

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8709 OF 2025

Navin Vishwanathan Prop. of
M/s. Oriental Facility

... Petitioner

V/s.

State of Maharashtra and Ors.

... Respondents

Mr. Sujit Sahoo a/w. Mr. Suresh Sharma a/w. Mr. Varun Sharma a/w. Mr. Zainab Barmwala a/w. Ms. Reetu Sharma for the Petitioner

Ms. Shruti D. Vyas, Addl.G.P. a/w. Mr. Aditya R. Deolekar, AGP for Respondents - State

**CORAM : G.S. KULKARNI AND
FARHAN P. DUBASH, JJ.**

**RESERVED ON : 26th MARCH 2026
PRONOUNCED ON : 15th APRIL 2026**

Judgment (Per Farhan Dubash, J.) :

1. Rule. Rule made returnable forthwith. Learned Additional Government Pleader waives service for the Respondents. By consent of parties, the Petition is taken up for final disposal at the stage of admission.
2. The present Petition under Articles 226 and 300A of the Constitution of India challenges a communication dated 21st March 2025 issued by

Respondent No. 2 under Section 79(1)(c) read with Section 93(1)(a) of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”), whereby the Petitioner's bank account bearing no. 41485511814 maintained with the State Bank of India, CBD Belapur Branch, came to be attached for recovery of alleged outstanding GST dues of the Petitioner's deceased father.

FACTS IN BRIEF

3. The material facts, briefly stated, are as follows:
- (a) The Petitioner's father, late Mr. Pudugraman Neelakantan Vishwanathan, carried on his proprietorship business under the trade name “*M/s. Oriental Facility*”, holding GST Registration No. 27AMGPP7304N1ZL, with its principal place of business at Sector 8B, Flat No. C-232, Vikasani CHS, CBD Belapur, Thane - 400614.
 - (b) By an order dated 7th March 2024, passed on show cause notice dated 29th December 2022, the said GST registration stood *suo motu* cancelled with effect from 1st January 2023.
 - (c) The Petitioner's father passed away on 11th February 2024.
 - (d) Prior to the demise of his father, the Petitioner is stated to have commenced his independent proprietorship business engaged in labour supply and employment services by adopting the same trade name of “*M/s. Oriental Facility*”, allegedly as a mark of continuity with his father's legacy.
 - (e) On 22nd February 2023, the Petitioner obtained a separate GST

registration for his said proprietorship business, bearing GSTIN 27ADXP900D1ZD, and commenced operations from a separate and distinct place of business, namely Office No. 807, Prabhat Center Annex, CBD Belapur, Navi Mumbai - 400614.

- (f) It is not in dispute that both proprietorships are separately registered taxable entities under the GST regime.
- (g) Five days after the demise of the Petitioner's father, Respondent No. 2 / Deputy Commissioner of State Tax issued an order in Form DRC-07 on 16th February 2024 raising a demand of approximately ₹3,86,61,652/- crores against the proprietorship concern of the Petitioner's deceased father under Rule 142(5) of the CGST Rules, 2017.
- (h) On becoming aware of these proceedings, the Petitioner filed an appeal challenging the attachment of his deceased father's bank account/s on 6th February 2024 and also deposited 10% of the disputed tax. The Petitioner thereafter addressed correspondence with the Department seeking release of the bank account/s belonging to his deceased father.
- (i) Considering this, the Department released the attachment of the bank account/s of the Petitioner's deceased father.
- (j) Nearly one year thereafter, Respondent No. 2 invoked Sections 79 and 93 of the CGST Act and issued Form GST DRC-13 dated 21st March 2025 to Respondent No. 3 / State Bank of India viz. the Petitioner's banker, directing recovery of dues aggregating ₹ 4,15,54,508/- allegedly payable by the Petitioner's deceased father towards tax, cess, interest and penalty.

- (k) Pursuant thereto, the Petitioner's bank account with Respondent No. 3 came to be frozen without issuance of any prior show cause notice or affording any opportunity of hearing to him.
- (l) The Petitioner immediately addressed a representation dated 24th March 2025 asserting that his proprietorship was distinct from that of his deceased father despite similarity of trade name and requested de-freezing of his personal bank account.
- (m) No action was taken by Respondent No. 2, which resulted in the Petitioner filing of the present Writ Petition.

