

Gurugram Branch of NIRC
The Institute of Chartered Accountants of India
[Setup by an Act of Parliament]



e-Newsletter

Chartered Accountants
March 2022 Edition

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CA. Mohit Singhal, Chief Editor

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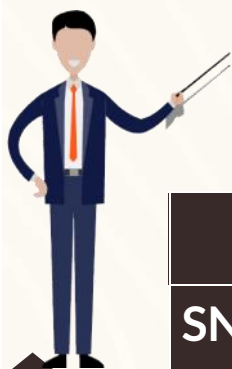


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Stay Connected-Get Updated with ICAI Gurugram Branch

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Channel - **ICAI Gurugram Branch**
-  9899324222 (only whatsapp)



ICAI MOTTO

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।
 तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।
 तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

Ya eṣa supteṣu jāgarti kāmam kāmam puruṣo nirmimāṇah ।
 Tadeva śukram tad brahma tadevāmṛtamucyate ।
 Tasminlokāh śritāh sarve tadu nātyeti kaścan । Etad vai tat ॥

That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman that, indeed is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends'.

Source: Kathopanishad





Special Offer for New Member (other than Existing Study Group Member 2021-22 of Gurugram Branch)

From the Date of Payment to 31st March 2023 (13 months)

Particulars	Fee Per member	GST @ 18%	Total Amount
For Individual Member	Rs. 5500/-	Rs. 990/-	Rs. 6490/-
For five or more declared members from any organization	Rs. 5000/-	Rs. 900/-	Rs. 5900/-

Fee Structure:-

Special Offer for New Member-Other than existing study group members-2021-22

(From the Date of Payment to 31st March 2023 (13 Months))

A. For Individual Member:- Rs 5500 plus Rs. 990(18% GST)= Rs. 6490/-

B. For five or more declared members from any organization i.e. names of the Members to be declared at the time of payment of fee- Rs.5000 plus Rs.900 (18% GST)= Rs. 5900/- per member

Payment Option:

- Offline Mode** - Please fill up the form ([Click Here](#)) and send the cheque to branch along duly filled form.
- NEFT/RTGS Mode** : RTGS/NEFT at below bank and share the details of payment along duly filled form at gurgaoncai1@gmail.com

Bank Account Details:-

A/C Name : Gurgaon Branch of NIRC of ICAI

A/C Number : 910010026661826 | IFSC Code : UTIB0000056

(Kindly mention your name and Membership Number in the remarks while making the payment)

3. Payumoney - Please follow the link and make the payment.

For Individual Member : <https://pmny.in/LIsJxjb5Qz4P>

For Five Member : <https://pmny.in/EIPOkfzu4vCH>

Note:- GST details (in membership form) need to be shared at the time of making the payment. An invoice once issued will not be altered.

Disclaimer:

Request you to please send a mail at gurgaoncai1@gmail.com along with invoice/GST details (in membership form) within 3 days of making the payment to receive a copy of GST Invoice with your details.

Renewal Offer for Existing Study Group Member(2021-22) of Gurugram Branch



Offer Valid upto 31st March 2022

25%

DISCOUNT

Under this scheme, All payment will be taken by the branch via cheque only.

The details of membership fee which are as follows:

Particulars	Fee Per member	After 25% Discount (for existing member)	GST @ 18%	Total Amount
For Individual Member	Rs. 5500/-	Rs. 4125/-	Rs. 743/-	Rs. 4868/-
For five or more declared members from any organization	Rs. 5000/-	Rs. 3750/-	Rs. 675/-	Rs. 4425/-

Renewal Offer with Discount for Existing Study Group Member (2021-22) of Gurugram Branch - (25 % Discount only if payment made upto 31st March,2022- via Cheque Only)

For Individual Member:- Rs 4125 plus Rs. 743(18% GST)= Rs. 4868/-

For five or more declared members from any organization i.e. names of the Members to be declared at the time of payment of fee- (payment will be made with a single cheque only):- Rs.3750 plus Rs.675(18% GST) = Rs. 4425/- Per member

Payment Option:

- Offline Mode** - Please fill up the form ([Click Here](#)) and send the cheque to branch along duly filled form.
- NEFT/RTGS Mode** : RTGS/NEFT at below bank and share the details of payment along duly filled form at gurgaoncai1@gmail.com

Bank Account Details:-

A/C Name : Gurgaon Branch of NIRC of ICAI

A/C Number : 910010026661826 | IFSC Code : UTIB0000056

(Kindly mention your name and Membership Number in the remarks while making the payment)

Note:- GST details (in membership form) need to be shared at the time of making the payment. An invoice once issued will not be altered.

