

Instruction No. 19/2024-Customs

CBIC-21/124/2024-INV-CUSTOMS-CBEC
Government of India
Ministry of Finance,
Department of Revenue
Central Board of Indirect Taxes & Customs
(Investigation-Customs)

New Delhi, 22 July 2024

To,
Principal Chief Commissioner/Chief Commissioner- Customs/ Customs
(Preventive) / CGST and Customs Zone,
Principal Director General, Directorate of Revenue Intelligence,
Webmaster, CBIC

Madam / Sir,

Subject: Provisional attachment of bank account(s) - Section 110 (5) of Customs Act, 1962 reg.

Attention of field formations is drawn to the matter cited in the subject above.
The section 110 (5) of Customs Act, 1962 provides -

"(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified."

2. In certain instances, the Hon'ble High Court(s) have had to emphasize that the order of provisional attachment must reflect the opinion of the proper officer as to why the provisional attachment is necessary to protect the revenue interests or prevent smuggling; and further that the written order directing the provisional attachment must be served not only on the bank but also on the bank account holder.

3. While reiterating above aspects, the Board directs for compliance by field formations on the aspect that to form an opinion, the proper officer should exercise due diligence by thoroughly considering and examining the facts of the case. This includes examining nature of offence, amount of revenue involved or value of

smuggled goods, availability on record of material having value as evidence. Moreover, it must contain the reasons to believe that the bank account holder may utilize the funds from the bank account if it is not provisionally attached.

4. The basis on which the proper officer forms an opinion to seek approval of provisional attachment of a person's bank account must be duly recorded on file. The formation of opinion should bear a proximate and live nexus to the purpose of protecting the interests of revenue and/or preventing smuggling.

5. This must be followed by written approval of (Pr.) Commissioner. The power of provisional attachment must not be exercised in a routine/mechanical manner. It is important for the approving authority to make careful examination of facts of the case to determine whether a case is fit for exercising power under section 110(5). Before going ahead with any provisional attachment, the collective evidence, based on the proceedings/ inquiry already conducted in the case, must indicate that, *prima facie*, a case is made out against the bank account holder.

6. After the approval, the order in writing, which is issued directing the provisional attachment, must reflect/contain the basis of framing opinion by the proper officer to attach the bank account. It must clearly specify the duration for which the bank account is being attached. The initial period of provisional attachment cannot exceed six months.

7. The order, or its extension, must be specifically addressed to both the bank account holder and the concerned bank. Further, even on expiry of initial provisional attachment period, or expiry of the period when extended period expires, communication to the concerned bank with a copy to bank account holder must be made informing the release or restoration of the bank account to the bank account holder.

8. Insofar as extending the period of provisional attachment is concerned, the (Pr.) Commissioner may extend, for an additional period not exceeding six months the period of provisional attachment only after providing the bank account holder with an opportunity to be heard in person and thereafter recording in writing the reasons for such an extension. This should lead to issuing of an order extending the period of provisional attachment. Accordingly, the exercise required for issuing an extension order should begin well in time such that if an extension is required it can be issued before the expiry of the initial provisional attachment period.

9. At any time before the expiry of any attachment period if the proper officer forms the opinion that the bank account is no longer liable for being provisionally attached, he shall, with the approval of (Pr.) Commissioner, issue communication

to the concerned bank, with intimation to the bank account holder, to release or restore the bank account to the bank account holder.

10. The communications referred herein above must bear the Document Identification Number (DIN) in terms of Board's Circular Nos. 37/2019-Customs dated 05.11.2019 and 43/2019-Customs dated 23.12.2019.

11. As the provisional attachment of bank account is resorted to protect the interests of the revenue and may also affect the business and functioning of the person whose bank account is provisionally attached, it may be endeavored that in all such cases, the investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of duty/tax as well as interest, penalty etc. arising upon adjudication can be recovered from the said person and the purpose of attachment is achieved.

Signed by Shweta Garg

Date: 22-07-2024 19:53:25

(Shweta Garg)

Deputy Commissioner

(Investigation-Customs Wing)