

Scope and extent of the power to arrest

Vimal Yashwantgiri Goswami v. State of Gujarat¹

The Hon'ble High Court of Gujarat, in the present case, has examined the scope and extent of the powers of arrest under the Central Goods and Services Tax Act, 2017 ('the Act'), especially in light of section 132(5) (punishment in case of cognizable and non-bailable offences) of the Act.

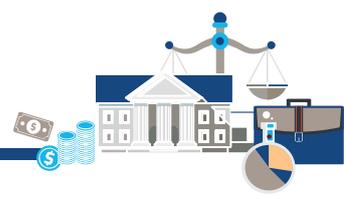
Facts of the case:

- That the petitioner is a proprietor of the proprietary concern, M/s Heugo Metal, engaged in the business of trading stainless steel and scrap.
- The respondent, being the commissioner of Goods and Services Tax ('GST'), along with other officials visited the residential premise of the petitioner on July 19, 2019 to conduct investigation of the business transactions, and sealed a drawer in which the petitioner stored his files, diary, mobile and laptop. The respondent asked the petitioner to appear before him along with the provisional balance sheet of his propriety concern.
- The respondent again visited the premise of the petitioner on July 23, 2019 to carry out the search and left without noting any reason in the sealing

memo. Thereafter, the respondent issued summons dated July 23, 2019 requiring the petitioner to appear before him on July 25, 2019 along with the provisional balance sheet and requisite documents.

- Against the summons, the petitioner through his advocate submitted a letter with the respondent asking for a week's time to appear before the respondent with the requisite documents. Upon submission of the letter by the petitioner, the respondent again visited the premise of the petitioner on July 26, 2019 and seized the purchase and sales files along with the mobile and laptop and removed the seal affixed by him earlier.
- On July 27, 2019, the respondent yet again issued summons to the petitioner asking the petitioner to appear before him on the same day, i.e., July 27, 2019. As the petitioner could not appear before the respondent on July 27, 2019, he again submitted a letter asking for a week's time to appear before the respondent through his advocate.
- The petitioner submitted that he had filed all the GST returns till May 2019 and the returns for the months of June and July 2019 were pending to be filed, for which he did not receive any notice from

¹ 2020-VIL-515-GUJ



the respondent under the relevant provisions of the Act.

- The petitioner, upon receiving the summons from the respondent requiring to appear before the respondent without any specific reason, apprehended that if he would appear before the respondent / approach the respondent in respect of the summons, respondent would arrest the petitioner. Hence, the petitioner filed the present appeal.

The Hon'ble High Court came to examine the following aspects:

- Can the power to arrest under section 69, read with section 132 of the Act be invoked by the commissioner without completion of the assessment and determination of liability payable under the Act?
- Whether the commissioner is obliged to record the reasons to believe and furnish such reasons to the person sought to be arrested?
- Would the provisions of the Code of Criminal Procedures, 1973 ('CrPC') apply to the proceedings of arrest under the Act?
- For the purpose of section 69(3) of the Act, could the officers of the GST department be considered to be a "police officer in charge of a police station", as defined under section 2(o) of the CrPC?
- Whether the constitutional safeguards laid down by the Supreme Court in the case of *Dr. D.K. Basu*² in context of the powers of the police officer under the CrPC and of the officers of Central Excise, Customs and Enforcement Directorate applicable to exercise of the power to arrest under section 69 of the Act in equal measure?

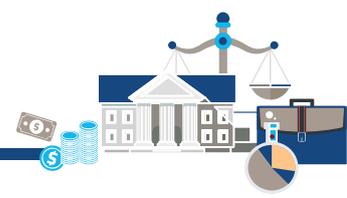
The decision of the Hon'ble High Court is as follows, with respect to each of the above points:

- It was held that once the commissioner has formed an opinion and has reason to believe based on cogent and credible information, that the offence as specified under section 132 of the Act is committed, an arrest under section 69 of the Act can be made on the authorisation of the Commissioner. For this

reason, the argument of the petitioner that an arrest cannot be made unless adjudication is not complete, and demand is not determined was rejected by the Hon'ble High Court.

