



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.7888 OF 2026

Nivara Infradevelopers LLP, through
Designated Partner Mr.Nilesh Patil,
CTS No.185, 185/1 to 8, Jalmeena CHS,
Tejpal Scheme, Road No.5 Junction,
Vile Parle (East), Mumbai - 400057.

Petitioner

versus

1. The Union of India,
2. The State of Maharashtra,
3. The Commissioner of State Tax
8th Floor, GST Bhavan, Mazgaon,
Mumbai - 400017.
4. Joint Commissioner of State Tax,
Investigation - A, C- Wing, 2nd Floor,
Old Building, GST Bhavan, Mazgaon,
Mumbai - 400017.
5. Assistant Commissioner of State Tax
(MUM-INV-D-1013), 2nd Floor, Cabin No.B-4,
Old Building, GST Bhavan,
Mazgaon, Mumbai-400010.

Respondents

Mr.Ishaan V.Patkar with Mr.Vinit V.Raje, Mr.Sanskar R.Ahire i/by Alaksha Legal
for Petitioner.

Mr.Amar Mishra, AGP, for Respondent nos.2, 3 4 and 5.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 2nd April 2026

ORAL JUDGMENT – (G.S.Kulkarni, J.) :-

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs :

(c) that the Hon'ble Court be pleased to issue a writ of certiorari or any other writ, direction or order quashing and setting aside the Impugned Orders dated 23 January 2026 being Exhibits A and B to this Petition;

(d) pending the hearing and final disposal of the present Petition, the Hon'ble Court may be pleased to stay the operation of the Impugned Orders dated 23 January 2026 being Exhibits A and B to this Petition and consequently direct the Respondent No.4 to forthwith withdraw the attachment of the bank accounts."

2. The grievance of the Petitioner is primarily against the impugned orders of attachment dated 23rd January 2026 (Exhibits A and B respectively). The impugned orders are intimation to the Petitioner's bankers namely Punjab National Bank, Mumbai and Saraswat Co-operative Bank Limited, Mumbai attaching the bank accounts of the Petitioner. One of such intimation issued to Punjab National Bank is extracted below :

"Government of Maharashtra
Department of Goods and Service Tax

Office of The,
Joint Commissioner of State Tax, .
Investigation-A,
C-Wing, 2nd Floor, Old Building,, GST Bhavan, Mazgaon,
Mumbai-400010

No/JCST/INV-A/ M/s. Nivara Infradevelopers LLP /DRC-22/2025-26/E-118
Mumbai Dated 23-01-2026

"FORM GST DRC- 22"
(See rule 159[1])

To,

The Manager,
Punjab National Bank,
Samartha Mandir, Bhalerao Wadi, Hanuman Road,
Vileparle East, Mumbai, Maharashtra - 400057.
IFSC: PUNB0373600
Account No: 3736002101019575

Provisional attachment of Bank Account under section 83

It is to inform that M/s. Nivara Infradevelopers LLP (GSTIN-27AAKFN9501B1ZF) having principal place of business at CTS No.185 185/1 to 8 , Jalmeena Chs , Tejpal Scheme, Road No.5 Junction , Vile Parle East , Mumbai Suburban, Maharashtra-400057 bearing registration number as 27AAKFN9501B1ZF, PAN AAKFN9501B is a registered taxable person under

the MGST/CGST Act.2017. Mr. Prasad Shantaram Patil and Mr. Nilesh Shantaram Patil are the partners of M/s. Nivara Infradevelopers LLP. Proceedings have been launched against the aforesaid taxable person under section 67(2) of the said Act to determine the tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has account in your bank having account no.3736002101019575.

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I Prerna Deshbhratar (IAS), Joint Commissioner of State Tax, Investigation-A, hereby provisionally attach the aforesaid account.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAI\ without the prior permission of this department.

Prerna Deshbhratar (IAS)
Joint Commissioner of State Tax,
Investigation-A, Mumbai.

