

Power of Officers under GST in case of Demand and Recovery

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Section -78

Initiation of recovery proceedings

- Any **amount payable** by a taxable person in pursuance of **an order** passed under this Act shall be paid by such person **within a period of three months** from the date of service of such order failing which recovery proceedings shall be initiated:

- Provided that where the proper officer considers it expedient in the interest of revenue, he may, **for reasons to be recorded in writing**, require the said taxable person **to make such payment within such period less than a period of three months** as may be specified by him.

Section -79 Recovery of Tax

Any amount payable by a
person to Government

NOT PAID

Proper Officer recover the same
by prescribed mode

Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid,



Recovery Proceedings under Section 79 cannot be initiated directly without determination of tax liability.

HIGH COURT OF MADRAS- V.N. Mehta & Company v. Assistant Commissioner, Nungambakkam, Chennai*-[2019]

Facts-

- Competent Authority initiated proceedings under section 79 against assessee and issued notice on Bank Manager of assessee to recover tax, cess, interest and penalty was payable by assessee under provisions of GST Act and it had failed to make such payment –

Assessee filed writ petition stating **that impugned proceedings were issued straightaway**, even before making an assessment –

Revenue, on other hand, submitted **that assessee had admitted its liability through** its statement and, therefore, proper officer could deduct amount so payable from any money owing to such person as provided under section 79 - It also submitted that even otherwise as per section 83, Competent Authority was entitled to make provision to protect interest of revenue

Term "amount payable by a person" is to mean that such liability arises only after determination of such amount in a manner known to law.

Whether it was for Competent Authority to determine tax liability by resorting to procedures in accordance with law, instead of issuing impugned proceedings straightaway under section 79 based on so called admission by assessee - Held, yes –

Whether since **no proceedings were pending** as on today under any of provisions viz. sections 62, 63, 64, 67, 73 and 74, section 83 also would not come to rescue of Competent Authority to sustain impugned proceedings - Held, yes –

Whether impugned proceedings were not maintainable and deserved to be set aside - Held, yes

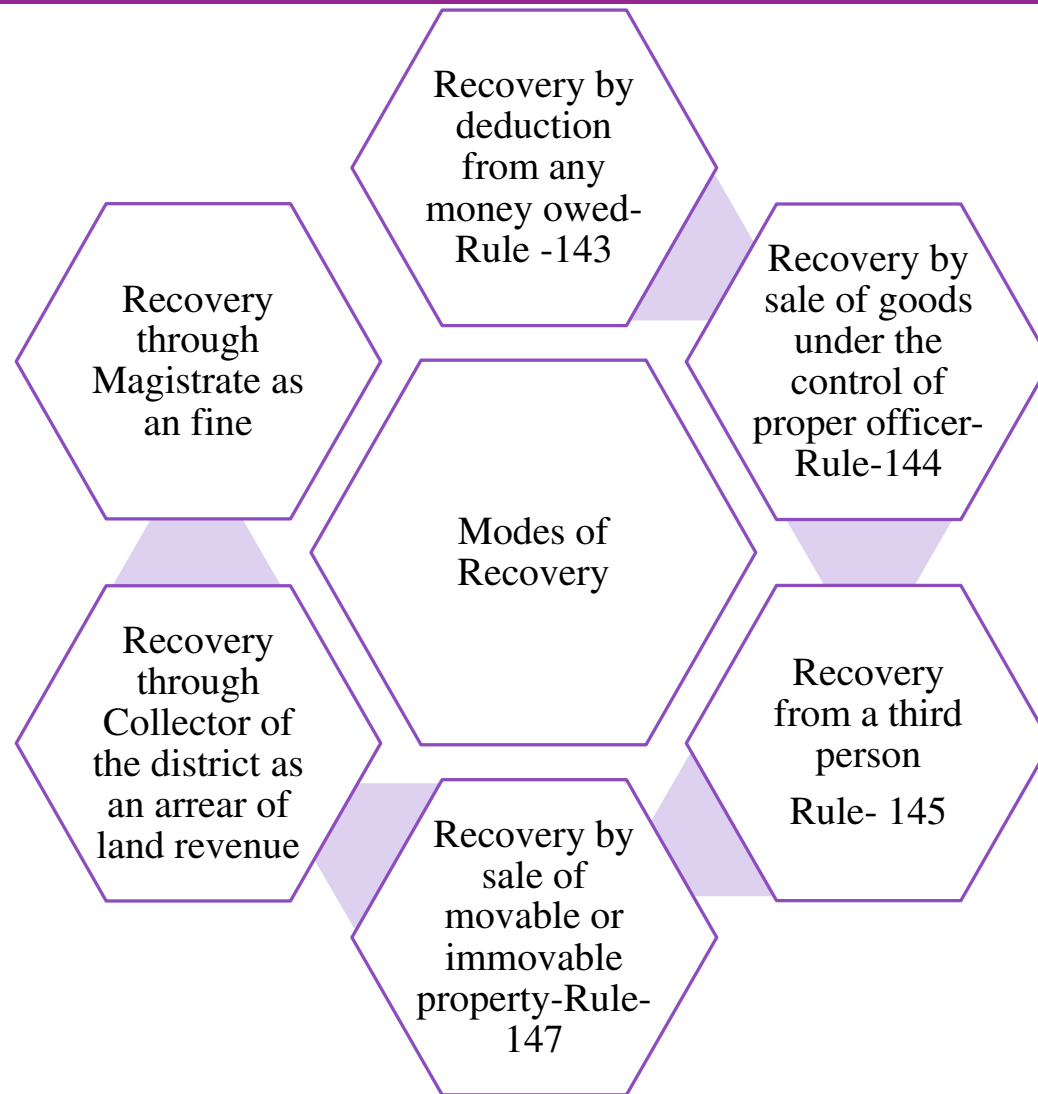
GST Interest Liability is Automatic, Leviable only after Completion of Adjudication Proceedings