Disclaimer: Request you to please send a mail at gurgaoncai1@gmail.com along with invoice/GST details (in membership form) within 3 days of making the payment to receive a copy of GST Invoice with your details.



Chairman's Message

CA Mohit Singhal
Gurugram Branch of NIRC of ICAI



Respected Members and Students,

It gives me an immense pleasure to assume office as Chairman of such Prestigious Branch of ICAI, the largest branch of Northern Region of ICAI. I am privileged, honoured, and humbled to take over as the 24th Chairman of Gurugram Branch of NIRC of ICAI. My sincere thanks to the members of the Managing Committee for unanimously electing me as the Chairman for the term 2022-23. My heartfelt thanks to all the members of Gurugram Branch for their continued faith in me by electing me to the branch for terms 2019-22 and 2022-25 consecutively. I am aware that I have shouldered a huge responsibility, my predecessors have done wonderful job to the fraternity and set a very high standard. I know the expectations from stakeholders are enormous and with the strong support from the vibrant team, we will try to meet your expectations and exceed.

It's a year where I hope to give platform to my convictions and implement the ideas that are in the best interest in the members and students of this branch. I hope that I shall be able to respond to each and every query raised, that I would be able to implement every suggestion made and that I would be able to do all that which shall be for the good, whole good of the community of Gurugram.

On behalf of Gurugram Branch of NIRC of ICAI, I congratulate and welcome our versatile leaders at the helm, our President , CA. (Dr) Debashis Mitra and the Vice President, CA Aniket Sunil Talati, the New Torch Bearers of ICAI for the year 2022-23. We are confident that the profession shall reach greater heights under their able leadership. Let me also congratulate the new Chairman of NIRC CA Naveen Garg and his entire new team.

Vibrant team of your branch for the term 2022-23 comprises of

- CA. Mohit Singhal- Chairman
- CA. Amit Gupta- Vice Chairman
- CA. Jitender Yadav- Secretary
- CA. Pooja Agarwal- Treasurer
- CA. Vipin Agarwal- NICASA Chairman
- CA. Amit Kithania- Chairman of Member In Industry

CA. Nishant Kumar- Member

CA. Himmat Yadav- Member

CA. Amit Mittal -Member

On behalf of the Gurugram Branch managing committee I assure you that in first year of this tenure we will work to the best possible in the interest in the branch. Let us prepare ourselves for the new opportunities and challenges future is bringing to us. I am happy to communicate that our branch is geared up to serve for futuristic CA Profession. This month is all set with festivals like Holi, Mahashivratri etc., I give my best wishes to all the members and students. Congratulations to all the students for passing exam! Your patience and persistence has finally paid off. Now you are now one step closer to your dream.

For this month of march, we are planning to conduct several seminars in physical/virtual mode.

Following few seminars planned for this month are: -

- Seminar on Discussion on Budget-2022
- Seminar on International Women's Day
- Seminar on Bank Audit for members and students
- Workshop and Group discussion on different topics for members and students
- Career Counselling Programs

I humbly request Members to enrol life member of the Chartered Accountant Benevolent Fund (CABF) to provide financial assistance for maintenance, education, or any other similar purpose. Please click <https://cabf.icai.org/lifeMember>.

Before concluding my first message, I am confident that the term 2022-23, with all your support and blessings would be an eventful year and solicit your valuable suggestions and co-operation as always to serve for the cause of the profession and students. Your suggestions and feedback are pertinent to decide upon our course of actions. Please feel free to reach out to me on gurgaon@icai.org and also on **9555379714** at any moment 24*7. In conclusion, I assure you all that we will be putting our best foot forward in ensuring that all your expectations are met and beyond! If you have any suggestions and comments, I'm always a phone call or an e-mail away!

CA Mohit Singhal

Chairman, Gurugram Branch of NIRC of ICAI



Immediate Past Chairman's Message

CA Nitin Kataria
Gurugram Branch of NIRC of ICAI



Dear Professional Colleagues,

As I complete the last day today as the chairman of Gurugram branch of NIRC of ICAI I am short of words to express my feelings about the tremendous journey of the last three years. This was the time in February 2021 last year when I took over the charge of Gurugram Branch of NIRC of ICAI the largest branch of ICAI Northern Region. Our committee was elected in 2019 for a period of three years and the journey was truly memorable. It seems now that the three years went by just a blink of an eye. The Gurugram branch was nurtured by all the past chairman's, committee members and taken to this level where in any of the member can proudly talk about the working of the branch at national level.

My tenure as a chairman was started with a very big challenge of the deadly 2nd wave of covid-19 in the month of April 2021. When the whole country was fighting covid, we at the branch level were doing our bit. With the support of the whole managing committee, branch staff and the seniors of the profession. we organised 3 covid vaccination drives. we distributed the medical kits and the oxygen concentrators to the CA members of Gurugram.

