

TAX FLASH NEWS

2 November 2020



Power to arrest provision under GST can be invoked if the Commissioner has ‘reasons to believe’ that specified offences have been committed – Gujarat High Court

Hon’ble Gujarat High Court has recently held¹ that the arrest provision under the GST i.e. Section 69 and punishment for offences as provided in section 132 operate in totally different fields. The attempt to canvass that unless and until adjudication proceedings determining the tax and liability is completed, the Commissioner cannot form any opinion to ‘reason to believe’ that the assessee has committed any offence, is contrary to the entire scheme of the GST Act.

The phrase ‘reasons to believe’ in the arrest provision under GST contemplate an objective determination based on intelligence, care and deliberation, involving judicial review as distinguished from a purely subjective consideration. Hence, he is not required to conclude that person sought to be arrested is guilty of any offence.

Background

Summons were issued to the petitioner(s) to give statement before the GST officials. The petitioner(s) apprehended that they may be arrested by the invoking the arrest provision under the CGST Act. Accordingly, the petitioner(s) had filed writ before the Hon’ble Gujarat High Court. The key questions placed before the High Court are -

1. Whether power to arrest provisions² under the CGST Act can be invoked by the Commissioner only upon completion of the adjudication process of finalising the assessment and determination of liability?
2. Whether provision of section 69 of the CGST Act envisages that the Commissioner is obliged to record his reasons to believe and furnish the same to the person who is sought to be arrested?

3. Whether an authorised person can arrest a person alleged to have committed non cognizable and bailable offences without a warrant of arrest issued by the Magistrate under the provisions of the Code of Criminal Procedures, 1973?

High Court order

1. On the question whether authorities can invoke the provision granting the power to arrest before the completion of the adjudication proceedings, the Court made the following observations –
 - Section 69 of the CGST Act, 2017, grants power to the Commissioner to arrest a person. The said section falls under chapter XII, which prescribes measures available with the authorities to find out the evasion of tax, if any, by the assessee.
 - The power to arrest under section 69 can be invoked if the Commissioner has a ‘reason to believe’ that the person has committed offences³ which are prescribed and which are punishable⁴ under section 132 of the CGST Act, 2017.
 - On the other hand, section 132 prescribes punishment for certain offences falling under Chapter XIX. The said chapter provides for offences and penalties. The legislature has enacted section 132 to prescribe punishment for commission of prescribed offences.
 - Thus, section 69 and section 132 operates in totally different fields and the attempt to canvass that unless and until adjudication proceedings is completed, the Commissioner

¹ Vimal Yashwant Giri Goswami and Others [TS-924-HC-2020(GUJ)-NT]

² Section 69 read with section 132 of the Central Goods and Services Tax Act, 2017

³ Clause (a), (b), (c) and (d) of the section 132(1) prescribes offences which are liable for prosecution

⁴ Clause (i) and (ii) prescribes of sub-section (1) and sub-section (2) of section 132 prescribes provision for prosecution

cannot form any opinion to believe that the assessee has committed any offence, is contrary to the entire scheme of the CGST Act.

- The reference of section 132 in section 69 is only for the purpose of indicating that the nature of offences on the basis of which reasonable belief is formed and recorded by the Commissioner for the purpose of passing an order for arrest.

Based on the above observation the Court has held that the power to arrest provision can be invoked if the Commissioner has a reason to believe that the person has committed offences which liable to be prosecuted under section 132 without completion of the adjudication proceedings.

2. On the question whether the Commissioner is required to record his reason of belief and furnish the same to the person who is sought to be arrested, the Court made the following observations –
 - Section 69(2) provides for informing assessee about the grounds of arrest if he is alleged to have committed a cognizable and non-bailable offence and section 69(3) authorises the Deputy Commissioner or Assistant Commissioner for releasing the arrested assessee on bail if such person is alleged to have committed a non-cognizable and bailable offences.
 - Therefore, it is not necessary for the Commissioner to provide a copy of the reasons recorded by him, if he has a reason to believe that the assessee has committed offences which are cognizable and non-bailable.
 - The expression 'any person' in Section 69 includes a person who is suspected or believed to be concerned in the evasion of tax or availing illegal input tax credit.
 - However, a person arrested by an authorised Officer because he is found to be evading tax or availing input tax credit as specified in section 132 is not, when called upon by the authorised Officer to make a statement or to produce a document or thing, accused of an offence within the meaning of Article 20(3) of the Constitution of India.
 - Where an authorised officer arrests a person and informs that person of the grounds of his arrest, for the purposes of holding an inquiry which the authorised officer has a reason to believe has taken place, there is no formal accusation of an offence.
 - The accusation could be said to have been made when a complaint is lodged in that behalf before the Magistrate.

- The arrest and detention are only for the purpose of holding an effective inquiry under the provisions of the CGST Act with a view to adjudging the evasion of GST and availing illegal input tax credit and imposing penalty.

3. On the question whether an authorised officer can arrest a person alleged to have committed non cognizable and bailable offences without a warrant of arrest issued by the magistrate, the Court made the following observations –

- Any person can be arrested for prescribed offences under section 69, by an authorised person to whom authority has been given by the Commissioner. However, the Commissioner should have the reason to believe that such person has committed the offence punishable under section 132.
- The provision of section 154 to 157⁵ of the Code of Civil Procedures will have no application at that point in time.
- Section 69(3) does not confer upon the GST officers, the power of the officer in-charge of the police station in respect of investigation and report. The said provision gives powers to the GST officer as defined in Code of Civil procedure to grant bail or otherwise. However, this does not mean that a person alleged to have committed a non-cognizable and bailable offence cannot be arrested without a warrant issued by a Magistrate.
- The authorised officer exercising power to arrest is not a Police Officer and therefore is not obliged in law to register FIR against the person arrested.
- The statement given before the authorised officer in the course of inquiry are not admissible under section 25 of the Evidence Act.
- The power to arrest a person is a statutory in character and should not be interfered with.
- Section 69 does not contemplate any Magisterial intervention.

Our comments

It is a significant judgement considering that the Court has held that it is not necessary to complete the investigation/adjudication proceeding before prosecution provisions can be initiated.

⁵ Section 154 – Information in Cognizable cases, Section 155 – Information as to non-cognizable cases and investigation of such cases, Section 157 – Procedure for investigation preliminary inquiry

The Court in its order has distinguished between the measures available with the revenue authorities for determining whether a taxpayer is involved in evading tax and the punishment prescribed after the commission of prescribed offences. The Court has held that as part of the measure prescribed, the revenue authorities may arrest and detain a person if there is a reasonable belief that the specified offence has been committed. However, the Court has also stated in the order that the arrest provision should not invoke merely on the basis of suspicion and that the arrest was necessary for determining the tax evasion.

This is a very significant judgement and one can expect authorities to invoke the prosecution provision if there is sufficient amount of evidence of tax evasion.



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