

## **ARREST UNDER GST**

*Shree Pawar\**

### **ABSTRACT**

*The implementation of the Goods and Services Tax (GST) in India in 2017 marked a transformative step in the country's indirect taxation regime. Among its many provisions, the power to arrest under the GST law particularly under Sections 69 and 132 of the CGST Act has emerged as both a necessary enforcement tool and a source of concern for potential misuse. This research paper seeks to demystify the legal framework surrounding arrests under GST by examining statutory provisions, judicial interpretations, and administrative guidelines. It begins by unpacking the meaning of "reason to believe" as a precondition for arrest and explores how courts have interpreted this standard to prevent arbitrary action. The study also highlights the constitutional mandate to communicate the grounds of arrest in writing, following landmark rulings by the Supreme Court and High Courts. By engaging with recent case law, statutory interpretation, and instructions issued by GST authorities, this study this paper provides a balanced perspective on the evolving jurisprudence. The findings underscore the need to strike a fine balance between effective tax enforcement and the protection of individual rights.*

**Keywords:** GST, Arrest, Framework, Indirect Taxation, Reason to believe, Grounds of arrest.

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\* Student, 5<sup>th</sup> year B.A. LL.B., Maharashtra National Law University, Nagpur

## **INTRODUCTION**

The Goods and Services Tax (GST), implemented in India in July 2017, marked a significant shift in the country's indirect tax regime, aiming to streamline taxation and improve compliance. In India, the taxation framework incorporates provisions for inspection, search, seizure, and arrest to effectively address cases involving tax evasion. The arrest provisions under GST are backed by stringent procedural safeguards. Arrests can only be made with prior authorisation from the Commissioner, and only in cases involving the commission of specified offences where the tax amount involved exceeds the prescribed threshold.

Court on various occasions has stated that power to arrest shall only be used in exceptional cases and shall not be used routinely. The arrest jurisprudence under GST has developed significantly over the years and various safeguards are also provided through cases. Also, the GST investigation wing had issued a guideline for arrest and bail in relation to offences punishable under the CGST act through instruction No. 02/2022-23 which provides a safeguard and protects the rights of the accused.<sup>1</sup> Although the power to arrest similar to the police officers has been given the GST officers and procedure under CrPC applies to arrest in GST cases but they are not to be considered as police officers. This project aims to provide a comprehensive analysis of the legal provisions, procedural requirements, judicial interpretations, and challenges associated with arrest under the GST regime.

In the recent case of *Radhika Aggarwal*<sup>2</sup>, the Supreme Court, while referring to its earlier judgment in *Arvind Kejriwal v. Directorate of Enforcement*<sup>3</sup>, laid down critical procedural safeguards that must be adhered to during arrests under the Customs Act and the Goods and Services Tax (GST) Act. It held that officers must have clear, admissible evidence for their "reasons to believe," and must inform the accused of the arrest grounds in writing but in exceptional circumstances it can keep redaction for justifiable reasons. The Court also mentioned that the nature of the offence must be properly classified, monetary thresholds must be followed, and authorities must consider all evidence including that which may favour the accused. Most importantly, arrests must be fair and proportionate, not arbitrary.

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<sup>1</sup> GST Council, Instruction No. 02/2022-23, GST- Investigation Wing

<sup>2</sup> 2025 SCC OnLine SC 449

<sup>3</sup> [2024] 164 taxmann.com 318 (SC)

## **RESEARCH QUESTION**

1. How have Indian courts interpreted the term “reason to believe” under Section 69(1) of the CGST Act, and what safeguards have been developed to prevent its misuse?
2. Is prior assessment of tax liability a legal prerequisite before exercising the power of arrest under Section 132 of the CGST Act?
3. To what extent does the constitutional mandate under Article 22(1) apply to arrests under tax laws, especially with regard to the communication of arrest grounds?
4. Can tax professionals such as Chartered Accountants or Advocates be held criminally liable or arrested for a client’s GST violations without direct evidence of involvement?

