

M/s Radha Krishan Industries v. State of Himachal Pradesh & Ors.

Case number: Civil Appeal No. 1155 of 2021, arising out of SLP (C) No. 1688 of 2021

Citation: Judgment dated 20 April 2021 **Decision date:** 2021-04-20

GST provisional attachment, tangible material, proportionality and writ jurisdiction

Court: Supreme Court

Bench: Dr Dhananjaya Y. Chandrachud and M.R. Shah, JJ.

Decision stage: Final judgment

01 Facts

Radha Krishan Industries manufactured lead in Himachal Pradesh. The tax department investigated its supplier, GM Powertech, for allegedly obtaining input tax credit (ITC) through fictitious invoices. Following the supplier's assessment, the department questioned the appellant's credit on purchases from that supplier. An earlier attachment of the appellant's customer receivables had been withdrawn on 30 January 2019 after representations. On 21 October 2020, the Commissioner delegated section 83 powers to the Joint Commissioner. On 28 October 2020, the Joint Commissioner issued fresh attachment orders against payments due to the appellant from Fujikawa Power and Deepak International, referring to alleged ITC fraud of Rs. 5,03,82,554. The appellant's objections were rejected on 6 November 2020 without a hearing. Its section 74(1) show-cause notice followed on 27 November 2020. The Himachal Pradesh High Court dismissed the writ petition on 1 January 2021, treating a section 107 appeal as an efficacious alternative remedy. During the Supreme Court proceedings, a separate section 74(9) assessment dated 18 February 2021 confirmed a demand of Rs. 8,30,27,218, against which the appellant filed a statutory appeal. The Supreme Court confined this case to maintainability of the attachment challenge and legality of the attachment; it expressly declined to decide the merits of the tax assessment.

Pinpoint: Paragraphs 2-18, 21-22 and 57-58; official PDF pages 2-9, 17 and 44-47. Scope exclusion: paragraph 22, page 17. Separate assessment and appeal: paragraphs 67 and 69, pages 55-56.

02 Court Discussion

The Hon'ble Court explained that an alternative remedy ordinarily warrants restraint in exercising Article 226 jurisdiction, but the rule is discretionary. It identified exceptions involving enforcement of fundamental rights, breach of natural justice, an order or proceeding wholly without jurisdiction, or a challenge to legislative validity. Here, there was also no section 107(1) appeal against the impugned attachment: the Joint Commissioner exercised the Commissioner's delegated power, and the applicable definition of adjudicating authority excluded the Commissioner. The High Court therefore erred in declining the writ petition (paragraphs 27 and 59-62).

For the historical section 83, the Court required strict fulfilment of statutory preconditions. The Commissioner had to form an opinion, before making a written attachment order, that attachment was necessary to protect government revenue. The opinion had to rest on tangible material with a live connection to that necessity; administrative convenience or the mere availability of attachable property was insufficient. Proportionality required a relationship between the nature and extent of the attachment and

the revenue-protection purpose. The concluding formulation required material indicating that the assessee was likely to defeat the demand, if any (paragraphs 39-42, 48-51 and 72(iv)-(vii)).

Rule 159(5) provided two cumulative post-attachment safeguards: a right to object and an opportunity of being heard. The officer had to decide objections by a reasoned order and communicate it. The objection process also had to accommodate an excessive-attachment argument, objections to the nature of the property, and an offer of alternative security. The taxpayer could propose security, but could not insist that the Commissioner accept a particular form or regard it as sufficient (paragraphs 54-56 and 72(ix)-(x)).

On the facts, the file noting disclosed no tangible material explaining why attachment was necessary to protect revenue. The conclusion against GM Powertech and rejection of the appellant's submissions did not supply that missing foundation. The Commissioner also wrongly treated a hearing as discretionary. Under the then-applicable wording, specified proceedings had to be pending against the taxpayer whose property was attached; proceedings against the supplier could not fulfil that condition for this appellant (paragraphs 63-68).

The Court further held, under that historical provision, that the provisional attachment had to end once the section 74(9) assessment was made. The separate assessment appeal attracted the payment requirements and deemed stay of balance recovery under section 107(6)-(7). Reissuing attachment on the same grounds after the earlier attachment had been withdrawn, without a material change in circumstances, was an additional reason for invalidity (paragraphs 69-72). These temporal conclusions must be read with the subsequent statutory qualification below.

Pinpoint: Writ jurisdiction: paragraphs 27 and 59-62, PDF pages 19-20 and 48-50. Statutory prerequisites and proportionality: paragraphs 39-42 and 48-51, pages 27-30 and 34-38. Procedural safeguards: paragraphs 54-56, pages 40-44. Application and additional grounds: paragraphs 63-72, pages 50-61; the handwritten file noting reproduced in paragraph 65 appears on pages 52-54.