Few of the highlights for the year 2021-22

Covid Vaccination Drive Camps and Plasma Donation.

Four Plantation Drives of more than 11,000 plants.

Distribution of Medical Kits and Oxygen Concentrators.

First ever Residential Bike RRC.

First ever Mobile Cancer Screening and Health Checkup.



Organized Blood Donation Camp.

Organized National Level Cricket Tournament with 10 teams from different states.

Organized maximum numbers of webinars and seminars in Gurugram Branch history.

Speeding up the building process with three roof slabs already casted.

Organised Cricket match with Income Tax Department and Students.

Cycling trip to Aravalis on the occasion of Independence Day.

Inviting Dignitaries from different fields.

Yoga Day Celebration on International Yoga Day.

Branch Foundation Day Celebration.

Cultural Evening on the occasion of Diwali.

We have collaborated with many other branches during the year as the program dynamics were changed due to the online activities via video conferencing facilities, we also conducted several programs in collaboration with the various committees of our esteemed Institute. I would also like to thank our Hon'ble President CA Nihar Jambusaria, our Hon'ble Vice President Debashis Mitra and our Hon'ble Past President CA Atul Gupta for their valuable advice, guidance and support.

All these activities were possible only with the support of the members and my committee colleagues who helped me throughout the year to take the branch to new heights. I knocked myself out and tried my level best to do justice to my job and i will always remain obligated to you all for giving me chance to



serve the profession. Throughout the year we left no stone unturned to keep the involvement of the members at the maximum.

These three years were the most exquisite of my life and it has elevated me to a new level as a professional and as a human being. Throughout the journey I kept on learning every day and kept on trying something new for the branch. Lastly, from branch perspective we are on a recovery mode I have a very strong wish that the things remain normal and we should not face again any uncertain situation due to covid which hampers the progress of the branch.

As I bid adieu, I promise to be always at the branch's beck and call 24*7 with all the support that i can provide. I would also like to congratulate the newly constituted committee under the able leadership of CA Mohit Singhal. I am sure that the branch will attain new heights and break new records under the endeavours of the new committee. At last I would like to end with a very important verse from Shrimad Bhagvad Gita.

॥ कर्मण्येवाधिकारस्ते मा फलेषु कदाचन
मा कर्मफलहेतुर्भूर्मा ते सङ्गोऽस्त्वकर्मणि ॥

Yours Sincerely

CA Nitin Kataria

Chairman (2021-22)

Gurugram Branch of NIRC of ICAI

thankful



Vice_Chairman's Message

CA Amit Gupta
Gurugram Branch of NIRC of ICAI



Respected Members and Students,

It is indeed a great honour to communicate with you as the Vice-Chairman of Gurugram Branch of NIRC of ICAI. Representing the members of a noble profession like ours in a millennium city like Gurugram, is an honor and we will try and ensure that the baton be kept and handed over to the successors in transparent and professional manner. I would also like to thanks the previous management for the efforts they have put in to bring the Branch at this level today.

It is a matter of great pride for us that CA. (Dr.) Debashis Mitra, has been elected as the President of ICAI and CA. Aniket Sunil Talati as Vice President of ICAI. On behalf of our branch, I would like to congratulate both of them.

Your branch has been doing great works in the field of knowledge development while creating a community of professional brotherhood. I am sure, in the coming years, the branch will add multiple new feathers in its cap including a fast-paced development in the Gurugram branch's building in Manesar.

Coming together is a beginning; keeping together is progress; working together is success.

Success does not come by chance, lot of efforts have been done in sequence to achieve that success, For being successful in life one has to put in lot of hard work and dedication for the achievement of positive results. For producing the desired results, one has to update the skill set and knowledge and move forward with the changing and challenging time. The professional world is full of challenges, as lots of developments and amendments are taking place day in day out. For being successful professional one has to be updated every next second. Keeping all this in mind, Gurugram ICAI Branch is always keen to provide best of the possible services to various stakeholder either in the form of offering more & more opportunities of learning and capacity building for keeping them updated by organizing series of quality professional developments programs or in the form of providing any other services

May 2022 exams around the corner, I convey my best wishes for the upcoming exams. All of us know these are one of the tough exams around but a planned set of studies along regular improvement on the way one attempts the exams is a sure recipe for success.

We all will celebrate the festival of colours this month and I take this opportunity to wish all members & students a Happy and Colourful Holi.

With this, I thank everyone once again for their continuous support and guidance.