- 1) Deputy Commissioner of State Tax, Inv-A (E-0101)
- 2) Assistant Commissioner of State Tax, Inv-A, (D-0103)
- 3) M/s. Nivara Infradevelopers LLP.”

3. It appears from the record that on the even date, i.e. on 23rd January 2026, the Petitioner was issued a pre-attachment communication in DRC-23, however, on the very same day, the impugned attachment notices to the Petitioner’s bankers, as extracted hereinabove, came to be issued.

4. It is Petitioner’s contention that on a plain reading of the impugned notice, as also the pre-intimation to the attachment, which is dated 23rd January 2026, it is clear that basic principles of law are not followed, inasmuch as, apart from the impugned attachment, the pre-intimation does not disclose any opinion being formed and in respect of the period in regard to which tax is being demanded, as set out in a statement appearing at page 2 of the pre-intimation notice dated 23rd January 2026. It is the Petitioner’s contention that any action of provisional attachment without any opinion being formed, needs to be regarded as illegal, as attaching the Petitioner’s bank accounts itself is a draconian action and

for which necessarily an opinion is required to be formed on the basis of tangible material as per the settled principles of law. In support of such contention, Mr.Patkar, learned counsel for the Petitioner, has placed reliance on the decision of Supreme Court in **Radha Krishan Industries Vs. State of Himachal Pradesh**¹, in which the Supreme Court in the context of Section 83 of Himachal Pradesh Goods and Services Tax Act, 2017 has held that the power to levy a provisional attachment is draconian in nature, as by the exercise of the power, a property belonging to the taxable person can be attached, including a bank account. It is held that the language of the statute indicates first, the necessity of the formation of an opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; thirdly the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the Government revenue; fourthly, the issuance of an order in writing for the attachment of any property of the taxable person; and fifthly, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. It is submitted that in the present case neither the mandatory procedure is followed nor any opinion is formed, as is clear from the contents of the pre-intimation as well as the attachment notice. The relevant observations of the Supreme Court in **Radha Krishan Industries Vs. State of Himachal Pradesh (supra)** are extracted below :

“48. On the other hand, when the proper officer is of the opinion that the amount which has been paid under sub-section (5) falls short of the amount which is actually payable, a notice under subsection (1) is to issue for the amount which falls short of what is actually payable. Sub-section (8) contains a stipulation that where a person who is chargeable with tax under sub-section (1) pays the tax together with interest and a penalty of twenty-five per cent of the tax within thirty days of the issuance of the notice, all proceedings in respect of the notice shall be

¹(2021)6-SCC-771

deemed to be concluded. Under subsection (9), the proper officer after considering the representation of the person chargeable to tax is authorised to determine the amount of tax, interest and penalty due and to issue an order. A period of five years is stipulated by sub-section (10) for the issuance of an order in sub-section (9). Sub-section (11) stipulates that upon service of an order under sub-section (9), all proceedings in respect of the notice shall be deemed to be concluded upon the person paying the tax with interest under Section 50 and a penalty equivalent to 50 per cent of the tax within thirty days of the communication of an order. These provisions indicate how sub-sections (5), (8) and (11) operate at different stages of the process.

49. Now in this backdrop, it becomes necessary to emphasise that before the Commissioner can levy a provisional attachment, there must be a formation of "the opinion" and that it is necessary "so to do" for the purpose of protecting the interest of the government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalisation of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory preconditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that "for the purpose of protecting the interest of the government revenue, it is necessary so to do", it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.

50. By utilising the expression "it is necessary so to do" the legislature has evinced an intent that an attachment is authorised not merely because it is expedient to do so (or profitable or practicable for the Revenue to do so) but because it is necessary to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the Revenue can be protected only by a provisional attachment without which the interest of the Revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallised. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be permissible

because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an assessee can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorise Commissioners to make pre-emptive strikes on the property of the assessee, merely because property is available for being attached. 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.