## **STATUTORY PROVISIONS GOVERNING ARREST UNDER GST**

The power to arrest and the penal consequences of certain offences are governed primarily by Section 132 and Section 69 of the Central Goods and Services Tax (CGST) Act, 2017.

### **Section 132: Classification of Offences and Punishments**

Section 132 lays down a detailed list of offences and prescribes punishments based on the gravity of the offence and the quantum of tax involved. Some of the key offences include such as Issuing fake invoices, supplying goods without invoice, wrongfully availing ITC, falsifying records.

The punishment varies based on the amount involved. If the amount is more than ₹500 lakhs then Imprisonment up to 5 years and fine the offence is cognizable and non-bailable.<sup>4</sup> From ₹200 lakhs to ₹500 lakhs then Imprisonment up to 3 years and fine, the offence is Bailable and Non-cognizable.<sup>5</sup> From ₹100 lakhs to ₹200 lakhs then Imprisonment up to 1 year and fine.<sup>6</sup> For certain specified offences (like falsifying records, obstruction, or tampering) the punishment is imprisonment up to 6 months, regardless of tax amount.<sup>7</sup>

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<sup>4</sup> Central Goods and Service Tax Act, 2017, §132 (1) (i), No.12, Acts of Parliament, 2017 (India)

<sup>5</sup> Central Goods and Service Tax Act, 2017, §132 (1) (ii), No.12, Acts of Parliament, 2017 (India)

<sup>6</sup> Central Goods and Service Tax Act, 2017, §132 (1) (iii), No.12, Acts of Parliament, 2017 (India)

<sup>7</sup> Central Goods and Service Tax Act, 2017, §132 (1) (iv), No.12, Acts of Parliament, 2017 (India).

**Section 69: Power and Procedure for Arrest**

Section 69 empowers the Commissioner to authorize arrests for offences under Section 132 based on “reasons to believe.” The arrest can be made through a written order. If the offence is cognizable and non-bailable, the person must be informed of the grounds of arrest and produced before a Magistrate within 24 hours.<sup>8</sup> For non-cognizable and bailable offences, the person may be released on bail by the Deputy or Assistant Commissioner. These officers exercise powers similar to a police officer under the CrPC.<sup>9</sup>

**APPLICABILITY OF CRPC PROVISIONS TO ARRESTS UNDER THE CGST ACT**

The main issue being discussed is whether the GST law, specifically the CGST Act, must follow the arrest procedures laid out in the Criminal Procedure Code (CrPC). While it is clear that the Constitution of India would always prevail, the relationship between the CGST Act and CrPC in matters of arrest has been debated many times.

Before GST came into force, older laws like the Central Excise Act had clear provisions that stated any arrest must follow the rules mentioned in the CrPC.<sup>10</sup> Courts had also ruled that even in tax cases, any arrest must comply with both the CrPC and the Constitution to ensure basic rights and safeguards are respected. However, under the CGST Act, particularly Section 69(1), there is no mention that the CrPC must be followed before making an arrest. The law only says that once the person is arrested, then the CrPC will apply for further steps. This shows that lawmakers may have deliberately avoided including CrPC rules for the stage before arrest.

Still, under general legal principles, when a special law like the CGST Act does not say anything about a certain issue (like arrest procedure), the general law (CrPC) can still apply to fill in the gaps.<sup>11</sup> So even though the CGST Act doesn't mention CrPC before arrest, the protections under CrPC may still be applicable unless specifically excluded. On the other hand, there is also a principle that if there is a conflict between two laws a general law and a special law then the special law will prevail.<sup>12</sup> The CGST Act is a special law made specifically to

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<sup>8</sup> Central Goods and Service Tax Act, 2017, § 69 (2), No.12, Acts of Parliament, 2017 (India).

<sup>9</sup> Central Goods and Service Tax Act, 2017, § 69 (3), No.12, Acts of Parliament, 2017 (India).