HIGH COURT OF JHARKHAND--- Mahadeo Construction Co. v. Union of India

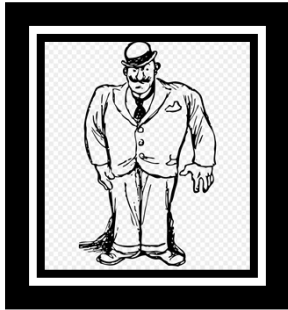
Facts-

Where Revenue Authorities exercised powers under section 79 by initiating garnishee proceedings for recovery of certain amount of interest by issuing notice to assesses banker and assessee disputed computation or very leviability of interest

It was to be held that liability of interest was required to be adjudicated in event an assessee disputed computation or very leviability of same, by initiation of adjudication proceedings under section 73 or 74. Thus, without initiation of any adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount



Recovery by deduction from any money owed- Rule -143



Proper Officer

in Form GST DRC-09

Require a specified officer

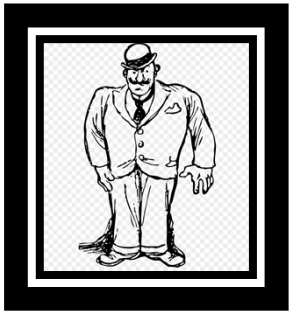
to deduct the amount from any money owing to such defaulter

Any officer of the

- Central Government or
- State Government or
- A Union territory or
- Local authority, or
- a Board or
- Corporation or
- a company

- owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

Recovery by sale of goods under the control of proper officer- Rule-144



Prepare an inventory

Estimate the market value

Proceed to sell only so much required for recovering the amount payable and administrative expenditure

Sold through a process of auction, including e-auction

Notice shall be issued in FORM GST DRC-10

Indicating the goods to be sold and the purpose of sale

Specify the amount of pre-bid deposit to be furnished in prescribed manner

to make the bidders eligible to participate in the auction,

Returned to the unsuccessful or adjusted or forfeited for successful bidder

Notice in FORM GST DRC-11 to the successful bidder

to make the payment within 15 days from the date of auction

On payment transfer the possession of the said goods and issue certificates in FORM GST DRC-12

may sell them forthwith if

goods are of perishable or hazardous nature

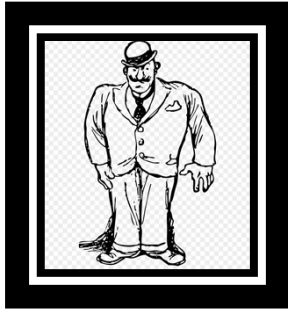
where the expenses of keeping them in custody are likely to exceed their value

Last date for Submission of bid

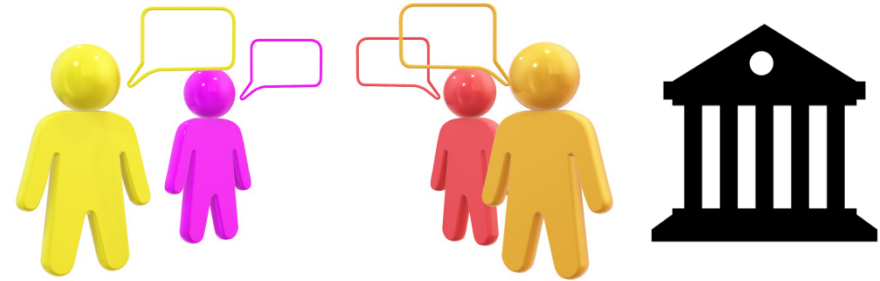
Date of auction

shall not be earlier than fifteen days from the date of issue of the notice

Recovery from third Person- Rule-145



Through a notice in FORM GST DRC-13



After Payment, Certificate in FORM GST DRC-14 Indicating the details of the liability so discharged.