51. These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure. It also postulates the maintenance of a proportion between the nature and extent of the attachment and the purpose which is sought to be served by ordering it. Moreover, the words embodied in sub-section (1) of Section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. While dealing with a similar provision contained in Section 45 of the Gujarat Value Added Tax Act, 2003, one of us (Hon'ble M.R. Shah, J.) speaking for a Division Bench of the Gujarat High Court in *Vishwanath Realtor v. State of Gujarat* observed : (*Vishwanath Realtor* case, SCC OnLine Guj para 26)

"26. Section 45 of the VAT Act confers powers upon the Commissioner to pass the order of provisional attachment of any property belonging to the dealer during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment. However, the order of provisional attachment can be passed by the Commissioner when the Commissioner is of the opinion that for ne purpose of protecting the interest of the Government Revenue, it is necessary so to do. Therefore, before passing the order of provisional attachment, there must be an opinion formed by the Commissioner that for the purpose of protecting the interest of the Government Revenue during the pendency of any proceedings of assessment or reassessment, it is necessary to attach provisionally any property belonging to the dealer. However, such satisfaction must be on some tangible material on objective facts with the Commissioner. In a given case, on the basis of the past conduct of the dealer and on the basis of some reliable information that the dealer is likely to defeat the claim of the Revenue in case any order is passed against the dealer under the VAT Act and/or the dealer is likely to sale his properties and/or sale and/or dispose of the properties and in case after the conclusion of the assessment/reassessment proceedings, if there is any tax liability, the Revenue may not be in a position to recover the amount thereafter, in such a case only, however, on formation of subjective satisfaction/opinion, the Commissioner may exercise the powers under Section 45 of the VAT Act." (emphasis supplied)

5. Mr.Patkar has also placed reliance on the decision of a co-ordinate Bench of this Court in which one of us (G.S.Kulkarni, J.) was a member, in **Chokshi Arvind Jewellers Vs. Union of India and others²**, in which although the Court was concerned with provisional attachment under the Customs Act, 1962 i.e. Section 110 of the Customs Act, following the principles as laid down by the Supreme Court in *Radha Krishan Industries Vs. State of Himachal Pradesh* (supra) in the context of a challenge to the provisional attachment, the Court held that, before the provisional attachment of the bank account, the proper authority had not passed any order in writing which fulfilled the requirements of section 110(5) of the Act, as the designated officer had not formed any opinion on the basis of any tangible material and in these circumstances the attachment was found to be bad and illegal. The relevant observations in that regard are necessary to be extracted, which read thus :

“38. Further, the order in writing directing provisional attachment of the bank accounts must reflect as to why the proper officer is of the opinion that it is necessary to provisionally attach the bank account for the purpose of protecting the interest of revenue or preventing smuggling. These reasons must be set out in the order in writing. Further, the said order in writing must also disclose the tangible material on the basis of which the proper officer has formed such an opinion.

39. The power exercised by the proper officer in directing provisional attachment of the bank account of a person is quite drastic or coercive in nature resulting in attracting civil consequences. If a bank account of a person is attached, it would certainly cause severe prejudice to that person. The Legislature, whilst enacting the provisions of section 110(5) of the Act was conscious of the severity of such power and the serious consequences which would emanate from the provisional attachment of any property, including a bank account, of a taxable person, and, therefore, it conditioned the exercise of the power by employing specific statutory language of an approval to be sought by the proper officer from the Principal Commissioner or Commissioner, who is a high ranking officer. Thus, such power is not left to the ipse dixit of the proper officer and any such decision is required to undergo a rigorous scrutiny of the Principal Commissioner or the Commissioner. Each of these components of section 110(5) are integral to a valid exercise of power. In other words, when the exercise of power is challenged, the validity of its

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exercise will depend on a strict and punctilious observance of the statutory preconditions by the Principal Commissioner of the Commissioner. While conditioning the exercise of power on the formation of an opinion of the Principal Commissioner/Commissioner that, "for the purpose of protecting the interest of revenue or preventing smuggling it is necessary so to do", it is evident that the statute has not left formation of the opinion to an unguided subjective discretion of the proper officer or for that matter the Principal Commissioner/Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of Government Revenue and/or preventing smuggling.