<sup>10</sup> The Finance Act, 1994, § 91, No. 32, Acts of Parliament, 1994 (India)

<sup>11</sup> Tejram Nagrachi v. State of Chhattisgarh, SCC OnLine Chh 24 (2019)

<sup>12</sup> LIC v. D.J. Bahadur, 1981 SCR (1)1083

regulate GST and related offences. So, if the CGST Act has its own method for arrest, and that method is different from the CrPC, then the CGST rules will apply, not CrPC.

Section 60-A of the CrPC itself recognizes this and allows arrest according to other special laws<sup>13</sup>. For example, under Section 41(2) of the CrPC, a person involved in a non-cognizable offence cannot be arrested without a warrant.<sup>14</sup> But under Section 69(1) of the CGST Act, a person can be arrested for a non-cognizable offence without a warrant. In such cases, the CGST Act would override the CrPC. While CrPC principles may apply when the CGST Act is silent, if there is a direct conflict between the two laws, the specific provisions of the CGST Act will take priority.<sup>15</sup>

### **“REASON TO BELIEVE” UNDER SECTION 69(1) OF THE CGST ACT: JUDICIAL INTERPRETATION AND SAFEGUARDS**

According to Section 26 of the Indian Penal Code “A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.”<sup>16</sup> As mentioned under Section 69(1) there shall be a reason to believe that person has committed an offence before making an arrest. This is a sort of protection granted to person being arrest to make sure that no one is arrested arbitrarily by misusing the powers given by the law.

Recently in the case of *Radhika Agarwal* the court observed that reasons must be based on objective facts of commission of offence.<sup>17</sup> In the case of *Tata Chemicals Ltd. v. Commissioner of Customs*, the Supreme Court held that expressions such as “*deems it necessary*” or “*reason to believe*” cannot be equated with the subjective satisfaction of the officer. The power under such provisions must be exercised within the bounds of law and is subject to judicial review. The Court stated that such powers must conform to the safeguards enshrined in Articles 21 and 22 of the Constitution of India, which protect personal liberty and due process in matters of arrest.<sup>18</sup>

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<sup>13</sup> The Code of Criminal Procedure, 1973, § 60-A, No. 2, Acts of Parliament, 1974 (India)

<sup>14</sup> The Code of Criminal Procedure, 1973, § 41(2), No. 2, Acts of Parliament, 1974 (India)

<sup>15</sup> Vidhi. G & V. Agarwal, Safeguards Against Arrest and The GST Law, The Journal of Indian Law and Society, Vol. 9 (2018)

<sup>16</sup> Indian Penal Code, 1860, §26, No. 45, Acts of Parliament, 1860 (India)

<sup>17</sup> *Id.* At 02

<sup>18</sup> [2015] 58 taxmann.com 126/52 GST 94 (SC)

This decision was further strengthened by the Gujarat High Court in *Vimal Yashwantgiri Goswami v. State of Gujarat*, where the Court held that “*reason to believe*” must involve an objective determination based on intelligence, care, and deliberation, and need not be based on conclusive proof. Even indicative or persuasive material can suffice to justify an arrest, as long as it is credible and reasonable.<sup>19</sup> Belief must be of an *honest and reasonable person*, founded on reasonable grounds. Mere suspicion, gossip, rumour, or guesswork cannot justify an arrest or reassessment.<sup>20</sup> The Dehi high court in the case of *MakeMyTrip (India) Pvt. Ltd. v. Union of India* further clarified that there shall be a clear reason to believe backed by evidence that offence under Section 132 has occurred. The benefit of doubt must go to the assessee, and material evidence is essential to justify any arrest.<sup>21</sup>