Secretary's Message

CA Jitender
Gurugram Branch of NIRC of ICAI



Dear Professional Colleagues and CA Students,

First of all I would like to convey my sincere gratitude to the members of Gurugram Branch of NIRC of ICAI who have shown their confidence to give me an opportunity to serve as Secretary of our esteemed branch. Representing the members of a noble profession like ours in a millennium city like Gurugram, is an honor and we will try and ensure that the baton be kept and handed over to the successors in transparent and professional manner. I would also like to express my gratitude to all the members of the previous committees of the Gurugram branch for their efforts and contribution for the profession. I would also like to congratulate our newly elected President CA. (Dr.) Debashis Mitra and Vice President CA Aniket Sunil Talati for the year 2022-23. I would also like to congratulate our newly elected Northern India Regional Council Chairman CA Naveen Garg and Vice Chairman CA Abhinav Aggarwal for the year 2022-23.

Your branch has been doing some great works in the field of knowledge development while creating a community of professional brotherhood. I am sure, in the coming years, the branch will add multiple new feathers in its cap including a fast-paced development in the Gurugram branch's upcoming building in Manesar.

It gives me a pleasure to share my thoughts through the first Newsletter of new managing committee 2022-23. I consider my responsibility both as an opportunity and a challenge too. I wish that I will continue to enjoy your love and kind support and I hope that we can reach our collective goals together. It gives me a great satisfaction that your branch is putting dedicated efforts to serve the members and students at large. For Esteemed Members, the branch is going to continue the series of post qualification courses. It shall remain our endeavour to keep the members as well as students update on various fields of knowledge to excel in profession.

As secretary of this esteemed branch, I assure every member and student that they will be provided with the best platform for professional and academic development. Our Institute is a partner in nation building and I am sure that this Branch of the Institute shall be fulfilling and exhibiting its Excellency to prove so. Members of the Branch are requested to generously contribute articles on issue of relevance to the Members in Profession for Newsletter.



At the end, I once again thank all of you from the core of my heart for giving me this opportunity to serve you all as the Secretary of this esteemed Gurugram branch of ICAI and assure you all as the best of my services as the member of the managing committee and as the proud member of the branch for the whole life.



Stay Connected-Get Updated with NICASA Gurugram Branch

Please update your latest details in the form to stay updated for all activities of your branch.



Stay Connected-Get Updated Link:
<https://bit.ly/ggnStayConnected>

Also join us on any below mentioned social media link for the CA Students Activities

-  <https://bit.ly/linkedinicaigurugram>
-  <https://bit.ly/icaiggnpage>
-  <https://bit.ly/instagramggnicai>
-  <https://bit.ly/icaigurugramApp>
-  <https://t.me/ICAIgurugramConnected>
Channel - **ICAI Gurugram-CA Students**
-  9899324222 (only whatsapp)





Treasurer's Message

CA Pooja Aggarwal
Gurugram Branch of NIRC of ICAI



My Dear Professional Colleagues,

Greetings from the desk of the Treasurer

First and foremost, I would like to thank The Almighty for his divine blessings. Please accept my heartfelt gratitude for entrusting me with the responsibility of leading the prestigious Gurugram Branch of NIRC of ICAI.

Our Profession has seen many evolutionary changes over the last few years. In an increasingly complex, demanding and competitive 21st century we still need to push the boundaries and rise beyond the ordinary.

We Chartered Accountants are multi-talented, and throughout our professional journey we learn not to make requests but to take charge of situations.

युक्ति युक्तं प्रगृहणीयात् बालादपि विचक्षणः।
रवेरविषयं वस्तु किं न दीपः प्रकाशयेत्॥

A wise person should receive a good word or advice even from a child. Does the small lamp not illuminate a place where the sun cannot reach?

This shloka is self-explanatory as it signifies the importance of learning a good word or advice from others. Do not judge the source of wisdom, just accept the wise words.

Our Institute is continuously striving to properly update us through various academic and skill-enhancing programmes digitally to share knowledge through various webinars enabling the members to take benefit of available time

Gurugram ICAI Branch is always keen to provide best of the possible services to various stakeholder either in the form of offering more & more opportunities of learning and capacity

building for keeping them updated by organizing series of quality professional developments programs or in the form of providing any other services.

In Past, Gurugram ICAI Branch has organized various National Seminars, Conferences, Workshops, Certification courses, Group discussion etc. A large number of Members attended all the Seminars and Workshops. I would like to convey my sincere thanks to all the Guest Speakers for sparing their precious time for all the CPE Programmes and sharing their expertise with all of us and hoping that their same patronage will continue in future.

In addition to the regular study circle meetings and seminars, greater emphasis will be placed on organising a variety of workshops which will assist members in equip themselves with the requisite skills to explore new and emerging areas of practice.

