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By Nidhi, Advocate



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Section 82 of CGST Act, 2017

82. Tax to be first charge on property.

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, (31 of 2016) any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Our Interpretation

Section
82

The provisions of this section would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Government. Any liability to be paid to the Government would be given priority in the matter of effecting recovery **by placing a first charge on the property** of the taxable person or any other person. This provision also covers recovery from a person other than the taxable person like a legal representative, member of partitioned HUF etc.

There are separate implications under GST law when the taxable person or any person is also adjudicated under insolvency and Bankruptcy code (IBC) Act, 2016. This code is enacted through which the creditor can collect their dues through Corporate Insolvency Resolution Process (CIRP). The IBC law is applicable to corporate debtors which includes the company and LLP. The "corporate debtor" means a corporate person who owes a debt to any person. The procedure under GST law for the corporate debtors, is discussed vide Notification No.11/2020-CT dated 23.3.2020 & Circular No.134/04/2020-GST dated 23.03.2020, Circular No. 138/08/2020-GST dated 06.05.2020 & Circular No 187/19/2022-GST dated 27.12.2022.

If there are any tax dues which is unpaid by the company, then whether GST Authorities can proceed for recovery of tax prior to CIRP period. The section clearly state that the IBC law will prevail over the GST law. Therefore, the GST Authorities should submit the claim as operational creditors and make an application to the Adjudicating Authority (NCLT) for initiating the CIRP process. The government dues, including tax dues, are defined to be an operational debt under Section 5 of IBC.

Circular No. 187/19/2022-GST dated 27.12.2022 has clarified that proceedings conducted under Insolvency and Bankruptcy Code (IBC),2016, also adjudicate government dues pending under CGST Act against the corporate debtor and it would be covered under the term 'other proceedings' in Section 84 of CGST Act. Therefore, in cases where a confirmed demand for recovery has been issued by tax authorities for which a summary has been issued in DRC-07/DRC-07A against corporate debtor and where proceedings have been finalised against corporate debtor under IBC reducing the amount of statutory dues payable, then jurisdictional Commissioner shall issue intimation in DRC-25 for reducing such demand. Thus, the tax officer should abide by the NCLT order in insolvency cases and recover only that much GST dues as has been finalised by the Tribunal.

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