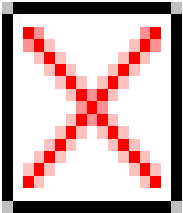


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By Dr G Gokul Kishore



**EASE**

of doing business is a slogan serving as a mask. Otherwise, neither will there be a necessity to make the penal provisions in GST law stringent nor will implementation of the same ease businesses out. The urge to suspend registration and even cancel it citing as trivial a reason as mismatch between certain returns cannot be anything but forcing businesses to shut shop. A new narrative is being built to project that pre-GST, taxes were all being paid with least evasion, industry was behaving properly then but in GST regime, many in business have got intoxicated with the vice of evasion. Leaving unearthed clandestine removals of yesteryears aside, we are told to believe that ITC frauds are historically at its peak now and but for the intelligent software and pro-active measures taken, economic security of the nation could have been compromised. The amendments to penal provisions in CGST [Act, 2017](#)

as proposed by Finance Bill, 2021 is part of this narrative and this 98 th part endeavours to tell the story from a different perspective.

### **The bond of provisional attachment**

Indian scriptures have preached us to remain detached from material things so that attachment with the Supreme and fellow beings will get strengthened. Such pious principles get written off when the tax administration gets bonded with provisional attachment and uses such powers, unrestrained and uninstructed. Scores of writ petitions in various High Courts are being heard and in many, the Court has had strong words for the government but the attachment for taxpayers' bank accounts and property remains intact. Neither an SOP nor a simple circular has been issued so far by the so-called "**pro-active**"

CBIC as to what is the purpose of provisional attachment, how to use such extreme measures without harming entrepreneurs and what could be the alternative method to secure revenue. Budget 2021 proposals take one more step further to prove the love for being attached to taxpayers' property.

Provisional attachment provision in a tax law in itself is abhorrent considering the pride we take in democratic Constitution and traditions. Provisions curtailing liberties relating to property based on suspicion are akin to those approving preventive detention of persons. That preventive detention is an extraordinary measure to be invoked only in rare instances of compelling nature is evident from Article 22 of the Constitution which does approve of such detention but expressly provides for procedural safeguards against misuse resulting in prolonged custody. Compared to such constitutional guarantees, legislations like CGST Act fare poorly by incorporating an obnoxious version of Section 83. When the law is stated as progressive, when citizenry is certified as mature and when the State is seen as grown in terms of institutions and processes, a provision on attachment of property in a tax law on mere apprehension of revenue leakage before any kind of adjudication can hardly be claimed as **sine qua non**.

Instead of arresting the increasing tendency to threaten the trade with such provisions, Finance Bill, 2021 has proposed to widen the sweep by substituting the specific provisions under which proceedings should be pending for invoking Section 83 with specified chapters, in entirety. Those who feel the urge to invoke such provisions need not bother whether the section is mentioned correctly or not. No court can question that the provision quoted is wrong when the entire chapter is covered. Jocularly speaking, instead of using chapter number, it would have been easier to use reference to CGST Act as such. This would have made the task of attaching machinery much easier. May be, this is reserved for Finance Bill, 2022.

Some entertain the view that proceedings are not to be considered as pending when either search operation is completed, or statement has been recorded and nothing is heard thereafter from the department. Therefore, the Budget 2021 amendment proposes to nonchalantly

substitute such pendency with initiation of proceedings along with **"after"**

. Therefore, even if search has been conducted in 2021, provisional attachment can be resorted to in 2023 since the same is **"after initiation"**

. There is a general grievance that codification of judgments does not happen in many instances. Now, such process has been initiated on real-time basis even as High Courts are taking a serious view of the manner in which such powers are invoked. Codification has been given a new meaning now. It is being implemented in the form of ring-fencing such provisions and their implementation from judicial strictures.

### **Mismatch in returns - Recovery from buyers and cancellation of registration**

These are the days of affection and attachment. If a taxpayer enters some data in his outward supply return (GSTR-1), then the value of supplies in his monthly return (GSTR-3B) should tally. If there is an issue of reconciliation, then his buyers may refuse to pay for the supplies made by the taxpayer as the department may initiate recovery proceedings against them also under Section 79, if the amendment proposed in Section 75 is passed and gets notified. For such mismatch, suspension and cancellation of registration of the taxpayer can be resorted to as per the recently notified Rule 21A(2A) of CGST Rules. CBIC has sought to underplay the rigour of such provision by issuing SOP by Circular No. [145/01/2021-GST](#)

dated 11-2-2021 but history tells us that a bad provision can never be used in a benevolent manner. Even without such provision, use of powers to suspend and cancel registration has been frequent. Extreme powers either indicate the subjects are unruly and need to be disciplined or the rulers are nervous and clueless.

The intention of this series is to positively contribute and not to castigate. The fervent hope is GST Council will intervene when the powers are used for purposes other than for which they have been conferred. A watchful industry should represent to the GST Council whenever the Lakshman Rekha is crossed so that oppressive provisions are re-visited and softened, if not deleted from the statute book.

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See [Part 97](#)

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