40. Further, such provisional attachment is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallised. Therefore, an anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute. The exercise of unguided discretion would not be permissible because it would leave persons and their legitimate business activities to the peril of arbitrary power.

41. Each of the ingredients of section 110(5) must be strictly complied with before the provisional attachment on the property of an assessee can be levied. The proper officer must be alive to the fact that such provisions are not intended to make preemptive strikes on the property of the assessee, merely because such property is available for being attached.

45. In the present case, before provisionally attaching the bank accounts of petitioners, the proper officer has not passed any order in writing which fulfils the requirements of section 110(5) of the Act. No such order in writing has been placed on record before us by the respondents. In fact, in paragraph 11 of its affidavit in reply, respondent No. 3, quite surprisingly, contended that, as per the provisions of section 110(5) of the Act, no written order for provisional attachment of a bank account is required to be passed. The relevant part of paragraph 11 of the affidavit in reply of respondent No. 3 reads as under:

"As per the provision of the section 110(5) of the Customs Act, 1962, no written order for provisional attachment of a bank account is required to be passed and the letter issued to the bank for provisional attachment is deemed to be an order which issued with the approval of the Principal Commissioner of Customs or Commissioner of Customs."

(emphasis supplied)

6. Mr. Patkar has also submitted that the impugned attachment order, in fact, is required to be held to be high handed, arbitrary and based on extraneous considerations. He has made this submission on two grounds. Firstly, without following the due procedure known in law, the Joint Commissioner of State Tax has erroneously issued the impugned order by completely bypassing the procedure. The second contention is that on 30th January 2026 the Petitioner addressed a

detailed objection responding to the impugned provisional attachment and also offering alternate security. In such communication, the requirements of law, as laid down by the Supreme Court in **Radha Krishan Industries Vs. State of Himachal Pradesh** (supra), were pointed out. However, the same was not taken into consideration and the provisional attachment continued to operate. He submitted that there was no alternative for the Petitioner but to approach this Court.

7. It is his submission that thus, the tax payers are pushed to approach this Court due to such high handed actions of the authorities. He submitted that hence this is a fit case for imposing cost on the concerned officer, as such officer had acted in complete contravention of the procedure of law, as also the settled principles of provisional attachment, as laid down by the Supreme Court.

8. Insofar as the facts of the present case are concerned, learned AGP also is not in a position to urge anything more than what has been reflected in the impugned communications provisionally attaching Petitioner's bank accounts.

9. We also find that there is absolute vagueness even in the pre-intimation notice which was also issued on the very day the impugned attachment order was issued. Thus, the mandate and requirement of law has been given a complete go by in regard to such coercive action of ordering attachment of Petitioner's bank accounts. The requirements of Section 83 of the Act itself have been conveniently overlooked. Hence, following the principles of law as laid down in the **Radha Krishan Industries Vs. State of Himachal Pradesh** (supra) and **Chokshi Arvind Jewellers Vs. Union of India and others**, we are of the opinion that the impugned attachment is required to be interfered as the impugned action of the designated

officer has seriously breached the civil rights of the Petitioner without following the due procedure of law, as discussed hereinabove.

10. We are thus in complete agreement with Mr.Patkar as we find that certainly the impugned actions are in violation of the law and an apparent abuse of the powers which are vested with the authorities under the provisions of the Act. It is well settled that when such power to take drastic action is conferred on the authorities, it is coupled with an onerous duty to adhere to the provisions of law and the procedure so established. There cannot be a conscious departure from such mandatory requirements of law. Any action on the part of the officers who are supposed to act within the framework of law, cannot be taken in a high handed manner and/or for extraneous considerations, as rightly contended by Mr.Patkar. It is the rule of law which is taken to the ransom by such officials when they knowingly breach the law, that too with impunity.

