



# Lawgics

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## Section 83 of CGST Act, 2017

### 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).

### 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—and a copy of such order shall also be sent to person whose property is being attached under section 83.

(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 by the taxable 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 person filing the objection, release the said property by 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.

## Our Interpretation

Section 83  
read with  
Rule 159

If the government attaches the property of a person, the person cannot transfer the said property to anyone else. Even if he does manage to transfer the attached property, the transfer shall be deemed to be void. Even bank accounts can be attached and in such a case, the person will not be allowed to transfer his funds to any other account.

This Section is about the provisional attachment of property of the:

- taxable person, or
- any person who either retains the benefit of below mentioned transactions or at whose instance such transactions are conducted such as:
  - (i) Supply of any goods or services or both without issue of any invoice or issuance of an incorrect or false invoice with regard to any such supply;
  - (ii) Issuance of any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the CGST Rules;
  - (iii) Availment or utilisation of ITC without actual receipt of goods or services or both either fully or partially, in contravention of provisions of this Act or CGST Rules;
  - (iv) Distribution of ITC in contravention of Section 20,

In order to protect the interest of revenue in case of pendency of any proceeding under following chapters:

Sr.No.	Chapter	Chapter Heading	Inclusions
1	CHAPTER XII	Assessment	Section 59-Section 64 (Already discussed)
2	CHAPTER XIV	Inspection, Search, Seizure And Arrest	Section 67-Section 72 (Already discussed)
3	CHAPTER XV	Demands And Recovery	Section 73-Section 84 (Already discussed)

Therefore, if the Commissioner is of the opinion that for the purpose of protecting the interest of Government revenue, it is necessary to attach provisionally any property (movable or immovable), including bank account, belonging to the taxable person or any above mentioned persons, then he may do so, by order in writing.

Every such provisional attachment shall cease to have effect after the expiry of 1 year from the date of the attachment order.

Grounds for provisional attachment of the property:

- There must be pendency of a proceeding against any person under the above mentioned chapters.
- The Commissioner must have formed the opinion that provisional attachment of the property belonging to the any person is necessary for the purpose of protecting the interest of the Government revenue.

Due care ought to be taken by Commissioner as attachment of property is extraordinary; therefore it needs to be resorted to with utmost circumspection and with maximum care and caution.

Commissioner must:

- Exercise due diligence,
- Carefully examine all the facts of the case, including the nature of offence, amount of revenue involved, established nature of business and extent of investment in capital assets,
- Have reasons to believe that the taxable person, against whom, the proceedings are pending, may dispose of or remove the property, if not attached provisionally.

The basis, on which, Commissioner has formed such an opinion, should be duly recorded.

A careful examination of all the facts of the case is important to determine whether the case is fit for exercising power under section 83, and must not be exercised in a routine/ mechanical manner. Attachment of the property normally should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where wrongful input tax credit is availed or utilized or wrongfully passed on.

Guidelines for Provisional Attachment of Property

Guidelines were issued vide Circular No. CBIC-20/16/05/2021-GST/359 dated 23/02/2021.

**Type of case, where provisional attachment can be considered to be resorted to, subject to specific facts of the case:-**

Where taxable person has:-

- i) Supplied any Goods or Services or both without issue any Invoice in violation of the provisions of the act and rule made there under, with an intention to evade tax; or
- ii) Issued any Invoice or bill without supply of Goods or Services or both in violation of the provisions of the Act and rule made there under ; or
- iii) Availed Input Tax Credit using the invoice or bill referred in clause (ii) or fraudulently availed

- input tax credit without any invoice or bill; or wrongly availed or Utilized without actual receipt of Goods/Services;
- iv) Collected any amount of tax but has failed to pay it to Government beyond 3 months from the date on which such payment become due; or
- v) Fraudulently obtained refund; and
- vi) Passed on input tax credit fraudulently to recipients but has not paid commensurate tax

Other Guidelines for Attachment:

- i) It should be ensured that the value of property attached provisionally is not excessive. The provisional attachment of property shall be to the extent it is required to protect the interest of revenue that is to say, the value of attached property should be as near as possible to the estimated amount of pending revenue against such person.
- ii) More than one property may be attached in case value of one property is not sufficient to cover the estimated amount of pending revenue against such person.
- iii) Further, different properties of the taxpayer can be attached at different points of time subject to the conditions specified in section 83 of the Act.
- iv) Provisional attachment can be made only of the property belonging to such person, against whom the proceedings mentioned under section 83 of the Act are pending.
- v) Movable property should normally be attached, only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.
- vi) It should also be ensured that such attachment does not hamper normal business activities of the taxable person. This means that raw materials and inputs required for production or finished goods should not normally be attached by the Department.
- vii) In cases where the movable property, including bank account, belonging to taxable person has been attached, such movable property may be released if taxable person offers, in lieu of movable property, any other immovable property which is sufficient to protect the interest of revenue. Such immovable property should be of value not less than the tax amount in dispute. It should also be free from any subsisting charge, liens, mortgages or encumbrances, property tax fully paid up to date and not involved in any legal dispute. The taxable person must produce the original title deeds and other necessary information relating to property, for the satisfaction of the concerned officer.

Procedure of Provisional attachment of property:

1. Commissioner after forming an opinion of attaching any immovable or movable property should duly record on file the basis on which he has formed such opinion and pass an order in DRC-22 mentioning details of property attached.
2. Order of attachment shall be sent to the concerned authority under whom the attached property comes. E.g. Revenue Authority, RTO or Bank etc and a copy of the order shall also be sent to the person whose property is attached.
3. Property attached shall be removed only with the written instructions from the Commissioner.
4. If objection is filed by any person whose property is attached in DRC-22A, an opportunity of being heard shall be given by Commissioner and after considering all facts as presented, the officer shall form a reasoned view necessity to attach property or not.
5. After representation, in case of non-requirement of attachment, officer shall release such property by issuing an order in DRC-23.
6. On payment by the person whose property is attached in case property attached is of perishable or hazardous nature, such property shall be released in DRC - 23. Payment shall be of amount equivalent to the market price of property with perishable/hazardous nature or the amount payable, whichever is lower.
7. Otherwise the said property with perishable/hazardous nature shall be disposed off and the proceeds shall be adjusted to the amount payable.

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