

Commissioner can authorize 'arrest' prior to completion of adjudication/assessment

The Hon'ble HC, Gujarat in ***Vimal Yashwant Giri Goswami & Others v. State of Gujarat [R/SLP No. 13679/2019 dated 20.10.2020]*** held that the power to arrest as provided under Section 69 read with Section 132 of Central Goods and Services Tax Act, 2017 ("**CGST Act**") can be invoked by Commissioner prior to the completion of adjudication/assessment and determination of liability.

Facts:

The Vimal Yashwant Giri Goswami ("**the Petitioner**") is engaged in the business of trading and/or supply of the stainless steel and scrap thereof. The authority visited the premises of the Petitioner to carry out search proceedings and issued a summon to appear before the authority with the provisional balance sheet. The Petitioner did not appear and the authority completed the search and seized the purchase and sale files, laptop, etc. The Petitioner filed writ petition apprehending that if they approached the authority, they would be arrested under Section 69 of the CGST Act.

Issue:

Whether Commissioner can authorize arrest prior to completion of adjudication/assessment.

Held:

Hon'ble HC, Gujarat in ***R/SLP No. 13679/2019 dated 20.10.2020*** held as under:

- Power to arrest as provided under Section 69 read with Section 132 of CGST Act can be invoked by Commissioner prior to the completion of adjudication/assessment and determination of liability as per provisions of CGST Act.
- The expression 'reason to believe' under Section 69 ibid contemplate an objective determination based on intelligence, care and deliberation involving judicial review as distinguished from a purely subjective consideration and hence, Commissioner is not required to conclude that person sought to be arrested is guilty of any offence.
- Further, states that it cannot be said that by invoking the power under Section 69 of the CGST Act, punishment prescribed under the Section 132 is inflicted.
- Furthermore, states following to be kept in mind while arresting under sec 69 ibid:

- The formation of the opinion, though subjective, must be based on some credible material disclosing that is necessary to arrest the person concerned alleged to have committed the offence as specified under sec 132 ibid.
 - Power conferred upon the authority under sec 69 ibid for arrest could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.
 - The powers of arrest should not be used as a tool to harass the assessee nor it should be used in any manner which may have an irreversible detrimental effect on the business of the assessee.
 - The Commissioner must be able to justify the arrest apart from his power to do so as it can cause ‘incalculable harm to the reputation and self-esteem of a person’.
 - Arrest memo is a key safeguard against illegal arrest and a crucial component of the legal procedure of arrest, thus requires GST Department to prescribe a standardized format for the arrest memo.
- While making an arrest, an authorised officer under section 69 of the CGST Act is not obliged in law to comply with the provisions of Sections 154 to 157 of the Code of Criminal Procedure, 1973.
 - Section 69(3) of the CGST Act does not confer upon the GST officers the powers of the officer in charge of a police station in respect of the investigation and report, however, clarified that this does not necessarily mean that a person alleged to have committed a non-cognizable and bailable offence cannot be arrested without a warrant issued by the Magistrate.
 - Safeguards pertaining to arrest as laid down by Hon’ble SC in ***D.K. Basu v. State of West Bengal reported in [1997 (1) SCC 416]*** would be applicable to GST officers as well as a person who will be interrogated under Section 70 of CGST Act.

Our comments:

A coordinate Bench of HC, Gujarat in ***Vimal Yashwant Giri Goswami v. State of Gujarat [R/SLP No. 13679/2019 dated 07.08.2019]*** opined on the powers of arrest under Section 69 of CGST Act citing that same “are to be exercised with lot of care and circumspection”.

To know more about “**Whether Arrest can be made prior to Adjudication & Assessment in GST**” kindly watch video by CA Bimal Jain:
https://www.youtube.com/watch?v=TKBPh_etIdU&t=10s

Relevant provisions:

Section 69 of the CGST Act

“Power to arrest.

69. (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

Section 132 of the CGST Act

“132. Punishment for certain offences.

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

.....

shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable...”

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