Asset Attachments by ED

Why in news?

Prime Minister Modi is considering legal options to return nearly Rs 3000 crore seized by the Enforcement Directorate to the people of West Bengal.

Enforcement Directorate (ED)
• **About-** It is a premier financial investigation agency and economic law enforcement agency of the Government of India. • **Headquarters** - New Delhi • **Ministry**- Department of Revenue, Ministry of Finance. • **History** - In 1956, an 'Enforcement Unit' was formed in the Department of Economic Affairs. • In 1960 the administrative control was shifted to Department of Revenue. • The ED currently draws its statutory powers from 3 different acts - Foreign Exchange Management Act, 1999 (FEMA) - Prevention of Money Laundering Act, 2002 (PMLA) - Fugitive Economic Offenders Act, 2018 (FEOA) • **Director** - Director is the head of the Enforcement Directorate assisted by special directors. • **Appointment**- The director is appointed in accordance with the provisions of the *Central Vigilance Commission Act 2003*. • The Centre appoints the director on recommendation of a high-level committee headed by the Central Vigilance Commissioner. • **Tenure-** The director has a fixed tenure of 2 years and a maximum 3 annual extensions.

How are seizures made?

- **Enforcement Directorate**- It is responsible for handling cash and other assets it seizes or attaches during investigations under Prevention of Money Laundering Act (PMLA).
- **Conduct search-** ED conducts searches at the premises of suspects with a search warrant under PMLA.
- **Seizure**- Any cash or assets recovered during these searches are seized in the presence of independent witnesses who sign a seizure memo.

Seizures	Prior to 2018	System rationalised in 2018

Seized cash	• It was deposited into fixed deposit accounts opened by the concerned administrative zones. • The money remained in the account until the case was decided. • **If convicted-** The cash attached would be deposited in the government treasury. • **If acquitted**- The entire amount along with interest would be returned to the accused.	• The money gets deposited directly in the treasury through personal deposit accounts. • The concerned zones now open PD accounts in the name of Enforcement Directorate with State Bank of India. • These accounts do not generate any interest on deposits. • The rest of the procedure for both gold and cash remains the same.
Seized gold or other valuables	It would be deposited in a locker.	

What happens after seizure or attachment?

- **Purpose of attachment**- To deprive the accused of the benefits associated with the attached asset, the law ensures that the property remains off-limits to the accused until the trial is complete.
- **Confirmation from adjudicating authority**- After the seizure, ED has 180 days to obtain confirmation from the adjudicating authority regarding the seizure.
- Once the attachment is confirmed, the ED gains the right to take possession of the seized property.
- **Appeal-** The Adjudicating Authority's order can be challenged in the *PMLA Appellate Tribunal* and subsequently in the *high court*. The high court may either stay the order, restore the property to the owner, or allow ED's possession.

How ED is handling various attachments?

Attachments by ED	Handling of ED attachments
Unused properties	• Some properties may have limited utility for the agency or other government departments while the trial is ongoing. • In such cases, the special director of the ED becomes the custodian and administrator of the property. • After the trial concludes, the government may auction these properties, but they may detoriated due to lack of maintenance as the properties left unused for extended periods.
Immovable property	• In the case of immovable property (such as land or buildings), the ED can issue an eviction notice to the property owner. • Upon compliance, the ED assumes physical possession of the property
Running businesses	• As a rule, running businesses are not shutdown following the confirmation by adjudicating authority. • If the accused does not receive legal protection from the tribunal or the high court, the ED has the authority to claim all profits generated from the operation of commercial premises (e.g., hotels). • These profits are deposited into PD accounts of the agency. • If the accused is acquitted, the entire amount is returned to them.

Residences	• If a residence is attached by the ED and the attachment is confirmed by judicial authorities, the agency gains the right to seek eviction of the accused from the premises. • However, if the accused is unable to move out, the ED has an alternative of seeking rent from the accused.
Vehicles	• Earlier the attached vehicles were sent to warehouses owned by the **Central Warehousing Corporation**. • Unfortunately the case dragged for years, at the end of the trial neither the accused nor ED could recover anything substantial from the vehicle. • To address the issue, the rules were recently amended which allows the ED to use the attached vehicle during the trial, the ED still seeks rent fixed by the local transport department.

References

1. Indian Express- How ED attaches cash?
2. Enforcement Directorate- History of ED

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