Looking forward for your blessings & support throughout the year.

Thanks & Regards





NICASA Chairman's Message

CA Vipin Agrawal
Gurugram Branch of NIRC of ICAI



My Dear Students,

It is a great honor to be the Chairman of the Gurugram Branch of NICASA and I am immensely happy that this gives me great opportunity to interact with young aspiring & budding Chartered Accountants.

I assure you that whatever possible will be done to mitigate your genuine difficulties that you are encountering in your journey to become a CA and the present Management Committee under the Chairmanship of CA. Mohit Singhal is committed to the well-being of student community.

Hearty congratulations to you all for enabling my fellow committee member and our past NICASA Chairperson CA. Sanjeev Aggarwal for gracefully past activities done in committee.

I am sure the new student's committee will also pursue the proven path of the predecessors and sincerely put in efforts to better the best.

I am always available for you @ **9599336633** and my email id is **cavipinagrwal@gmail.com**

We are organizing a seminar on Budget 2022 Awareness, Women's Day Celebration, Bank Branch Audit etc. in the month of March. On the extracurricular front, we are planning Article ship Placement Program, Sports and Arts events during the current year.

The CA course is not for youngsters with weak heart. Determination, focused systematic hard work is a must to successfully emerge as a CA.

The pandemic Covid 19 has added new challenges and yet technology has innovative solutions to face the challenge. Personally, my priority area would be to come up with efforts to help you deal with the problem of stress effectively.

The committee wants to stress that our handholding policy in the case of students would continue with the same care and warmth.

Regards,

Yours truly,

CA. VIPIN AGRAWAL

NICASA, Chairman
Gurugram Branch of NIRC of ICAI

Managing Committee 2022-23 Office Bearers of the Gurugram Branch of NIRC of ICAI for the year 2022-2023



CA. Mohit Singhal
Chairman



CA. Amit Gupta
Vice-Chairman



CA. Jitender
Secretary



CA. Pooja Aggarwal
Treasurer



CA. Amit Kithania
Chairman
Members in Industry



CA. Vipin Agrawal
Chairman, NICASA



CA. Nishant Kumar
Executive Member



CA. Amit Mittal
Executive Member



CA. Himmat Yadav
Executive Member



Gurugram Branch of NIRC of ICAI



Provisional Attachment – GST

CA. Anmol Gupta



Provisional Attachment – A measure introduced to protect interest of the revenue by provisionally attaching any property of a taxable person, including bank account. We begin this article with the comments given by the division bench of **Justice Dhananjaya Y Chandrachud and Justice MR Shah** as:

“The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.”

The power of provisional attachment is given to the GST Authorities, more specifically to the Commissioner of GST and there are numerous of cases rolling up these days involving the matter of provisional attachment in lieu of the powers conferred under Section 83 of the CGST Act, 2017. It has always been a litigative & debatable matter whether the action of the Competent Authority of provisionally attaching the bank account or any other property belonging to the taxpayer is as per the powers conferred and is justified in the circumstances.

Brief Introduction of Provisional Attachment

Before talking about the pertinent judicial pronouncements on this issue, here’s a brief of what powers are conferred under Section 83 of the CGST Act, 2017 and subject to what conditions. Section 83 of the CGST Act, 2017, as introduced w.e.f. 01 July 2017, reads as –

“(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).”

However, the sub-section (1) is proposed to be amended by the Finance Act, 2021 w.e.f. a date yet to be notified and after substitution, it shall read as –

“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the



Provisional Attachment - GST

Author: CA. Anmol Gupta

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.”

Vide the aforementioned amendment, scope of provisional attachment which is currently applicable on pendency of proceedings under Section 62, 63, 64, 67, 73 or 74 is proposed to be enlarged by giving power to invoke provisional attachment after initiation of proceedings under Chapter XII (covering Sections 59 to 64), XIV (covering Sections 67 to 72) and XV (covering Sections 73 to 84).

Now coming to the provision under Section 83 that currently exists, it provides for –

- Proceedings under Section 62, 63, 64, 67, 73 or 74 must be pending in order to invoke provisional attachment of any property of the taxpayer;
- Such power must be invoked after forming an opinion that the same is done with an objective to protect interest of the revenue;
- The competent authority to invoke such

power has been defined under Section 83 to be Commissioner of GST;

- Any property, including bank account, belonging to the taxpayer can be provisionally attached by the Commissioner by passing an Order in writing; and,
- The provisional attachment cannot have an effect for more than 1 year from the date of order.