Bound to comply with such notice

fails to make the payment, deemed to be a defaulter

any payment be deemed discharge of the liability of such person to the person in default

After notice, if discharge liability to person in default, , personally liable for such amount payable or as paid

After issuance of notice under this rule , if third party proves that money demanded not due, nothing apply to that person.

Recovery under Section 79 only in case of assessed liability and Section 83 only in case of pending proceedings:

Gujarat High Court-- Bharatbhai Manilal Patel vs State Of Gujarat

Powers under section 83 can be invoked invoked during pendency of any proceedings under sections 62, 63, 64, 67, 73 or 74 of the said Act

The impugned order of provisional attachment is totally silent as regards the section under which the proceedings have been launched

Attachment of the bank account of the petitioner by the respondent is without any authority of law.

Impugned notice for attachment and sale of immovable/movable goods/shares under section 79

Section 79 of the Cgst act, relates to recovery of tax which can be made provided there is only assessed liability.

Whether recovery under Section 79 can be made on the basis of GSTR-1 filed by the Taxpayer but GSTR-3B has not been filed

HIGH COURT OF MADHYA PRADESH

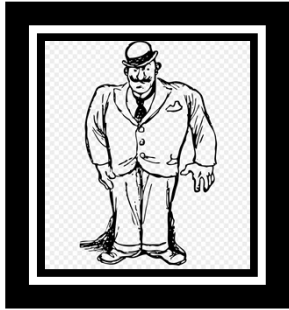
Kabeer Reality (P.) Ltd. v. Union of India [2019]

Petitioner contended that demand notice was per se illegal as without determination of tax under section 73, no recovery could have been made against petitioner - However, **tax determination had already been done as petitioner itself quantified its tax liability under GSTR-1 returns** –

Whether therefore, petitioner's contention that in absence of determination of tax under section 73 no recovery could have been made was unfounded - Held, yes –

Whether where tax was being recovered from petitioner after following due process of law, petitioner could not have escaped his liability of payment of GST - Held, yes

Recovery by sale of movable or immovable property-Rule-147



Through a notice in FORM GST DRC-16



• Distrain any movable or immovable property

• Detain the same until the amount payable is paid

• amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress

• may cause the said property to be sold to recover amount payable and cost of expenses

• surplus amount, if any, Repaid to such person

Recovery by sale of movable or immovable property-Rule-147

Prepare a list of movable and immovable property, estimate market value

Order of attachment or distraint and a notice for sale in FORM GST DRC-16 prohibiting any transaction

Send order copy to concerned Revenue Authority or Transport Authority or any such Authority to removed only on the written instructions from PO

In Immovable Property- Order of attachment or distraint shall be affixed on the said property AND shall remain affixed till the confirmation of sale

In a movable property- PO Seize and take custody of the same

Notice in FORM GST DRC-17 for auction, including e-auction, indicating the property to be sold and the purpose of sale

Sell such instrument or a share through a broker, recover amount and expenses and balance repaid

Specify the amount of pre-bid deposit to be furnished in prescribed manner to make the bidders eligible to participate in the auction, Or returned to the unsuccessful or adjusted or forfeited in case of successful bidder

Last date for Submission of bid or Date of auction shall not be earlier than fifteen days from the date of issue of the notice

Rule 154. Disposal of proceeds of sale of goods and movable or immovable property.-

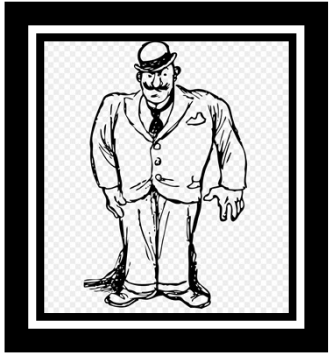
The amounts so realized from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

first, be appropriated against the administrative cost of the recovery process;

next, be appropriated against the amount to be recovered;

next, be appropriated against any other amount due from the defaulter under the Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and

any balance, be paid to the defaulter.