PETITIONER'S SUBMISSIONS

- 4. Mr. Sahoo, learned counsel for the Petitioner submits that the Petitioner's proprietorship business is an independent taxable entity having a distinct GST registration and separate place of business and the mere similarity of trade name with that of the Petitioner's deceased father cannot justify recovery proceedings against a different taxable person. He further submits that no proceedings under Section 93 determining liability of a legal heir were initiated and the impugned attachment has been effected without issuance of any show cause notice or grant of hearing, thereby violating principles of natural justice; and coercive recovery under Section 79 cannot precede adjudication of liability.
- 5. Mr. Sahoo relies on the following judgments which hold that a prior show

cause notice was required to be issued by the Department to the Petitioner before foisting any such GST liability of his deceased father on him:

- (i) *Galaxy International vs. Union of India*¹
- (ii) *Prasanna K Shetty vs. State of Maharashtra*²
- (iii) *Arvind Traders vs. State of Uttar Pradesh*³
- (iv) *Rajvanti Devi vs. State of UP*⁴
- (v) *Baratam Satish vs. Joint Commissioner of Central Tax*⁵
- (vi) *S. R. Steels vs. Deputy State Tax Officer, Hosur*⁶

6. It is therefore submitted that the impugned action is *ex facie* illegal.

RESPONDENTS' SUBMISSIONS

7. Ms. Shruthi Vyas, learned Additional Government Pleader, supported by Mr. Aditya Devalekar, appearing for Respondent Nos. 1 and 2, relies upon affidavit in reply dated 25th March 2026, filed on behalf of the Respondents and would submit that substantial GST dues of over ₹ 4,15,54,508/- crores stand crystallised against the Petitioner's deceased father. It is contended that the Petitioner carries on his proprietorship business under the very same trade name and had earlier also been associated with his father's business during his lifetime. They urge that the Department is therefore justified in treating the Petitioner as having continued the proprietorship business of M/s. Oriental

1 (2025) 32 Centax 212 (Bom)
2 (2024) 17 Centax 418 (Bom)
3 (2025) 30 Centax 141 (All)
4 (2026) 40 Centax 10 (All)
5 (2026) 38 Centax 118 (A.P.)
6 (2024) 24 Centax 14 (Mad)

Facility of his deceased father and in invoking Sections 79 and 93 of the CGST Act.

8. They further contend that the Petition is not maintainable in view of alternate statutory remedies already availed by the Petitioner.

ANALYSIS & FINDINGS

9. Having heard learned counsel for the parties and perused the record, the controversy lies within a narrow compass. The impugned action proceeds on the premise that since both proprietorship concerns bear the same trade name, viz. *M/s. Oriental Facility*, the Petitioner must be treated either as a successor to, or continuation of, the business of his deceased father and consequently, liable for his outstanding tax dues, by relying on Section 93(1)(a) of the CGST Act.
10. For the sake of convenience, the provisions of Section 93(1)(a) of the CGST Act, 2017 are reproduced hereunder:

“93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then --

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act ; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.”

11. At this stage, certain undisputed features assume significance:
 - (i) the Petitioner's deceased father and the Petitioner hold separate GST registrations;
 - (ii) both concerns operated from different registered places of business;
 - (iii) under the GST regime, each GSTIN constitutes an independent taxable person; and
 - (iv) no show cause notice determining the Petitioner's liability under Section 93 of the CGST Act has been issued prior to attachment of his bank account.
12. Recovery powers under Section 79 are undoubtedly wide. However, such coercive powers pre-suppose the existence of an established liability against the person from whom recovery is sought. Section 93 contemplates liability of legal representatives or persons continuing the business of a deceased taxable person. Whether the Petitioner satisfies the statutory conditions of that provision is a matter requiring determination upon notice, consideration of material, and hearing. This needs to be premised on materials and not

presumptions.

