
COMMISSIONER AUTHORIZED TO ARREST PRIOR TO COMPLETION OF ADJUDICATION/ASSESSMENT UNDER SECTION 69 OF THE CGST ACT: GUJARAT HC

In a recent pronouncement in the case of *M/s. Vimal Yashwantgiri Goswami vs. State of Gujarat* [R/SCA 13679/2019], the Gujarat High Court upheld Commissioner's power to authorize 'arrest' prior to adjudication/assessment completion under Sec. 69 of the Central Goods and Services Tax Act, 2017 (CGST Act) read with Sec. 132 of the CGST Act.

1. Petitioner's Submissions

- For invoking provisions of Sec. 69 read with Sec. 132 of the CGST Act, the "twin conditions" need to be satisfied "cumulatively" i.e. the Commissioner must have "reasons to believe" that a person committed the specified offence, where the commission of offence must be determined.
- Unless established that "offence is committed", provisions of Sec. 132 of the CGST Act cannot be invoked and unless Sec. 132 of the CGST Act is invoked, the provisions of the Sec. 69 of the CGST Act cannot be invoked.

2. Department's Submissions

- The words *reason to believe* in the Sec. 69 of the GGST Act, denote that offences have not been adjudicated / finalized / proved and that there is only *reason to believe* on the part of the concerned authority to the effect that the offences referred in the said section have been committed by any person. If adjudication / finalization of demand following the due procedure of the assessment, is already done then the words *reason to believe* would become redundant as once adjudication is completed there is no question of still forming an opinion to have the *reason to believe* on the part of the concerned respondent authority.
- Sec. 69 of the CGST is neither connected nor dependent upon Sec. 132 of the CGST Act hence, it is incorrect to state that arrest under Sec. 69 of the CGST Act cannot be undertaken before the adjudication of the offences. Where such interlinking is done, it would make the entire Sec. 69 of the CGST Act nugatory.
- Sec. 69 of the CGST Act merely borrows classification of offences made under Sec. 132 of the CGST Act. Power to arrest is solely for the purpose of holding an enquiry under CGST Act for finding any evasion of tax and ultimately adjudicating the assessment

3. Findings of the Court

- The power to arrest under Sec. 69 of the CGST Act can be invoked if the Commissioner has *reason to believe* that the person has committed punishable offences under Sec. 132 of the CGST Act without there being any adjudication for the assessment. The reference to Sec. 132 in Sec. 69 of the CGST Act is only for the purpose of indicating the nature of the offences on the basis of the same the reasonable belief is formed and recorded by the Commissioner for the purpose of passing an order of arrest.
- Commissioner is required to record *reason to believe* to arrest a person, however, in the case of non-cognizable and bailable offences, the arrested person may be released on bail. For such cases, it is not necessary for the Commissioner to provide copy of the reasons recorded by him though the person arrested must be informed about grounds of arrest.
- While recording *reason to believe*, the Commissioner is required to form only a prima facie opinion based on cogent materials and credible information and is not required to conclude that the person sought to be arrested is guilty of any offence. However, the material relied upon must not be vague, indefinite, far fetching. Additionally, the Commissioner must be able to justify the arrest for reasons other than his power to arrest.

-
- Such power given to the Commissioner is very drastic and far-reaching which should be used sparingly and only on substantive weighty grounds and reasons. It should neither be used as a tool to harass the assessee nor should it result in an irreversible detrimental effect on the business of the assessee.
 - Every authorized officer carrying out arrest must be clear that the preparation of valid, proper, and exhaustive arrest memo in terms of the guidelines laid down in **D.K. Basu v. State of West Bengal [1997 (1) SCC 416]** is mandatory.
 - In view of the foregoing, the Court rejected the petitions and upheld power of arrest with the Commissioner. The Court also directed that copy of judgement be circulated in all the subordinate Courts across the State of Gujarat and forwarded to the Commissioner of State Tax, State of Gujarat.

VA Comments

- i. One of the major takeaways from this judgement is that the Court although upholding the powers of arrest with the Commissioner, takes cognizance of the harassment and hardships the assessee or the business of the assessee may have to face. To tackle such menace, the Court strongly opined that GST department must prescribe a standardized format for arrest memo which must contain gist of the offence alleged and not merely state that person arrested and produced has committed offences under Sec. 132 of the CSGT Act.
- ii. The Court casts duty upon on the Magistrate to check that an arrest memo has been properly prepared and where the same is not done, the magistrate must decline production of arrested person.
- iii. The term of 'reasons to believe' is not an inclusive definition and thereby, maybe be misused and misinterpreted by the Authorities at their level, considering the justification of such 'reasons to belief' comes at a later stage.
- iv. The judgment fails to provide any recourse where the authorized officer may have acted in bad faith, failed to justify his 'reasons to belief' resulting in harassment and/or hardship to the assessee and/or his business. Though the judgment seems to be balanced on paper, it is important to see whether the same is duly implemented.

For any further information/ clarification, please feel free to write to:

- Mr. Shammi Kapoor, Partner shammi@vaishlaw.com
- Ms. Kritika Kapoor, Junior Associate kritika@vaishlaw.com

DISCLAIMER

The material contained in this publication is solely for information and general guidance and not for advertising or soliciting. The information provided does not constitute professional advice that may be required before acting on any matter. While every care has been taken in the preparation of this publication to ensure its accuracy, Vaish Associates Advocates neither assumes responsibility for any errors, which despite all precautions, may be found herein nor accepts any liability, and disclaims all responsibility, for any kind of loss or damage of any kind arising on account of anyone acting/ refraining to act by placing reliance upon the information contained in this publication.