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**Office of the Commissioner,
Commercial Tax, Uttar Pradesh,
(GST Section)**

Letter No. GST/2021-22/ 14 /Commercial Tax

Dated: 25-August, 2021

To;

All Zonal Additional Commissioner, Grade -1,
Additional Director (Training Centre)
Additional Commissioner, Grade -2, (S.I.B.),
Joint Commissioner, (Executive/Corporate Circle/ S.I.B),
Commercial Tax, Lucknow.

Subject:- Guidelines for provisional attachment of property under section 83 of the UPSGST Act, 2017-Reg.

This is in reference to section 83 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). This section provides for provisional attachment of property for the purpose of protecting the interest of revenue during the pendency of any proceeding under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of the Act.

2. Doubts have been raised by the field formations on various issues pertaining to provisional attachment of property under the provisions of section 83 of the Act read with rule 159 of Uttar Pradesh Goods and Services Tax Rules, 2017 (hereinafter referred to as the "UPSGST Rules"). Besides, in a number of cases, Hon'ble Courts have also made observations on the modalities of implementation of provisions of section 83 of the Act by the tax officers. In view of the same, the following guidelines are hereby issued with respect to the exercise of power under section 83 of the Act.

3.1 Grounds for provisional attachment of property

3.1.1 Section 83 of the Act is reproduced hereunder:

"83. *Provisional attachment to protect revenue in certain cases.-*

(1) *Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, 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 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)."

3.1.2 Perusal of the above provision of the law suggests that the followings grounds must exist for resorting to provisional attachment of property under the provisions of section 83 of the Act:

- (i) There must be pendency of a proceeding against a taxable person under the sections mentioned in section 83 of the Act;
- (ii) The Commissioner must have formed the opinion that provisional attachment of the property belonging to the taxable person is necessary for the purpose of protecting the interest of the Government revenue.

3.1.3 The Zonal Additional Commissioner shall send his report to Vidhi Section, Commercial Tax Headquarter, stating the grounds and necessity of such attachment.

3: 2 Cases fit for provisional attachment of property

3. 2.1 As mentioned above, the remedy of attachment being, by its very nature, extraordinary, needs to be resorted to with utmost circumspection and with maximum care and caution. It 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. While the specific facts of the case need to be examined in detail before forming an opinion in the matter, the following are some of type of cases, where provisional attachment can be considered to be resorted to, subject to specific facts of the case:

Where taxable person has:

- a. supplied any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made there under, with an intention to evade tax; or
- b. issued any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made there under; or
- c. availed input tax credit using the invoice or bill referred to in clause (b) or fraudulently availed input tax credit without any invoice or bill; or
- d. collected any amount as tax but has failed to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; or
- e. fraudulently obtained refund; or
- f. passed on input tax credit fraudulently to the recipients but has not paid the commensurate tax

3.2.2 The above list is illustrative only and not exhaustive. The Commissioner may examine the specific facts of the case and take a reasoned view in the matter.

3.3 Types of property that can be attached

3.3.1 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.

3.3.2 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. 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.

3.3.3 It may be noted that the provisional attachment can be made only of the property belonging to the taxable person, against whom the proceedings mentioned under section 83 of the Act are pending.

3.3.4 Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.

3.3.5 As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production or finished goods should not normally be attached by the Department.

3.3.6 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 the property, for the satisfaction of the concerned officer.

3.4 Attachment Period

3.4.1 Every provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the provisional attachment order.

3.4.2 Besides, the provisional attachment order shall also cease to have effect if an order in **FORM GST DRC-23** for release of such property is made by the Commissioner.

3.5 Procedure for provisional attachment of property

3.5.1 Vidhi Section, Commercial Tax HQ will put up the file before competent authority for issuance of DRC 22.

3.5.2 A copy of the order of attachment should be sent to the concerned Revenue Authority or Transport Authority or Bank or the relevant Authority to place encumbrance on the said movable or immovable property. The property, thus attached, shall be removed only on the written instructions from the Commissioner.

3.5.3 A copy of such attachment order shall be provided to the said taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within the time period prescribed under rule 159 of the UPSGST Rules. If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard to the person filing the objection. After considering the facts presented by the person in his written objection as well as during the personal hearing, if any, the Commissioner should form a reasoned view whether the property is still required to be continued to be attached or not, and pass an order in writing to this effect. In case, the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in **FORM GST DRC-23**.

3.5.4 Even in cases where objection is not filed within the time prescribed under rule 159(5) of UPSGST Rules, the Commissioner may take the grounds mentioned in the said objection/representation on record and pass a reasoned order. Where the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in **FORM GST DRC-23**.

3.5.5 Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order of attachment.

3.5.6 If the provisionally attached property is of perishable/hazardous nature, then such property shall be released to the taxable person by issuing order in **FORM GST DRC-23**, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, and submits proof of payment. In case the taxable person fails to pay the said amount, then the said property of perishable/hazardous nature may be disposed of and the amount recovered from such disposal of property shall be adjustable against the tax, interest, penalty, fee or any other amount payable by the taxable person. Further, the sale proceeds thus obtained must be deposited in the nearest Government Treasury or branch of any nationalised bank in fixed deposit and the receipt thereof must be retained for record, so that the same can be adjusted against the amount determined to be recoverable from the said taxable person.

3.6 Investigation and Adjudication

As the provisional attachment of property is resorted to protect the interests of the revenue and may also affect the working capital of the taxable person, it may be endeavoured that in all such cases, the investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc. arising upon adjudication can be recovered from the said taxable person and the purpose of attachment is achieved.

3.7 Share in property

Where the property to be provisionally attached consists of the share or interest of the concerned taxable person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

3.8 Property exempt from attachment

All such property as is by the Code of Civil Procedure, 1908 (5 of 1908). exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment (**Annexure-A**).

4. It may be noted that an amendment to the section 83 has been proposed in Uttar Pradesh Goods and Services Tax (Amendment) Act 2021. However such proposed amendment shall come into effect only from a date to be notified in future. The present guidelines, which are based on the existing provisions of section 83 of the Act, shall stand modified according to the amended provisions of Section 83, once the said amendment comes into effect.

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24/8/2021

(Ministhy S.)

**Commissioner, Commercial Tax,
Uttar Pradesh.**

Section 60. Property liable to attachment and sale in execution of decree.

1(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer of a domestic servant] and occupied by him ;
- (d) books of account ;
- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;
- [(h) the wages of labourers and domestic servants, whether payable in money or in kind;

[(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

[(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of a lessee of a residential of building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]

[(1) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree, and

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being

applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation 1. The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable.

Explanation II-- In clauses (i) and (ia), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.

Explanation [III] -- In clause (1) appropriate Government means--

(i) as respects any [person] in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(iii) as respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV.-- For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled unskilled or semi-skilled labourer.

Explanation V.-- For the purposes of this proviso, the expression agriculturist means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI.-- For the purposes of Explanation V an agriculturist shall be deemed to cultivate land-personally, if he cultivates land

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

(IA) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.