13. In the present case, the Department has straightaway invoked recovery proceedings and frozen the Petitioner's bank account without first determining whether the Petitioner's proprietorship is legally distinct; whether he has, in fact, continued the business of the deceased; or whether statutory conditions under Section 93 stand satisfied.
14. The powers of provisional attachment to protect revenue in certain cases are conferred under Section 83 of the CGST Act, 2017 which is required to be noted, which reads thus:

“Section 83 : Provisional attachment to protect revenue in certain cases.

15. [(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, 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 or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]

16. (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).”

Thus, the powers to attach the bank account of the petitioner is deemed to emanate by application of Section 83. Insofar as the principles of law on applicability of Section 83 to attach the bank account of a taxpayer is concerned, the principles in that regard are well settled namely that the designated officer is required to form an opinion in regard to tax liability of a

person against whom such action of attachment of the bank account is required to be taken. The Supreme Court in the case of **Radha Krishan Industries v. State of Himachal Pradesh**⁷; has held that the basic requirement to exercise powers under Section 83 would be to form an opinion based on tangible material so as to protect the interest of the Government revenue. The following observations of the Supreme Court are required to be noted, which read thus:

“41. Sub-section (1) of section 83 can be bifurcated into several parts. The first part provides an insight on when in point of time or at which stage the power can be exercised. The second part specifies the authority to whom the power to order a provisional attachment is entrusted. The third part defines the conditions which must be fulfilled to validate the power or ordering a provisional attachment. The fourth part indicates the manner in which an attachment is to be levelled. The final and the fifth part defines the nature of the property which can be attached. Each of these special divisions which have been explained above is for convenience of exposition. While they are not watertight compartments, ultimately and together they aid in validating an understanding of the statute.

Each of the above five parts is now interpreted and explained below:

- (i) The power to order a provisional attachment is entrusted during the pendency of proceedings under any one of six specified provisions : Sections 62, 63, 64, 67, 73 or 74. In other words, it is when a proceeding under any of these provisions is pending that a provisional attachment can be ordered;
- (ii) The power to order a provisional attachment has been vested by the Legislature in the Commissioner;
- (iii) Before exercising the power, the Commissioner must be ‘of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do’;
- (iv) The order for attachment must be in writing;
- (v) The provisional attachment which is contemplated is of any property including a bank account belonging to the taxable person; and
- (vi) The manner in which a provisional attachment is levied must be specified in the rules made pursuant to the provisions of the statute.

7 (2021) 88 GSTR 228 (SC)

42. Under sub-section (2) of section 83, a provisional attachment ceases to have effect upon the expiry of a period of one year of the order being passed under sub-section (1). The power to levy a provisional attachment has been entrusted to the Commissioner during the pendency of proceedings under sections 62, 63, 64, 67, 73 or as the case may be, section 74. section 62 contains provisions for assessment for non-filing of returns. Section 63 provides for assessment of unregistered persons. Section 64 contains provisions for summary assessment. Section 67 elucidates provisions for inspection, search and seizure. Before we dwell on section 74, it would be material to note the provisions of section 70 which are extracted below:

‘70. Power to summon persons to give evidence and produce documents.—

(1) The proper officer under this Act shall have powers to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Civil Procedure Code, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Penal Code, 1860.’

43. A power is conferred by section 70 upon the proper officer to summon a person whose attendance is considered necessary to give evidence or produce a document or any other things in any enquiry in the manner which is provided in the case of a civil court under the CPC.

44. Section 74 is extracted below:

‘74. Determination of tax not paid or short paid or erroneously refunded or input-tax credit wrongly availed or utilised by reason of fraud or any wilful mis-statement or suppression of facts.—(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input-tax credit has been wrongly availed or utilised by reason of fraud, or any wilful mis-statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input-tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub- section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input- tax credit

wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input-tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132; and

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings

against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purpose of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.’

45. Sub-section (1) of section 74 empowers the proper officer to serve a notice on a person chargeable with tax where it appears that

- (i) Any tax has not been paid;
- (ii) Tax has been short paid;
- (iii) Tax has been erroneously refunded; or
- (iv) Input-tax credit has been wrongly availed or utilized by reason of fraud, wilful mis-statement or suppression of fact to evade tax.