In *Sheth Brothers v. JCIT*, the High Court of Gujarat laid down a detailed framework outlining the requirements for a valid “reason to believe.” The Court held that such belief must be founded on tangible material, and not on mere assumptions or presumptions. It accentuated that the circumstances justifying the belief must actually exist and cannot be speculative. Moreover, the belief must be genuine and honest, free from suspicion or conjecture. There must also be a direct nexus between the material available and the belief formed by the officer. Importantly, the Court specifically stressed on the necessity of a clear and demonstrable application of mind by the officer concerned in forming such belief.<sup>22</sup> Giving additional protection with regards to arrest under GST the Guwahati high court recently observed that the commissioner shall specify *necessity of arrest* along with reason to believe that assessee committed the offence.<sup>23</sup>

While courts have clarified that “reason to believe” must be based on credible material, in practice, the subjective satisfaction of officers still risks misuse. There is a gap between judicial expectation and administrative implementation. A uniform checklist or threshold criteria like nature of evidence, risk of flight, or past conduct could help operationalize this requirement in a fairer manner.

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<sup>19</sup> [2019] 109 taxmann.com 340/76 GST 10 (Guj)(Mag.)

<sup>20</sup> *Desai Brothers v. DCIT* [1993] 204 ITR 121 (Guj)

<sup>21</sup> 2016 SCC OnLine Del 4951

<sup>22</sup> [2001] 251 ITR 270 (Guj)

<sup>23</sup> *Dharmendra Agarwal v. The Union Of India* WP(C)/6963/2024

## **GROUND OF ARREST**

The mandate to inform an arrested individual of the *grounds of arrest* is a constitutional guarantee under Article 22(1) of the Indian Constitution. While this principle has long been applied in conventional criminal law, its application in the realm of taxation laws particularly the CGST Act, 2017 had been inconsistent, leading to concerns over arbitrary arrests by tax authorities. That position has now been firmly addressed by judicial and administrative clarifications.<sup>24</sup>

Recently, the Delhi High Court, in *Kshitij Ghildiyal v. Director General of GST Intelligence, Delhi* held that the grounds of arrest must be communicated in writing to the person being arrested under the CGST Act. The Court stated that oral communication or mere reference in a remand application does not suffice.<sup>25</sup> In arriving at this conclusion, the Delhi High Court relied on recent Supreme Court judgments, especially *Pankaj Bansal v. Union of India*, wherein the court categorically held that written communication of arrest grounds is essential.<sup>26</sup>

The Supreme Court in *Prabir Purkayastha* distinguished between “reasons for arrest” and “grounds of arrest” and observed that reasons for arrest as typically found in arrest memos are general in nature, such as preventing tampering with evidence or ensuring proper investigation. However, grounds of arrest are specific, factual details justifying the arrest of the particular individual. They must be communicated in writing to the arrested person, allowing them to understand the allegations, oppose custodial remand, or apply for bail effectively.<sup>27</sup>

Following the *Kshitij Ghildiyal* decision, the Central Board of Indirect Taxes and Customs (CBIC) issued a clarification through Instruction No. 02/2022-23 GST (Investigation), amended on 13 January 2025, which reads as follows:

*“The grounds of arrest must be explained to the arrested person and also furnished to him in writing as an Annexure to the Arrest Memo. Acknowledgement of the same should be taken from the arrested person at the time of service of the Arrest Memo.”*<sup>28</sup>

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<sup>24</sup> Dr. Nipun and Abhishek, “Mandate of ‘Grounds of Arrest’ now in GST too!!”, [2025] 170 taxmann.com 781 (Article)

<sup>25</sup> 2024 SCC OnLine Del 8949

<sup>26</sup> 2023 SCC OnLine SC 1244

<sup>27</sup> [2024] 6 S.C.R. 666

<sup>28</sup> Instruction No. 01/2025-GST

This instruction now strengthens the rights of the accused person under GST. furnishing written “grounds of arrest” is no longer just a requirement in laws like PMLA or UAPA it’s now the standard in GST as well. This shift toward mandatory written grounds is not just procedural it’s essential to upholding natural justice and enabling fair access to bail. In absence of written grounds, arrested persons are left unable to challenge the arrest or respond meaningfully to remand applications. This development imposes a duty of care on officers, which must be backed by proper training and accountability mechanisms.