03 Decision

The appeal was allowed and the High Court's judgment and order dated 1 January 2021 were set aside. The Supreme Court itself allowed the appellant's Article 226 writ petition by setting aside the provisional attachment orders dated 28 October 2020. There was no order as to costs, and pending applications were disposed of. This was final relief against the particular attachments, rather than a remand merely directing reconsideration. The Court did not quash the section 74(9) tax assessment or adjudicate the appellant's substantive ITC entitlement; that assessment was the subject of the separate statutory appeal. The operative relief did not invalidate the Commissioner's delegation order.

Pinpoint: Paragraphs 73-75, official PDF page 61; express reservation of assessment merits in paragraph 22, page 17; section 107 consequences in paragraphs 69-70 and 72(xii), pages 56-57 and 60-61.

04 In Favour Of

Radha Krishan Industries on provisional attachment and writ maintainability; tax-assessment merits left open

In favour of Radha Krishan Industries on writ maintainability and the legality of the impugned provisional attachments, which were quashed. The outcome is confined to those attachment orders. It is not a final merits victory on the disputed ITC, fraud allegation or tax demand, all of which must be kept distinct from the successful attachment challenge.

Pinpoint: Paragraphs 21-22 and 72-75; official PDF pages 17 and 58-61.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: Build an attachment challenge around the actual order, its date, the applicable statutory version, the proceedings relied upon, the identity of the person proceeded against, and the contemporaneous material said to establish a threat to recovery. Test necessity and proportionality separately from the existence of an alleged tax default. Lodge objections promptly under the rule applicable on that date, expressly seek a hearing and a reasoned decision, document the business impact, and support any excess-attachment argument or alternative-security proposal with evidence. An objection does not guarantee acceptance of a preferred form of security. Identify the officer's legal capacity and the available remedy before selecting the forum. Maintain the separate assessment appeal and its payment requirements: success against provisional attachment does not extinguish the tax demand. Most importantly, do not reproduce this judgment's six-section pendency test or automatic cessation upon assessment as an unqualified rule for later attachments. The central section 83(1) was subsequently substituted, as described below. Check the relevant Central or State enactment, commencement dates, applicable rules and later binding decisions for the actual matter. This is AKHB's practical analysis, distinct from the Court's operative order.

Pinpoint: AKHB analysis based on paragraphs 27, 48-56, 59-72 and 74; official PDF pages 19-20, 34-44, 48-61. Limited central statutory update supported by Finance Act, 2021, section 115, and Notification No. 39/2021-Central Tax.

Sources and limitations

Relevant provisions

Constitution of India: Article 226

Himachal Pradesh Goods and Services Tax Act, 2017: sections 2(4), 5(3), 70, 74, 83 and 107(1), (6)-(7), as applicable to the disputed attachment

Himachal Pradesh Goods and Services Tax Rules, 2017: rule 159(1), (5)-(6) and Forms GST DRC-22 and DRC-23

Historical section 83(1): pendency of proceedings under sections 62, 63, 64, 67, 73 or 74

Later central statutory development: Finance Act, 2021, section 115, and Notification No. 39/2021-Central Tax dated 21 December 2021

Statutory note

Historical-law qualification: section 83(1) considered here required pendency under six specified sections. Finance Act, 2021, section 115 substituted central section 83(1); Notification No. 39/2021-Central Tax brought that amendment into force on 1 January 2022. The substituted provision uses initiation of proceedings under Chapters XII, XIV or XV and extends the property-owner category to persons specified in section 122(1A). It retains the necessity-to-protect-revenue requirement. The earlier wording and its cessation reasoning cannot be applied mechanically to later attachments. This limited update concerns the CGST Act; the corresponding Himachal Pradesh amendment and commencement history has not been independently audited.

Treatment note

Primary judgment and the identified central statutory substitution and commencement notification checked on 12 October 2026. No comprehensive subsequent-case, review-order or legislative-treatment audit has

been completed; current precedential treatment is not certified. This AI-assisted, source-based AKBH research note does not represent verified human legal review. It is general information, not legal advice or a substitute for professional advice on current law and the reader's facts.

Scope of source review

Complete 61-page official judgment, paragraphs 1-75, including the reproduced forms and handwritten file noting. Cover, signed bench, date and operative paragraphs checked against rendered pages. Paragraph references and printed page numbers correspond to the official PDF. No unverified reporter or neutral citation is supplied. The case construes the HPGST provision applicable to the 28 October 2020 attachments.

Primary source

Source description: Supreme Court of India official signed judgment dated 20 April 2021

Official source: [Open source document](#)

AKHB source PDF: [Open source document](#)

Judges: Dr Dhananjaya Y. Chandrachud; M.R. Shah

Outcome kind: final

Additional sources

Entry 1

Source: Finance Act, 2021: central section 83 amendment

Source document: [Open source document](#)

Pinpoint: Section 115; PDF page 3, Gazette page 62

Purpose: Limited central CGST amendment check; corresponding Himachal Pradesh amendment history not independently audited.

Entry 2

Source: Notification No. 39/2021-Central Tax

Source document: [Open source document](#)

Pinpoint: Page 1

Purpose: Commencement of the identified central amendment on 1 January 2022.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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