- The reference of section 132 in section 69 of the Act is only for the purpose of indicating the nature of offences for which the commissioner can make an arrest or authorize an officer to make an arrest.
- Section 69(2) of the Act casts a duty upon the officer authorized to make an arrest, to inform such person being arrested of the grounds on which the arrest is being made for an offence, which is cognizable and non-bailable and to produce the arrested person before the magistrate within 24 hours. However, the officer is not obligated to record his reason to believe that the offence was committed by the arrested person.
- Section 69(3) of the Act does not equate the officers authorized to make an arrest under the Act to a police officer as defined under section 2(o) of the CrPC. Hence, the officer does not have any obligation in law to register a FIR against the person arrested in respect of an offence committed under sections 132 of the Act. It only implies that the powers as defined in the CrPC are also granted under the Act for the purpose of releasing the arrested person on bail or otherwise. Furthermore, the power to make an authorized arrest is statutory in character and should not be interfered with. Section 69 of the Act does not contemplate any magisterial intervention.
- The constitutional safeguards as laid out by the Supreme Court in *Dr. D.K. Basu's case* with respect to arrest and procedure to be followed therein will equally apply to the Act. While producing an arrested person under section 69 of the Act, the importance of valid, proper and exhaustive arrest memo should not be undermined. Every authorized officer under the Act carrying out arrest must be clear that the preparation of an arrest memo is mandatory. The arrest memo should be verified by the magistrate on production of the arrested person

² 1997 (1) SCC 416



Dhruva Comments:

This judgment is an addition to the kitty of judgements on arrest and related procedures for offences under the GST Law, which itself evidences the need for clarity regarding when an arrest can be made and the procedure to be followed therein.

The judgment is important for the guideline it provides with respect to the requirement for an arrest memo and the validation of the same by the Magistrate on production of the arrested person before the magistrate. The Court also strongly opined that GST department must prescribe a standardized format for the arrest memo which must contain a gist of the offence alleged and not merely state that person arrested and produced has committed offences under section 132 of the CGST Act.

Furthermore, the Hon'ble High Court has stressed on the words "**reason to believe**" and stated that the Commissioner's reason to believe that the person arrested has committed the specified offence must be backed by material proof and credible information and must not be based on an allegation of commission of such offence. However, "**reason to believe**" is not a defined term, which leaves room for the same being interpreted differently and legitimising the arrest made by Commissioners.

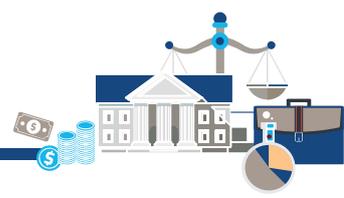
The aforesaid decision reiterates the views taken by the Courts time and again and also communicated vide circulars issued by CBIC, that powers to arrest must be exercised with utmost caution and that the powers should be exercised after careful consideration of the facts of each case. There should be a careful exercise of this power as arrests impinges on the personal liberty of an individual³. The reason to believe that a person has committed the specified offence which is rendering the person liable to arrest must be based on credible material which will stand the test of judicial scrutiny. The relevant facts should also ensure proper investigation and prevention of the possibility of tampering with evidence or intimidating or influencing witnesses. Arrests should not be made relating to cases of technical nature⁴. However, despite judicial precedents

and guidelines issued in the past, they are often violated.

We have recently seen a series of proposed amendments to be made under the Company law for decriminalize certain offences. It is important that a similar exercise is taken in the context of tax laws. Clear guidelines should be brought out, considering the increase in the number of arrests under the GST Law. Further, exceptions to arrest should be carved out clearly as part of the guidelines e.g. issues of technical nature, issues or transactions that do not result in any tax evasion or loss of revenue for the Government etc. This would be an important step towards improvement of India's ranking in the ease of doing business.

³ Circular No. 974/08/2013-CX dated 17th September 2013

⁴ Circular No. 201/11/2016-ST dated 30th September 2016





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