



Tax alert: Supreme Court holds renewal of lapsed provisional attachment orders as not permissible under GST law

19 August 2025

The Supreme court (SC) has held that the Central Goods and Services Tax (CGST) Act, 2017 does not permit issuance of a second provisional attachment order after the initial order has lapsed after expiry of a year.

In a nutshell



The appellant filed a civil appeal by special leave against a High Court (HC) judgment which upheld issuance of fresh provisional attachment orders after the expiry of previous ones.



The issue addressed by the SC was whether a second provisional attachment order could be issued after the initial order had lapsed due to the expiry of one year.



The SC emphasized the draconian nature of provisional attachment power, and the need for strict and correct observance of statutory preconditions while exercising such powers.



The SC concluded that the statute does not permit the renewal or re-issuance of a provisional attachment order once it has lapsed after a year.



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Background

- The appellant¹ filed a civil appeal by special leave before the SC against a judgment passed by a division bench of HC.
- The writ petition before HC had challenged the provisional attachment orders issued in the year 2024, by the Revenue under the CGST Act, on the basis that the orders were time-barred.
- Prior to its issuance in 2024, the Revenue had issued provisional attachment orders in 2023, which the appellant had objected by submitting a representation as permitted by the Central Goods and Services Tax Rules, 2017 (CGST Rules).
- The appellant argued that the initial provisional attachment orders lapsed after a year as per the timelines provided under the CGST Act. Further, the Revenue had no jurisdiction to issue fresh orders in 2024 after the lapse of the initial ones.
- The HC dismissed the appellant's challenge, holding that the law does not prohibit issuing a second provisional attachment order after the lapse of the earlier one.
- The appellant appealed in the SC, arguing that the HC's reasoning was flawed and that the CGST Act does not allow for renewal of provisional attachment orders after they lapse.
- The Revenue argued that the appellant was involved in large-scale financial fraud, causing revenue loss to the government, and that the renewal of the attachment orders was necessary to protect government revenue. Renewal of the earlier provision attachment order does not suffer any infirmity.
- The issue addressed by the SC was whether a second provisional attachment order could be issued after the initial order had lapsed due to the expiry of one year.

Observations of the SC

- SC emphasized the draconian nature of the power to provisionally attach property, including bank accounts under the provisions of CGST Act.
- Plain reading of the provision clearly states that a provisional attachment order ceases to have effect after a year. There is no statutory provision or executive instruction allowing for the renewal or re-issuance of such an order after it lapses.
- An authority to exercise a power must either be empowered by statute or authorized by executive instructions or any other valid instrument. It cannot be justified by arguing that the exercised power is neither prohibited by the statute nor by executive instructions.
- If the Revenue is allowed to issue a fresh provisional attachment order after the initial order had lapsed, the same would render the text of the respective provision otiose. It is akin to filling old wine in a new bottle.
- Unlike Excise and Customs law, the CGST Act does not explicitly provide for extensions of provisional attachments. This indicates a deliberate legislative choice not to allow extensions under the CGST Act.
- The Court referred to previous decisions, including *Radha Krishan Industries vs. State of Himachal Pradesh*², to underscore the need for a strict and correct observance of statutory preconditions when exercising such powers.

¹ Kesari Nandan Mobile v. Office of Assistant Commissioner of State Tax 2025 INSC 983

² (2021) 6 SCC 771

- The Court acknowledged the GST Council's recognition of the issue and its recommendation to amend the CGST Rules to align with the Act, ensuring that provisional attachments automatically cease after one year.
- 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 statute has other provisions.
- The Court concluded that the respondent could not issue fresh provisional attachment orders after the initial ones had lapsed.
- It ordered the de-freezing of the appellant's bank accounts and allowed the appeal, while clarifying that the ongoing investigation by the respondent could continue in accordance with the law.

Deloitte comments

The Supreme Court's decision has reinforced the principle that statutory powers must be exercised within the confines of the law, and any extension or renewal of such powers must be explicitly provided for by the statute. It provides relief to taxpayers facing repeated provisional attachments. One may want to evaluate if such principal of renewal of lapsed provisional attachment could also be applied under Direct tax law.



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