### **ARREST BEFORE ASSESSMENT UNDER GST**

One of the most discussed areas under GST law is that whether a formal assessment of tax liability is a necessary precondition before the initiation of arrest proceedings under Section 132 of the CGST Act, 2017. Various High Courts across India have interpreted this issue differently

#### **Pro Assessment view**

Several decisions have taken the view that assessment must precede arrest. In *Jayachandran Alloys Pvt. Ltd. v. Superintendent of GST*, the Madras High Court ruled that recovery and prosecution under GST laws should follow only after the determination of tax liability under Sections 73 or 74. The Court emphasized that the use of the word “commits” in Section 132 indicates that the commission of an offence can only be concluded once the liability has been properly adjudicated. The Court warned against putting the “cart before the horse” by arresting individuals without assessing their actual tax dues.<sup>29</sup>

A similar view was upheld by the *Bombay High Court in Cleartrip Pvt. Ltd. v. Union of India* where it held that arrest under the Finance Act could only occur after the investigation had been completed and prosecution was launched. The Court strictly opposed any form of coercive recovery before issuance of a show-cause notice and a reasoned adjudication.<sup>30</sup> The Delhi High Court, in *MakeMyTrip (India) Pvt. Ltd. v. Union of India*, also came down heavily on the premature actions of enforcement officers, stating “We strongly condemn the high-handed action of the DRI officers purporting to collect the amount even before reassessment.”<sup>31</sup>

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<sup>29</sup> 2019 SCC OnLine Mad 31224

<sup>30</sup> 2016 (42) STR 948 (Bom.)

<sup>31</sup> *Id.* At 05



### Pro Arrest View

On the other hand, several courts have taken a different approach. In *P.V. Ramana Reddy v. Union of India*, the Telangana High Court held that assessment is not a precondition for arrest where the offence involves issuing fake invoices without actual supply of goods or services. The Court justified that such acts fall squarely under Section 132(1)(b) and (c) and that arrests could be made based on credible documentary evidence, even before adjudication.<sup>32</sup>

Following the decision of Telangana High court the Gujarat High Court in *Vimal Yashwantgiri Goswami v. State of Gujarat*, rejected the argument that prosecution must wait for tax assessment. The Court held that “The list of offences under Section 132(1) have no co-relation to assessment. Prosecutions for these offences do not depend upon the completion of assessment.”<sup>33</sup>

Finally, the confusion regarding assessment before arrest was settled In 2025, the Supreme Court of India provided much-needed clarity in *Radhika Agarwal* the apex court stated that “In some cases, even without a formal order of assessment, if the department is certain that the amount of tax evaded constitutes an offence, the Commissioner may authorise arrest after recording his ‘reasons to believe’ based on material and evidence.”<sup>34</sup> The crux of the debate is whether arrest should be reactive or pre-emptive. While early arrest may prevent large-scale evasion or flight, it risks criminalizing suspicion before adjudication. The Supreme Court in *Radhika Agarwal* took a middle path by allowing pre-assessment arrest but requiring strong material evidence.

### ANTICIPATORY BAIL UNDER GST

The issue of whether anticipatory bail can be granted in cases under the CGST Act, 2017, particularly when a person is summoned or arrested under Section 69, without a formal FIR has been interpreted differently by the high courts across the country.

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<sup>32</sup> [2019] 104 taxmann.com 407 (Telangana)

<sup>33</sup> [2020] 121 taxmann.com 3 (Gujarat)

<sup>34</sup> *Id.* At 02

**Earlier View: No Anticipatory Bail Without FIR**

In *P.V. Ramana Reddy v. Union of India*, the Telangana High Court held that Section 438 of the CrPC cannot be invoked where arrest is made under Section 69 of the CGST Act. The reasoning was that since no FIR is registered, and arrest is made before a prosecution is launched, such action does not amount to a “criminal proceeding.” As a result, the court stated that anticipatory bail is not maintainable under these circumstances.

