

Pendency of proceedings is an essential condition for provisional attachment of property: HC

Facts of the case - Conceptial Trade v. State of Gujarat - [2022] (Gujarat)

The petitioner was engaged in the business of trading products such as garments, footwear, etc. The department contended that the petitioner was found to be a part of the syndicate that claimed and availed the GST refund fraudulently without any business transactions by transferring the amount to the bank accounts. The petitioner's bank account was provisionally attached on 06-01-2022 and he got to know about such an attachment through the bank. The department further issued summon to the petitioner on 21-02-2022 to appear before the authorities.

The petitioner filed a petition before the Ahmedabad High Court to set aside the provisional attachment order dated 06-01-2022 as there was no proceeding pending against the petitioner on the date of passing such an order.

Decision of the case :

- The High Court held that the pendency of the proceedings is sine qua non for the exercise of powers of provisional attachment. This is because the powers under Section 83 can be invoked where there is a pendency of proceedings. Since no proceedings were pending on the date of passing the order i.e. 06-01-2022 and summon was issued later, the power to provisionally attach the property could not be invoked on the said date.
- Given the above, the High Court set aside the above-said order and held that the respondent authorities may continue to proceed further pursuant to the summons and would be at liberty to impose the provisional attachment under Section 83.