognised not just by the constitutional courts but has been sought to be addressed by the GST

[19] 2024 SCC OnLine Del 4025
[20] 2023 SCC OnLine Del 8730
[21] 2023 SCC OnLine Del 8712
[22] 2023 SCC OnLine Del 8711
[23] 2022 SCC OnLine Bom 2320
[24] 2022 SCC OnLine Bom 6818
[25] 2024 SCC OnLine Cal 1380

Council[26] too in the agenda framed for its 53rd meeting[27]. The issue has been addressed by the council as under:

> **Agenda Item 3(v): Clarification regarding restoration of provisionally attached property.**
> **4.30** The Pr. Commissioner, GST Policy Wing took up the next agenda regarding provisional attachment of the property of the taxpayers. He stated that Section 83(2) of CGST Act, 2017 states that the provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order i.e. provisional attachment order in the form of FORM GST DRC-22. However, as per Rule 159(2) of CGST Rules, 2017, provisional attachment of a property shall be removed only on the written instructions from the Commissioner to that effect. But, even after completion of 1 year, the property is not released as the banks and other agencies with which the property is provisionally attached unless they receive written instructions from the Tax Authorities.
> Therefore, it appeared that the CGST Rules, 2017 were not in alignment with the CGST Act, 2017. This misalignment between Rules and Act was observed by the Hon'ble Delhi Court in the case of M/s. Balaji Enterprises vs. Pr. ADG, DGGI and therefore, the Hon'ble Court had ordered to adopt a procedure for defreezing the bank accounts.
> **4.31** He mentioned that the issue was deliberated by the Law Committee and the Law Committee recommended amendment in sub-rule (2) of rule 159 of CGST Rules and in FORM GST DRC-22, as below to align the provisions of CGST Rules with that of section 83 of CGST Act.:
> **Amendment in sub-rule (2) of Rule 159:**
> To insert the words "*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier*," after the words "*to that effect*", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.
> **Amendment in FORM GST DRC-22:**
> To insert the words "*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.*"
>
> (emphasis in original)

38. The Council while being conscious of the difficulties, has recommended necessary amendments to align the extant procedure under Rule 159 of the CGST Rules with the law. What is notable is the consciousness

[26] Council
[27] https://gstcouncil.gov.in/sites/default/files/Agenda/53rd_gstcm_agenda.pdf; last accessed on 2nd August, 2025.

of the Council too that a provisional attachment order would have no life after a year. Nonetheless, it stands to reason that till such time the amendments are carried out, actions to provisionally attach properties of taxpayers must be implemented in strict compliance with the statute.

39. The appellant's argument that the Parliament, being cognizant of other taxing statutes, deliberately chose not to incorporate an extension provision in the section, also carries considerable merit. The procedure of provisional attachment is not alien to tax jurisprudence. Such pre-emptive measure can be found in several statutes, including the Customs Act and the Excise Act, and the Income Tax Act, 1961 as well. *Ergo*, when the statue does provide for an extension, the authority thereunder is free to do so, subject to such restrictions as may be imposed. Conversely, when a statute does not provide for an extension, renewal, re-issuance, revival — whatever be the nomenclature — the executive cannot overreach the statute to do so.

40. Lastly, insofar as the issue of delegation and assumption of jurisdiction as alleged by the appellant in concerned, we have not considered the contention in view of the impugned provisional attachment orders being liable to be set aside on the point of law discussed above.

41. For the foregoing reasons, the question in paragraph 14 is answered in the negative. We hold that the respondent could not have issued the impugned provisional attachment orders dated 13th November, 2024 and 18th December, 2024 upon the previous ones having ceased to

have any effect by operation of law after a year of its issuance. The bank accounts attached by the respondent shall stand de-freezed and be made operable forthwith upon production of a copy of this judgment before the banks where the appellant maintains its accounts.

42. The civil appeal stands allowed on the above terms.

43. Before parting, it is necessary to observe that since the investigation by the respondent is still underway, this order shall not preclude it from conducting or taking further steps in accordance with law, and the present order shall be restricted to the issue agitated herein.

.....J
(DIPANKAR DATTA)

.....J
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
AUGUST 14, 2025.