This interpretation was accepted by the Supreme Court in *State of Gujarat v. Choodamani Parmeshwaran Iyer*, where it was held that if a person is summoned under Section 69 for the purpose of recording a statement, and no FIR is filed, then Section 438 CrPC does not apply. The only remedy, the Court said, was to approach the High Court under Article 226 of the Constitution for relief.<sup>35</sup> Similarly, in *Bharat Bhushan v. Director General of GST Intelligence*, the Supreme Court cancelled anticipatory bail granted by the Sessions Court, citing the *Choodamani* precedent. However, the petitioner was granted limited protection for six weeks to explore constitutional remedies under Article 226.<sup>36</sup>

**The Safeguard: Gurbaksh Singh Sibbia v. State of Punjab**

The courts were ignorant of the facts that the supreme court has already (40 Years back) settled the position that registration of an FIR is not a prerequisite for filing an application for anticipatory bail under Section 438 CrPC. What matters is a genuine and reasonable apprehension of arrest. Court observed that anticipatory bail can be considered even before a formal complaint or FIR is filed, as long as the fear of arrest is not vague.<sup>37</sup>

**Radhika Agarwal v. Union of India: Supreme Court Restores Balance**

To settle the position regarding anticipatory bail the Supreme Court in *Radhika Agarwal*, overruled the decisions in *Choodamani* and *Bharat Bhushan*. The Court clarified that “The power to grant anticipatory bail arises when there is an apprehension of arrest. This power, vested in the courts under the Code, affirms the right to life and liberty under Article 21 of the Constitution.”<sup>38</sup>

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<sup>35</sup> [2023] 152 taxmann.com 522 (SC)

<sup>36</sup> [2024] 164 taxmann.com 435

<sup>37</sup> [1980] 3 S.C.R. 383

<sup>38</sup> *Id.* At 02

The Court reaffirmed the legal principles established in *Gurbaksh Singh Sibbia* and *Sushila Aggarwal v. State (NCT of Delhi)*, accenting that the registration of an FIR is not a prerequisite for invoking the jurisdiction of the court under Section 438 of the CrPC for anticipatory bail. What is crucial is whether the applicant has demonstrated a clear, factual, and reasonable apprehension of arrest. In such cases, the court must assess the surrounding facts, the gravity of the alleged offence, and the genuineness of the apprehension while considering the request for anticipatory bail. The Court also clarified that the powers of arrest conferred under Section 69 of the CGST Act do not override or exclude the right of an individual to seek anticipatory bail under Section 438 CrPC, thereby upholding the constitutional protection against arbitrary arrest.<sup>39</sup>

## **ARREST OF TAX PROFESSIONALS UNDER GST**

### ***Are Tax Professionals Liable to Arrest under GST Law?***

One of the key concerns that has emerged in recent times is whether tax professionals such as Chartered Accountants (CAs), GST Consultants, or legal advisors can be arrested under the Central Goods and Services Tax (CGST) Act for alleged involvement in a client's tax evasion. The short and well-supported answer, based on a harmonious interpretation of Sections 69 and 132 of the CGST Act, is no, unless they have themselves directly committed an offence under the Act.

### **Understanding the Legal Framework**

Section 69 uses the word “committed” the offence not “caused to commit” or “aided in committing.” Section 132, however, expands liability by including those who “cause to commit” or “benefit from” an offence, and even those who “abet” the commission of certain offences. However, the power to arrest under Section 69 is only with respect to the actual commission of the offence not for aiding, abetting, or causing it to be committed.

