

GOODS AND SERVICES TAX - ARREST PROVISIONS : INSIDE THE CHAOS*

Goods and Services Tax (GST) is more than just a tax change. It is also a 'behaviour change'. Fake invoice racket is a menace for everyone as it is not only a fraud on the exchequer but also a fraud on the honest tax assesses. GST has strict provisions of seizure and arrest even though it is an economic legislation, i.e., a tax law and not a criminal legislation. The Goods and Services Tax Authorities are empowered under section 69 of CGST Act, 2017 to arrest persons accused of offences specified under Section 132 of the CGST Act, 2017 ('CGST Act').

The Commissioner of CGST (Central Goods and Services Tax), by order, can authorize any CGST officer to arrest a person, if he has reasons to believe that such person has committed an offence specified in clause (a) or clause (b) or clause (c) or clause (d) of section 132(1) of CGST Act which is punishable under clause (i) or (ii) of section 132(1) or section 132(2) of the CGST Act. This essentially means that a person can be arrested only when the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs. 1 Crore (imprisonment for a term up to 1 year with fine) or Rs. 5 Crores (imprisonment for a term up to 5 years with fine).

<i>Section of CGST Act</i>	<i>Offence</i>
132 (1)(a)	Supply of any goods or services or both without issue of any invoice in violation of the provisions of the Act or Rules with intent to evade tax.
132 (1)(b)	Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of the Act or Rules leading to wrongful availment or utilisation of input tax credit or refund of tax.
132 (1)(c)	Availment of input tax credit using the invoice or bill referred to in clause (b).
132 (1)(d)	Collection of any amount of tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

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Under the Income Tax Act, 1961, no order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing. However, Central Goods and Service Tax Act, 2017 provides the only circumstances and instances under which a person can be arrested but no guidelines have been provided in relation to the procedural aspect for arresting a person.

JUDGEMENTS

Some very popular judgements are given below for better understanding of GST Arrest Provisions:

1. *P.V. Ramana Reddy and Others v. Union of India - The Landmark Judgement (25 G.S.T.L. 185)*

This is a detailed judgement on the powers of arrest under the GST regime.

- (i) The Telangana High Court in its order held that since the accused was allegedly involved in circular trading with turnover on paper and also in fraudulent claims of Input Tax Credit (ITC) depriving Government of its dues, which constitute a threat to very implementation of GST law within short duration of its inception, he was not entitled to any relief against his arrest. His contention that the prosecution for offences under Section 132(1) of CGST Act, 2017 can be launched only after completion of assessment, was held to be not acceptable. Merely because offences under CGST Act, 2017 are compoundable cannot be a ground not to arrest the accused.
- (ii) The High Court also held that the offences under the CGST Act, 2017 cannot be compounded without any application by the accused to that effect and payment of compounding amount.
- (iii) The High Court further held that the arrested person should be produced by the authorized officer before the Magistrate within 24 hours of arrest, who may either remand him to judicial custody or release him on bail. The question of giving such person to police custody or custody to proper officer does not arise. The contention that the proper officer not being a police officer could not seek custody of arrested person, was held to be not tenable.
- (iv) The High Court also observed that since the power of Commissioner to order for arrest under Section 69(1) of CGST Act, 2017 is confined only to cognizable and non-bailable offences, it is not known as to how he can pass an order for arrest for offences specified under clauses (f) to (l) of Section 132(1) of CGST Act which are declared non-cognizable and bailable under Section 132(4) of the said Act. It seems that there are some incongruities between Sections 69(1) and 132 of the CGST Act.
- (v) The High Court held that though Section 69(1) of CGST Act, 2017 which confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguards incorporated in Sections 41 and 41A of the Code of Criminal Procedure, 1973 in view of provisions of Section 70(1) of the said Act same must be kept in mind before arresting a

person. However, Section 41A(3) of the Code of Criminal Procedure, 1973 does not provide an absolute irrevocable guarantee against arrest.