46. Sub-section (1) enables the proper officer to issue a notice to show cause for the recovery of tax, interest payable under section 50 and the penalty equivalent to the amount of tax specified in the notice. Sub-sections (2), (3) and (4) lay down procedural provisions which are to be followed by the proper officer.

Secondly, under sub-section (5) of section 74, before the service of a notice under sub-section (1), the person who is chargeable with tax may pay the tax together with interest and a penalty equivalent to fifteen per cent., of the tax on the basis of their own ascertainment of the tax or as ascertained by the proper officer and inform the proper officer of the payment having been made upon receipt of the information. Sub-section (6) stipulates that the proper officer shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty payable under the provisions of the Act or the Rules.

47. On the other hand, when the proper officer is of the opinion that the amount which has been paid under sub-section (5) falls short of the amount which is actually payable, a notice under sub-section (1) is to issue for the amount which falls short of what is actually payable. Sub-section (8) contains a stipulation that where a person who is chargeable with tax under sub-section (1) pays the tax together with interest and a penalty of twenty-five per cent., of the tax within thirty days of the issuance of the notice, all proceedings in respect of the notice shall be deemed to be concluded. Under sub-section (9), the proper officer after considering the representation of the person chargeable to tax is authorized to determine the amount of tax, interest and penalty due and to issue an order. A period of five years is stipulated by sub-section (10) for the issuance of an order in sub-section (9). Sub-section (11) stipulates that upon service of an order under sub-section (9), all proceedings in respect of the notice shall be deemed to be concluded upon the person paying the tax with interest under section 50 and a

penalty equivalent to 50 per cent. of the tax within thirty days of the communication of an order. These provisions indicate how sub-sections (5), (8) and (11) operate at different stages of the process.

48. Now in this backdrop, it becomes necessary to emphasize that before the Commissioner can levy a provisional attachment, there must be a formation of 'the opinion' and that it is necessary 'so to do' for the purpose of protecting the interest of the Government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in section 83 is, in other words, at a stage which is anterior to the finalization of an assessment or the raising of a demand. Conscious as the Legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the Government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory pre-conditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that 'for the purpose of protecting the interest of the Government Revenue, it is necessary so to do', it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the Government Revenue.

49. By utilizing the expression 'it is necessary so to do' the Legislature has evinced an intent that an attachment is authorized not merely because it is expedient to do so (or profitable or practicable for the revenue to do so) but because it is necessary to do so in order to protect interest of the Government revenue. Necessity postulates that the interest of the revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under section 83 is contemplated during the pendency of certain proceedings, meaning

thereby that a final demand or liability is yet to be crystallized. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an assessee can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorize Commissioners to make preemptive strikes on the property of the assessee, merely because property is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the Government revenue.

50. These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure. It also postulates the maintenance of a proportion between the nature and extent of the attachment and the purpose which is sought to be served by ordering it. Moreover, the words embodied in sub-section (1) of section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. While dealing with a similar provision contained in section 45 (section 45(1) provides as follows):

‘45. Provisional attachment.—(1) Where during the tendency of any proceedings of assessment or reassessment of turnover escaping assessment, 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 belonging to the dealer in such manner as may be prescribed.’ of the Gujarat Value Added tax Act, 2003, one of us (honourable Mr. Justice MR Shah) speaking for a Division Bench of the Gujarat High Court in *Vishwanath Realtor v. State of Gujarat (Special Civil No. 7210 of 2015, decided on April 29, 2015)* [(2015) 5 VST-OL 16 (Guj).] observed (page 24 in 5 VST-OL):

“8.3. Section 45 of the VAT Act confers powers upon the Commissioner to pass the order of provisional attachment of any property belonging to the dealer during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment. However, the order of provisional attachment can be passed by the Commissioner when the Commissioner is of the opinion that for the purpose of protecting the interest of the Government Revenue, it is necessary so to do. Therefore, before passing the order of provisional attachment, there must be an opinion formed by the Commissioner that for the purpose of protecting the interest of the Government Revenue during the pendency of any

proceedings of assessment or reassessment, it is necessary to attach provisionally any property belonging to the dealer.