### **The Principle of Strict Construction**

The supreme court in various occasions has stated that penal provisions shall be interpreted strictly and shall not be given liberal interpretation to expand the scope. In the case of

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<sup>39</sup> (2020) 5 SCC 1

*Commissioner of Sales Tax v. Modi Sugar Mills*, the court has formulated the principle that “In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.”<sup>40</sup>

Again, the Supreme court while deciding the interpretation of penal provision in the case of *Tolaram Relumal v. State of Bombay*, has stated that “If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.”<sup>41</sup>

Therefore, unless a tax professional is shown to have directly committed an offence under Section 132, the Commissioner does not have the authority to order their arrest under Section 69. This legislative distinction protects professionals from being wrongly implicated solely on the basis of their client’s actions. The legislative choice to exclude the words “caused to commit” and “retained benefit” in the arrest provision must be respected.

### **Can CAs or Advocates Be Held Liable for Clients’ GST Offences?**

Recently the Punjab and Haryana High court was dealing with a case where advocate was summoned by the DGGI (Directorate General of GST Intelligence) in a case involving fraudulent GST refunds in the case of *Akhil Krishan Maggu And Another vs Deputy Director, Dggi* where the court held that If an Advocate or CA has only filed returns or assisted in a professional capacity without gaining any benefit or being part of the fraud, then they should not be arrested. Advocates or professionals cannot be arrested merely because they have represented or assisted someone. Arrest must be based on solid evidence.<sup>42</sup>

To bring a tax professional within the ambit of criminal liability, it must be proven that they not only assisted in the commission of the offence but also personally gained from it. Section

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<sup>40</sup> AIR 1961 SC 1047

<sup>41</sup> AIR 1954 SC 496

<sup>42</sup> (2019) 111 Taxmann.com 367

132 refers to those who “cause to commit” and “retain the benefits” of a GST offence. This implies a higher degree of involvement than merely providing professional services.

For example, a CA who charges a legitimate fee for filing GST returns cannot be said to have “retained the benefit” of a fraudulent transaction. Merely offering compliance services does not automatically translate to abetment or participation in an offence. Without clear, deliberate, and fraudulent intent, the threshold for invoking arrest provisions is not met. Hence, unless a tax professional has personally committed an offence, they cannot be arrested under Section 69. Any arrest without this threshold would be legally unsustainable and unconstitutional.<sup>43</sup>

## **CONCLUSION**

The power to arrest under the CGST Act, particularly under Section 69, carries significant implications for personal liberty and must be exercised with utmost care, responsibility, and transparency. Judicial interpretation over the years has made it clear that the phrase “reason to believe” is not a carte blanche for arbitrary action; it must be backed by credible material, a clear application of mind, and must withstand constitutional scrutiny. The courts have reiterated that procedural safeguards like the written communication of arrest grounds, adherence to Articles 21 and 22, and respect for due process are non-negotiable.

Recent rulings, especially the Supreme Court’s verdict in *Radhika Agarwal v. Union of India*, have brought much-needed clarity and balance to the GST enforcement regime. They affirm that anticipatory bail is indeed available under Section 438 CrPC even in the absence of an FIR, as long as there exists a genuine apprehension of arrest. This judgment aligns arrest powers with the larger constitutional framework, ensuring that enforcement does not override fundamental rights. Courts have drawn a clear distinction between genuine tax offenders and professionals like CAs or advocates who may merely assist clients in a professional capacity. Without direct evidence of fraudulent intent or benefit, such professionals cannot be made scapegoats for a client’s wrongdoing.

Therefore, while tax enforcement under GST is essential to preserve the integrity of the fiscal system, it must be guided by the rule of law, fairness, and proportionality. The jurisprudence

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<sup>43</sup> Milind Sharma, “Arrest of Tax Professionals By GST Department: A Legal Perspective” [2022] 140 taxmann.com 57 (Article)

evolving around Section 69 and 132 of the CGST Act reflects a growing commitment to constitutional values where state power is checked by judicial oversight, and individual rights are safeguarded from arbitrary intrusion. Striking this balance between enforcement and liberty is not just a legal necessity, but a democratic imperative.