

GST DISPUTES

‘Don’t attach assets at the drop of a hat’

SC raps taxman for high-handed enforcement, ‘blatant misuse’

FE BUREAU

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EVEN AS THE government is showcasing the recent months’ surge in goods and services tax (GST) collections as proof of effective anti-evasion steps, the Supreme Court (SC) on Wednesday came down heavily on the GST authorities for high-handed enforcement of the relevant law and ‘blatant misuse’ of the provisions concerning attachment of taxpayers’ assets.

An SC Bench comprising justices DY Chandrachud and MR Shah noted that “Parliament had aimed to give the GST as a citizen-friendly tax structure”, but termed provisional attach-

SC SAYS



Attachment provisions under **GST law being misused** by tax dept



Taxman cannot see **all businesses as being fraudulent** and start attachment

Tax officers' accountability is a must, says apex court



■ Need for a balance between **protecting government revenue and letting businesses** operate

ment as a “draconian, preemptive strike”. The SC later reserved its judgment in the case — Radha Krishna Industries vs State of Himachal Pradesh.

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GST dues: 'Don't attach assets at the drop of a hat'

JUSTICE CHANDRACHUD DURING the hearing also orally observed that the taxman should not see all "businesses as being fraudulent", and said the country needed to come out of such mindset. "Even when ₹12-crore tax has been paid (by Radha Krishna Industries), just because some tax is still due, you can't start attaching property. If there is any alienation of assets or the assessee is winding up or going into liquidation, it is understandable... but just because you have the account numbers, you can't start attaching and even block the receivables," the judge said.

The hearing on an appeal by the firm, a manufacturer of lead, against powers of provisional attachment under the Himachal Pradesh Goods and Services Tax Act, 2017. The Himachal Pradesh High Court had in January dismissed the company's plea for quashing of the provisional attachment under Section 83 of the Act.

The SC Bench further said that there was a need for introducing a mechanism of assessment of the tax officers with a view to inculcating accountabil-

ity. It said that when the huge tax demand raised by the tax department is reduced drastically by the appellate tribunal or the Supreme Court, then the tax officers should be made accountable.

Justice Chandrachud further asked officers to strike a balance between protecting government revenue and allowing genuine businesses to operate. "In order to make the GST Act workable, the message must percolate to the actual authorities..."

The apex court also flayed the HP tax department's stand that providing an opportunity for hearing in connection with an order of attachment was a discretion of the Commissioner concerned. "This is a draconian law and needs to be structured. The rules say that the assessee will be given an opportunity for filing objections and of a hearing. The tax authorities have to abide by the mandate of the law," justice Chandrachud said.

Senior counsel Puneet Bali and counsel Surjeet Bhadu, appearing for the company, argued that the provisional attachment of trade receivables of the company in hands of its customers under Section 83 before any assessment proceedings was patently illegal. Rule 159(5) specifically provides that

the Commissioner has to take decision after affording an opportunity, they argued, adding that no such opportunity of being heard was given to the assessee before the provisional attachment was made.

"The opinion to be formed by the Commissioner or take a case by the delegated authority cannot be on imaginary ground, wishful thinking, howsoever laudable that may be. Such a course would be impermissible in law," the company said.

The state authorities opposed the appeal, saying that the firm had duly participated in the proceedings under Section 83. And once its objections were rejected, the company could not have turned back and challenged the proceedings under Section 83 only because the proceedings did not end up favouring it.