However, such satisfaction must be on some tangible material on objective facts with the Commissioner. In a given case, on the basis of the past conduct of the dealer and on the basis of some reliable information that the dealer is likely to defeat the claim of the Revenue in case any order is passed against the dealer under the VAT Act and/or the dealer is likely to sale his properties and/or sale and/or dispose of the properties and in case after the conclusion of the assessment/reassessment proceedings, if there is any tax liability, the Revenue may not be in a position to recover the amount thereafter, in such a case only, however, on formation of subjective satisfaction/opinion, the Commissioner may exercise the powers under section 45 of the VAT Act”.

(emphasis supplied)

51. We adopt the test of the existence of ‘tangible material’. In this context, reference may be made to the decision of this court in the *Commissioner of Income-tax v. Kelvinator of India Ltd.* [(2010) 320 ITR 561 (SC); (2010) 2 SCC 723.] Mr. Justice SH Kapadia (as the learned Chief Justice then was) while considering the expression ‘reason to believe’ in section 147 of the Income-tax Act, 1961 that income chargeable to tax has escaped assessment, inter alia, by the omission or failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of ‘tangible material’ and that ‘reasons must have a live link with the formation of the belief’. This principle was followed subsequently in a two-Judge Bench decision in *Income-tax Officer, Ward No. 162(2) v. Techspan India Private Ltd.* [(2018) 404 ITR 10 (SC); (2018) 6 SCC 685.] While advertent to these decisions we have noticed that section 83 of the HPGST Act uses the expression ‘opinion’ as distinguished from ‘reasons to believe’. However for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the Government Revenue.”

15. Thus a bank account constitutes *property* within the meaning of Article 300A of the Constitution of India. Hence, the action of Respondent No. 2 in freezing the Petitioner’s bank account without any prior show cause notice being issued to him and/or affording him an opportunity to put forth his objections thereto, results in civil consequences resulting in a violation

of his constitutional rights since he has been deprived of his property, without the due process of law being followed.

16. The principles of natural justice require that before fastening liability upon a person, particularly where coercive recovery measures affecting property i.e, in the present case the banking operations are invoked, such person must be put to notice and afforded an effective opportunity to present his case. Our view is also supported by the judgments relied upon by the Petitioner.

17. In the facts of the present case the designated officer needs to undertake an exercise to determine in what manner the Petitioner would become liable to discharge the tax dues of his deceased father's business. It would be difficult to accept a proposition that merely because there is similarity of trade name, this alone would authorise automatic recovery from the Petitioner who is an indirect registered taxable person that too without any prior adjudicatory process.

18. In the present case, in our opinion Respondent No. 2 has thus committed a jurisdictional error in issuing the impugned communication to Respondent No. 3. Such defect goes to the root of the matter. Moreover, principles of natural justice have also clearly been violated. Hence, this action warrants interference from this Court in exercise of its extraordinary writ jurisdiction

under Article 226 of the Constitution of India. Thus the objection as urged on behalf of the Respondents on the alternate remedy is devoid of any merit.

19. We clarify that the observations herein are purely *prima facie* and confined to examining the legality of the impugned recovery action. The Department is thus free to independently examine the issue of any liability of the Petitioner in accordance with law and uninfluenced by any observations contained in this order.
20. In view of the above discussion, the following order is passed:
 - (i) The impugned communication dated 21st March 2025 issued in Form GST DRC-13 attaching the Petitioner's bank account bearing no.41485511814 is quashed.
 - (ii) Accordingly, Respondent No. 3 shall de-freeze the Petitioner's bank account bearing no. 41485511814 forthwith and in any event, within one week from the date of uploading of this order.
 - (iii) It shall be open to Respondent No. 2 to initiate appropriate proceedings against the Petitioner, in the event the department is of the opinion that the dues of the Petitioner's deceased father – late Mr. Pudugraman Neelakantan Vishwanathan towards tax, cess, interest and penalty under the provisions of the CGST Act, 2017 are recoverable from the Petitioner as per the requirement of law including under Section 93 thereof.
 - (iv) All contentions of the parties in such regard on merits are expressly kept open.

20. The Petition is accordingly allowed in the aforesaid terms. Rule is made absolute. No order as to costs

(FARHAN P. DUBASH, J.)

(G.S. KULKARNI, J.)

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