

## **GST law: Taxman must not proceed to attach property in haste, says SC**

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The Supreme Court on Tuesday ruled that the power to order a provisional attachment of property, including a bank account, of an assessee under the GST law is “draconian in nature” and cannot be used as an “unguided subjective discretion” of the tax authorities.

A bench comprising justices DY Chandrachud and MR Shah said a provisional attachment is contemplated during the pendency of certain proceedings, implying a final demand or liability is yet to be crystallised. So, an anticipatory attachment of assets must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules, it said.

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Justice Chandrachud 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 unlock the receivables,” the judge had said.

“The commissioner must be alive to the fact that such provisions are not intended to make pre-emptive strikes on the property of the assessee, merely because property is available. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue,” the bench said in its 61-page judgment.

The formation of the opinion by the Commissioner must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue, it said, while allowing an appeal filed by M/s Radha Krishna Industries against the Himachal Pradesh

High Court's order of January 1, 2021, that upheld its provisional attachment of properties under the Himachal Pradesh Goods and Service Tax Act, 2017.

Justice Chandrachud, writing for the bench, said that the conditions which are prescribed by the statute for a valid exercise of the power, based on tangible material, must be strictly fulfilled.

In this case, the HC in January had dismissed the lead manufacturer's plea for quashing of the provisional attachment under Section 83 of the 2017 Act. The SC found that there was a clear non-application of the mind by the Commissioner and he misconceived it to be his discretion whether he allowed the appellant opportunity of hearing or not.

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