Recovery through land revenue authority.- Rule -155

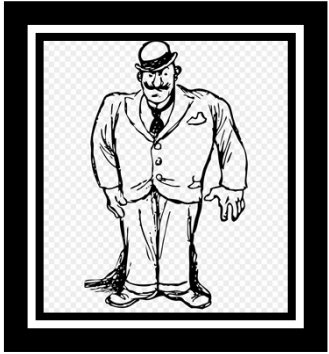
May Issue a certificate in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate



Collector or Deputy Commissioner of the district in which such person owns any property or resides or carries on his business or any other officer authorised



On receipt of such information proceed to recover an arrear of land revenue;



Recovery through court.- Rule -156

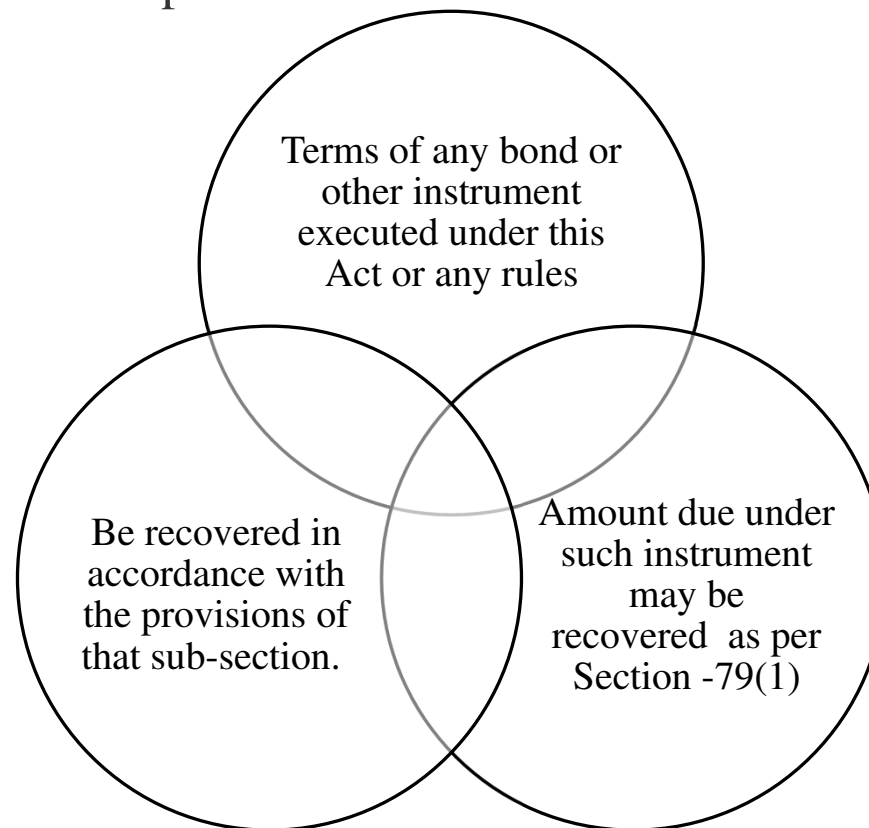
file an application in FORM GST DRC-19



proceed to recover from such person
As a fine imposed by him *under the Code of Criminal Procedure,*
1973

Recovery through Surety.- Rule -157

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.



(3) Where any amount of tax, interest or penalty is payable by a person to the Government under **any of the provisions** of this Act or the rules made there-under and **which remains unpaid**, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person **as if it were an arrear of State tax or Union territory tax** and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments **shall be in proportion** to the amount due to each such Government.

Liability under Section 50 is automatic but requires calculation and intimation to the assessee:

**Assitant Commissioner of CGST & Central Excise vs. Daejung Moparts (P.) Ltd. 2020] -
HIGH COURT OF MADRAS**

Where Revenue resorted to recover interest relying upon section 50 on ground that petitioner made some delay in filing return and paying GST within time and such recovery proceedings culminated into bank attachments, it was to be held that though **liability to pay interest under Section 50 is an automatic liability, still quantification of such liability cannot not be by way of an unilateral action**, more particularly, when assessee disputes quantum as well as period of liability.

Section 148. Prohibition against bidding or purchase by officer

- No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

149. Prohibition against sale on holidays

- No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

150. Assistance by police

- The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

Section :- 80. Payment of tax and other amount in instalments

On an application filed by a taxable person, the Commissioner may, for **reasons to be recorded in writing**, extend the time for payment or allow payment of any amount due under this Act, **other than the amount due as per the liability self-assessed in any return**, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Section- 83.