- (vi) The High Court further held that the enquiry by GST Commissionerate under Central Goods and Services Tax Act, 2017 is a judicial proceedings and not a criminal proceedings.
- (vii) It was held that if the reasons to believe that a person committed any offence under clauses (a), (b), (c) or (d) of Section 132(1) of CGST Act, 2017 warranting his arrest though found in the file but not disclosed in the order authorizing the arrest, the same is enough and it is not required to be recorded in order of authorization.
- (viii) The High Court also held that since no FIR lodged before exercising power of arrest under Section 69(1) of CGST Act, 2017, the accused person cannot invoke Section 438 of Code of Criminal Procedure, 1973 for anticipatory bail. Only way open to him is to seek protection against pre-trial/pre-prosecution arrest by invoking writ jurisdiction of the High Court under Article 226 of the Constitution of India.

2. *Jayachandran Alloys (P.) Ltd. v. Superintendent of GST & Central Excise WRIT PETITION NO. 5501 OF 2019 Dated :- 04-04-19(Madras High Court)*

In this case, the Hon'ble High Court has observed that, with regards offences as per Section 132 of the Act as extracted earlier, imposes a punishment upon the Assessee that 'commits' an offence.

The use of words 'commits' clearly indicates that act of committal of the offence is to be established first before punishment is imposed. Thus, 'determination' of the excess credit by way of the procedure set out in Section 73 or 74, as the case may be is a pre-requisite for the recovery thereof. As the recovery is to be made subject to 'determination' in an assessment, punishment for the offence alleged cannot be imposed prior to such assessment.

3. *Union of India v. Sapna Jain (CWP No.1996 / 2019)*

In this case the Supreme Court held that: The accused-respondents have been granted the privilege of *pre-arrest bail by the High Court* by the impugned orders.

Supreme Court was not inclined to interfere with the same. However, they made it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP(Crl.) No. 4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

4. *Bharat Raj Punj Vs Commissioner of Central Goods And Service Tax (Rajasthan High Court)(S.B.CWN. 76/2019)*

In this case Input tax credit was availed fraudulently by issue of fake or fictitious sale invoices.

The Rajasthan High Court gave a decision to arrest the senior officials of the company after recording their statements. Also, Rajasthan High Court dismissed the Writ petition of the petitioner and imposed a cost of Rs. 1,00,000/- only.

The Judgement showed that the Department has the power to issue summons or arrest the offender on reasonable grounds, without first determining the tax.

5. *Vikas Goel and another Vs Central Goods and Services Tax Commissionerate (Punjab and Haryana HC)(CRM No.M-45649 of 2018 (O&M))*

In this case the Petitioners made bogus bills and adjusted the amount without any actual transportation or sale of goods. Transactions appeared only on paper. On search, it was found that premises were closed for a period of 5 years and there was tax evasion.

So, the Department has the power to arrest under Section 69 of the Act.

High Court gave a decision to arrest the petitioner and denied their bail in GST fraud.

Conclusion

The word arrest usually comes within the realm of criminal jurisdiction. That being said, there has been an increasing amount of legislative backing which countries are now giving to civil arrests, especially in the field of taxation.

Offences can be classified into 3 major categories:

1. Tax evasion
2. Wrong/ fraudulent availing of Input tax credit
3. Wrong/ fraudulent obtaining of Refund

The punishment for offences in Section 132 (a),(b), (c), (d) where the quantum involved is more than 5 crore is cognisable and non bailable. All other offences with lesser quantum are non cognisable and bailable.

If the Commissioner of CGST/SGST believes a person has committed an offence u/s 132 of CGST Act, he can be arrested by any authorised CGST/SGST officer. The arrested person will be informed about the grounds of his arrest. He will appear before the magistrate within 24 hours of arrest in case of cognizable offence. Since, GST is not only a Tax Reform, It is a Business Reform.

References

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