Whereas Rule 159 of CGST Rules, 2019 contains procedure and *inter-alia* provides for mechanism for release of property in cases –

- where the property so attached is perishable or hazardous in nature (sub-rule 4); and,
- where person whose property is provisionally attached is of the opinion that such property is not liable for attachment, filing of objections thereof (sub-rule 5 & 6).

Cases wherein power of provisional attachment can generally be invoked

CBIC, recently issued **Instructions/Guidelines bearing no. CBEC-20/16/05/2021 – GST/359 dated 23 February 2021** for provisional attachment of property under Section 83 wherein certain cases (illustrative) were listed by the CBIC itself



Provisional Attachment - GST

Author: CA. Anmol Gupta

where, if the situations so warrant, provisional attachment can be resorted to, like –

- Where a person supplies any good or services without issuance of an invoice, with an intent to evade tax or *vice - vera*;
- Where a person has availed ITC using invoice issued without supply of goods or services;
- Where a person has collected any amount as tax but failed to pay to the Government beyond 3 months;
- Where a person has fraudulently obtained refund; and,
- Passed on ITC to recipient but not paid due taxes.

What properties can be provisionally attached?

Bank account can be attached as mentioned in the Section 83 itself. Further, CBIC *vide* aforementioned **Instructions/Guidelines dated 23 February 2021** contains certain guidelines with respect to the type of properties which can be provisionally attached –

- More than 1 property can be provisionally attached in case 1 prop-

erty is not sufficient to cover due taxes estimated to be collected from the taxpayer;

- Movable property should only be attached in case immovable property, available for attachment, is not sufficient to cover estimated dues, i.e. preference must be given to immovable property available for attachment, like, warehouse, godown, etc.;
- In case movable property (including bank account) is attached by the officers and taxpayer offers his immovable property (enough to cover estimated liability) for attachment, such movable property may be released; and,
- Raw material & Inputs required by the taxpayer for production or finished goods should not be attached by the officers. This is to ensure that provisional attachment does not hamper normal business activities of the taxpayer.

Some pertinent judicial pronouncements/resources on Provisional Attachment

This section discusses some of the important judgements pronounced under GST law on this topic setting precedents as to when this power can be invoked and when it must not be invoked and in what manner should this power be invoked by the concerned authority.





Provisional Attachment - GST

Author: CA. Anmol Gupta

1. Power for ordering of provisional attachment must be supported by substantial grounds (depicting formation of a valid opinion, as required) by the Commissioner as the said power is draconian in nature and to be exercised sparingly

- In the matter of **Radha Krishan Industries v. State of Himachal Pradesh**, cited at **MANU/SC/0293/2021**, the Hon'ble Supreme Court while setting aside the judgment of the Hon'ble High Court and the order of the provisional attachment has held that –
- The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;
- The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material

that the Assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

- The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.
- A judgment was pronounced by the Hon'ble High Court of Gujarat in the matter of **Valerius Industries v. Union of India**, cited at **MANU/GJ/1743/2019** where it was held that the power of provisional attachment under Section 83 of the CGST Act 2017 could be termed as very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons. The said power to be exercised with extreme care and caution. The power under Section 83 should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.
- It was further held that the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and in-



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definite or distant remote or far-fetching, which would warrant the formation of the belief.

- Also, the Hon'ble Court laid down the points to be considered by the authority before exercising power under Section 83 and provisionally attaching any property as -
- Whether it is revenue neutral situation; and,
- the statement of "output liability or input credit". Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.
- Due to increased instances of provisional attachment by departmental officers and upper courts quashing such orders of provisional attachment passed by officers, CBIC in line with directions laid down by upper courts and to ensure uniformity of actions, recently issued **Instructions/Guidelines bearing no. CBEC-20/16/05/2021 - GST/359 dated 23 February 2021** for provisional attachment of

property under Section 83 which, *inter-alia* contains -

- That for forming an opinion, it is important that Commissioner must exercise due diligence and duly consider as well as 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 and reasons to believe that the taxable person, against whom the proceedings referred in Section 83 are pending, may dispose of or remove the property, if not attached provisionally;
- Further, it was directed by CBIC that the basis on which Commissioner has formed an opinion shall be duly recorded on file; and,
- The remedy of attachment, available to Government officers, by its very nature, extraordinary, needs to be resorted to with utmost circumspection and with maximum care and caution. It should normally not be invoked in cases of technical nature.

2. Property of any joint owner or third party (who is not the part of proceedings) cannot be provisionally attached

- **M/s Abhi Engg. Corporation Pvt. Ltd. v. Un-**





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ion of India (High Court of Bombay), cited at MANU/MH/0334/2021 -

Facts of the Case: In the present case, the Petitioner and M/s Creative Business Associates ("Respondent 1") opened a joint escrow account; Respondent No. 1, being the first party and the Petitioner, being the second party to the account. It was agreed that out of the deposits made in the escrow account, 3% shall be transferred to Respondent No. 1 and 97% shall be transferred to Petitioner.