Provisional attachment to protect revenue in certain cases.

- (1) Where during the pendency of any proceedings under
 - section 62 or -Assessment of non-filers of returns.
 - section 63 or -Assessment of unregistered persons.
 - section 64 or -Summary assessment in certain special cases.
 - section 67 or -Power of inspection, search and seizure
 - section 73 or –Tax not paid / short paid, or erroneously refunded or input tax credit wrongly availed or utilized-other than fraud
 - section 74, - Tax not paid / short paid, or erroneously refunded or input tax credit wrongly availed or utilized-fraud

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.

Gandhi Trading vs. Asstt. CIT (1999) 239 ITR 337 (Bom.)

Pranit Hem Desai vs Additional Director General , SCA No 9392 of 2019- Guj HC.- Bank account attachment shall be last resort.

Commissioner's Opinion

- a. Resorting to such drastic action (Provisional Attachment), the Commissioner is required to form an opinion
- b. For the purpose of arriving at such an opinion, the Commissioner should first form an opinion that the petitioner **would not be in a position to pay the tax dues** after the assessment proceedings are over
- c. Without recording any such satisfaction, the respondent could not have formed the opinion that it was necessary to resort to provisional attachment
- d. Respondents **should consider the background and history** of the dealer as well as his financial position
- e. The authorities should keep in mind that bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue
- f. Authorities **should try to balance the interest of the Government revenue as well as a dealer** to ensure that while the interest of the revenue is safeguarded, the dealer is also in a **position to continue with his business.**
- g. If the **dealer is a fly by night operator** or a habitual offender or does not have sufficient means to pay the dues that may arise upon assessment, such action may be justified

Legal Analysis

Proceedings must be pending u/s [62](#) or [63](#) or [64](#) or [67](#) or [73](#) or [74](#). Continuation of proceedings is must. If the proceedings started and not continued, then such attachment shall not be valid.

Commissioner and Officer above the rank of Commissioner can make the order for the Attachment.
Attachment of property including bank account by officer subordinate to him shall be without jurisdiction

There must be formation of opinion. Opinion should be such that the taxable person shall not be available for recovery after the demand order has been issued.

Provisions relating to [Section 83](#) is of attachment. Officer cannot withdraw the amount till the final order.

Attachment order shall be valid for only 1 year from the date of order of attachment. No attachment shall continue after the period of one year

No restriction for make fresh attachment order after the expiry of original attachment order.

Can opinion for provisional attachment can be delegated

5 (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him

Section 168 (2) of CGST Act

The Commissioner specified in clause (91) of section 2, **sub-section (3) of section 5**, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean **a Commissioner or Joint Secretary posted in the Board** and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

**Valerius Industries vs. Union of India-HIGH COURT OF GUJARAT- 109 taxmann.com 218
(Gujarat) [28-08-2019]**

Proceeding under Section 71 of CGST Act, 2017 not valid for exercise of powers under section 83 of CGST Act, 2017

Powers to attach the property to protect the interest of the revenue are conferred by section 83 of the GGST Act;

Any proceeding should be pending under section 62 or section 63 or section 64 or section 67 or section 73 or section 74

No proceeding under any of the above sections is stated to have been pending against the petitioner at the time when the order of seizure came to be made

Only proceeding which finds reference in the affidavit-in-reply is under section 71 of the GGST Act which relates to access to business premises.

Does not empower the Commissioner to take action thereunder during the pendency of proceedings under section 71 of the GGST Act.

Prakashsinh Hathisinh Udavat v. State of Gujarat [2019]

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).

Can officer issues notice after the expiry of One year.

Section 83(2) provides for a period for cessation of provisional attachment but does not in any manner prevent authorities to issue a fresh order of provisional attachment, if requirements under Section 83(1) are met

The interpretation of Section 83 of the CGST Act, 2017 is not based on the facts that have been presented by the respondents in their affidavits, but on the legal principles of interpretation of fiscal statutes and examination of the precedents cited by parties. It is opined that the powers conferred under Section 83 are drastic and extraordinary in nature. The Court also believes that the powers under this section should not be invoked routinely and must be exercised with due caution, circumspection and deliberation. (Para 28)

[2020] 116 taxmann.com 153 (Calcutta)

HIGH COURT OF CALCUTTA

Amazonite Steel (P.) Ltd.

v.

Union of India

Provisional attachment of property- Rule -159

- (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.
- (2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- (3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.
- (4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.
- (5) Any person whose property is attached may, **within seven days of the attachment** under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23.
- (6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC-23.

THANK YOU

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