11. Mr.Patkar would also submit that such officers, who abuse the powers as conferred on them easily get away, in the event the orders passed by such officers are simplicitor set aside, there is no deterrent, so that such high handed and arbitrary actions are not repeated in future. We find ourselves in agreement with Mr.Patkar. It is difficult to believe that the officers who are vested with such draconian powers are not aware as to how the same is required to be exercised as the law would mandate. Moreover, such officers cannot be permitted to openly defeat the provisions of law and the law as declared by the Supreme Court (supra). In our opinion, in the event, the concerned officials are to adhere to the basic norms and procedure in conducting any proceedings under the tax laws, majority

of the litigation would not reach the Court. The law has conferred such powers to protect the interest of the revenue, which needs to be exercised only in a manner as permissible and not arbitrarily.

12. In this view of the matter, we are of the clear opinion that present case can be categorized to be quite gross wherein the requirements of law, for the best reasons known to such officer, have been breached. Further, even after the position in law was pointed out by the Petitioner in the representation dated 26th January 2026, the concerned officer for reasons which we do not know, however which Mr. Patkar says it to be quite extraneous, did not bother even to respond to such representation. The Petitioner had not only furnished correct legal information but also provided an alternate security to avoid such drastic action of attachment of the petitioner's bank account. However, the officer remained satisfied on maintaining such attachment. Thus, the whole approach of the concerned officer was of unwarranted coercion by attaching the bank accounts and that too without issuance of a show cause notice. Such attachment has continued to operate for three months depriving the Petitioner of the valuable right guaranteed under Article 300A of the Constitution of India apart from the petitioner being put to a live death on the business being brought at a standstill. This has certainly resulted into civil consequences and serious prejudice to the Petitioner in complete breach of the principles of law.

13. In this view of the matter, while we set aside the impugned attachment orders, the Joint Commissioner of State Tax, Investigation-A is directed to deposit an amount of Rs.25,000/- as costs with the Secretary, Maharashtra State Legal

Services Authority, High Court premises, Mumbai within a period of two months from the date a copy of this order is made available. Ordered accordingly.

14. We are informed by Mr.Patkar, learned counsel for the Petitioner that, against this very officer, contempt proceedings have been initiated by a co-ordinate Bench in Mishal J.Shah HUF (Keeyan Enterprises) Vs. State of Maharashtra and others (Writ Petition (L) No.38480 of 2024 with Show Cause Notice No.16 of 2024) by tendering the order dated 7th January 2025 although it is the submission made on behalf of the Respondents that the contempt proceedings have now been dropped. We do not intend to delve into this case of the respondents, as we are satisfied that in the facts of the present case, certainly costs are required to be imposed on the said officer personally.

15. Although we have come to the aforesaid conclusion, a fair submission has made on behalf of the Petitioner which needs to be stated, namely that the concerned officer, if at all has any tangible material against the Petitioner, to reach to an opinion that recovery is required to be made from the Petitioner, in that case, the Petitioner be issued a show cause notice for any period apart from the period for which the earlier show cause notice was issued and the same was adjudicated. Thus, we are of the opinion that the concerned officer if has any tangible material that tax is to be recovered from the Petitioner, the Petitioner be issued a show cause notice as expeditiously as possible and in any event within a period of six weeks from today. In the aforesaid circumstances, this petition is disposed of in terms of the following order :

ORDER

- (i) The impugned attachment orders Exhibits-A and B, dated 23rd January 2026 are quashed and set aside;
- (ii) The Respondents shall be at liberty to issue a show cause notice to the Petitioner as expeditiously as possible and in any event within a period of six weeks from the date a copy of this order is made available, if there is tangible material against the Petitioner for recovery to be initiated, and the same be taken to the logical conclusion in accordance with law;
- (iii) All contentions of the parties in the proposed proceedings are expressly kept open;
- (iv) The petition is disposed of in the above terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)