In the present matter, the proceedings were initiated against the Respondent 1 under Section 74 to determine the tax and other amount due from the said person. Further the escrow account as held jointly by the Petitioner and Respondent 1 was, in entirety, provisionally attached by the Competent Authority exercising the power conferred by Section 83 to protect the interest of the revenue.

Order: The Hon'ble High Court of Bombay has held that Petitioner is not the taxable person in the present case and after considering the fact that no proceedings have been initiated against the Petitioner and no inquiry has been contemplated against the Petitioner, it was directed to the Competent Authority to lift the provisional attachment in so far as Petitioner's share in the escrow account is concerned, i.e. 97% and de-

partment is empowered to provisionally attach such bank account to the extent of only 3%, i.e. Respondent No. 1's share.

- **Roshni Sana Jaiswal v. Commissioner of Central Taxes GST Delhi (East)**, reported at [2021] 128 taxmann.com 357 - In this matter, Petitioner was acting as a director on the Board of Directors of a company, namely, M/s Milkfood Ltd between 2006 and 2008 and since then, was working as a mentor/advisor to the Company for which receiving a remuneration from the company and also had 14.33% equity stake in M/s Milkfood Ltd. Department on the basis of an information received that Milkfood Ltd. was availing ITC against fake/ineligible invoices, commenced investigation, under Section 67 against Milkfood Ltd. In the process, provisional attachment order was passed attaching bank account of the Petitioner, i.e. bank account of the mentor/advisor of the Company on whom proceedings were pending.
- Hon'ble Delhi High Court, in this matter, while setting aside the provisional attachment order, held that exercise of power u/s 83 to provisionally attach bank account of the Petitioner was without jurisdiction, as the petitioner is not a 'taxable person' as defined in GST law, instead M/s Milkfood Ltd. is the taxable person against whom proceedings u/s 67 were pend-





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ing.

- Similarly, in the matter of **Dharmesh Gandhi v. Assistant Commissioner (Anti-Evasion), CGST & Central Excise, Belapur**, reported at [2021] 128 taxmann.com 50 (Bombay), bank accounts of not only Petitioner but also his family members (mother, wife & son) were provisionally attached by the department. Hon'ble Bombay High Court after relying upon an identical matter in **Siddhart Mandavia v. Union of India**, reported at [2020] 121 taxmann.com 68 (Bom.) ordered to release the bank accounts of the family members.
- Furthermore, CBIC, *vide Instructions/Guidelines dated 23 February 2021* categorically states that provisional attachment can be made only of the property belonging to the taxable person, against whom proceedings are pending and not against any third person.

3. Provisional attachment not required when substantial amount of disputed tax has already been paid/reversed

- In the matter of **H.M. Industrial P. Ltd. v. Commissioner of Central GST and Central Excise** cited at MANU/

GJ/0457/2019, proceedings u/s 67, 73 or 74 were pending against the Petitioner when Order of provisional attachment of the bank account u/s 83 was passed by the competent authority. As on the date of passing of Order of provisional attachment, liability was estimated to Rs. 14.62 crores which on the date of this decision was enhanced to Rs. 16.24 crores. It was held by the Hon'ble Gujarat High Court that provisional attachment of the property to safeguard the interest of the revenue is not required as in the present matter, the Petitioner has already reversed the substantial amount of the ITC (Rs. 13.52 crores) out of total estimated demand (Rs. 14.62 crores). Thus, it was concluded that there is no requirement to provisionally attach the bank account as the interest of the Revenue is sufficiently secured.

- In pursuance to the above judgment, similar view can be drawn from the matter of **Pranit Hem Desai v. Additional Director General** cited at **MANU/GJ/1009/2019** where in the present case the Petitioner has paid GST more than the ITC availed (availment of which was under dispute). Moreover, it could not be said that the interest of the revenue was at stake and held that there is requirement to provisionally attach the bank account.





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- The same judgement can be relied upon in the of **Patran Steel Rolling Mill v. Assistant Commissioner of State Tax** cited at **MANU/GJ/1398/2018** where the Hon'ble High Court of Gujarat observed that the Petitioner has on his own deposited a sum of Rs. 17,00,000/- during search covering more than tax liability that might be assessed, i.e. Rs. 13,84,000/-, then the impugned order of provisional attachment does not hold good and thus, set aside and quashed.
- Furthermore, CBIC, *vide* **Instructions/Guidelines dated 23 February 2021** categorically stated that Departmental officers should ensure that value of property attached is not excessive. The provisional attachment of property shall be to the extent it is required to protect the interest of revenue i.e., to cover the estimated pending dues from such taxpayer, whose property is proposed to be provisionally attached.

