Can recovery proceedings be initiated under the GST law prior to completion of Assessment?

A show cause notice is the foundation based on which adjudication proceedings begins under the GST law. However, it has been observed that in recent times the Department is resorting to unreasonable recovery actions without following the due process of law.

It is an established principle of law that coercive steps cannot be taken for recovery of tax, interest or penalty without adjudication.

The Hon'ble Supreme Court in Dabur India Ltd. v. State of U.P. reported in AIR 1990 SC 1814 had observed that it would not like to hear from a litigant that the Government is coercing citizens to make payment of duties which the litigant is contending not to be leviable. The Government is entitled to take all the legal steps for enforcement but it cannot be permitted to play dirty games with the citizens to coerce them in making payments which the citizens were not legally obliged to make. If any money is due, the Government should take steps but not take extra legal steps or manoeuvre.

Hon’ble Bombay High Court in the case of Neelkamal Realtors Power Pvt. Ltd. Versus Union Of India reported in 2019 (31) G.S.T.L. 53 (Bom.), held that “the Hon’ble Supreme Court as well as Hon’ble High Court has repeatedly held that rule of law has to be followed and no officers of the respondent can take law in his own hands or take extra-legal steps or manoeuvre so as to collect amounts which have not yet been held by judicial and/or quasi judicial order as payable by the petitioners to the respondent.”

It is not that GST department is helpless if it apprehends that an assessee may alienate its property before the process of adjudication. In order to protect the interest of revenue, section 83 of the GST Act conferes power on the taxation authorities to impose a provisional attachment on the properties of the assessee, including bank accounts. But it is to be noted that Hon’ble Supreme Court in the case of Radha Krishan Industries Versus State of Himachal Pradesh reported in 2021 (48) G.S.T.L. 113 (S.C.) has cautioned 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. It was observed that 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.

It is therefore advisable in the opinion of the author that if an unlawful action of recovery of tax without notice is taken by the department than the assessee should approach a writ court to get such action quashed.

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