4. Authority cannot attach the bank account "again" when the order for releasing the same has been passed earlier

- In the matter of **Patran Steel Rolling Mill**

v. Assistant Commissioner of State Tax cited at **MANU/GJ/1173/2019**, the Competent Authority has once exercised the power under sec 83 of the CGST Act by attaching the Bank account of the assessee against which the assessee had filed the Writ Petition and the Hon'ble High Court in the said matter had set aside the impugned order of the Competent Authority and directed to release the attached property of the assessee.

- After that, once again the Competent Authority has attached the same bank account of the assessee by passing an identical order again which *vide* this interim order of Hon'ble Gujarat High Court was directed to be released.

5. Provisional attachment ceases to be effective after the expiry of one year from the date of order or from the date of attachment if order does not specify any date.

- In the matter of **Namaskar Enterprise v. Commissioner of Goods and Service Tax** cited at **MANU/GJ/1313/2020**, Petitioner filed the writ application with the subject matter of releasing the bank account attached vide Section 83 of the CGST Act 2017. The contention of the Petitioner was that the provisional attachment of the bank





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account will only to have effect for one year from the date of the order. However, in the present case the date no specific date was mentioned so the date of freezing the bank account of the Petitioner is to be taken into the consideration and the one year from the date of attaching the bank account has lapsed.

- The Hon'ble High Court of Gujarat has held that the provisional attachment would cease to have effect after the expiry of a period of one year from the date of attachment and thereby directed the bank to permit the Petitioner to operate his bank account forthwith.
- The similar judgement has been passed by the Hon'ble High Court of Gujarat in the matter of **Badal Shambhubhai Shah v. The Directorate General of Goods & Service Tax Intelligence** cited at **MANU/GJ/0885/2020** where the Competent Authority was directed to lift the provisional attachment order as the period of one year was over and thus the impugned order had lapsed on completion of one year.

6. Provisional attachment order would come to an end once final order is passed concluding the pending proceedings

- In the matter of **Usha Industries (India) v. Deputy Commissioner** cited at **[2021] 128 taxmann.com 269**, Hon'ble Punjab & Haryana High Court while relying upon the Apex Court's decision in *Radha Krishan Industries (supra)* held that since a final Adjudicating order under Section 74(9) of the Act has been passed, the proceedings under the provisional attachment order passed comes to an end.

7. Even after attachment of bank account, assesseees are allowed to operate the bank account subject to certain conditions so that business of such assessee is not paralyzed

- In the matter of **Skj Finvest Advisory Pvt. Ltd. v. Union of India** cited at **[2021] 128 taxmann.com 53 (Gujarat)**, Hon'ble Gujarat High Court allowed the Petitioner to operate his bank account (provisionally attached by the revenue) subject to the condition that as on the date of provisional attachment, balance in such bank account showed a balance of Rs. 22 lakhs which the Petitioner was directed to maintain at all times.
- In another matter of **SPNN Business Services (P.) Ltd. v. Commissioner of Central Tax (GST), Delhi** reported at **[2021] 129 taxmann.com 207 (Delhi)**, the concern raised by the Petitioner was that in absence of bank account became inoperable due to provisional attachment, Petitioner is





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unable to distribute salaries of its employees. Taking cognizance of the situation, Hon'ble Delhi High Court permitted the Petitioner to collect Rs. 2 crores from the attached bank accounts to be used only to pay the salaries of the employees.

Conclusion:

From the case laws described *supra* & Instructions/Guidelines issued by the CBIC, it will not be correct to deny the fact that the power of provisional attachment is very extreme in nature and must be exercised with full caution as if these powers are used in a harsh manner, it may eventually lead to the closure of the business of the taxable person which is never the purpose of GST law. No doubt this power is necessary to protect the interest of revenue but it should be used in a rational manner and to be exer-

cised only if utmost necessary as it will hamper the working of the business even if the taxable person has no *mala-fide* intention.

Further, with the changes proposed to be made in Section 83 of the CGST Act 2017 brought by the Finance Act 2021, the scope of the powers will be expanded and now it is more imperative to be exercised carefully and with caution.



Glimpses

Gurugram Branch of NIRC of ICAI



Day & Date : Saturday, 12th February 2022 2021
Topic: Startup Conclave
Time : 09.30 AM - 02.00 PM (4 CPE Hours)
Venue : Hotel Leela Ambience, Sector-24, Gurugram

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