



Dimensions – 19th Edition

Judgments under GST:

1. Govind Enterprises v. State of U.P. and Ors.¹

Issues for Consideration	<ul style="list-style-type: none"> Where an offence of cheating is committed by the Petitioner, can a proceeding be drawn against him under the U.P. Goods and Services Tax Act, 2017 ('SGST Act, 2017') and not under the Indian Penal Code by taking recourse to the provisions of Code of Criminal Procedure? Whether First Information Report ('FIR') can be lodged against the Petitioner under the provisions of the Code of Criminal Procedure ('CrPC') for offences punishable under the Indian Penal Code ('IPC') in such situation?
Discussion & Judgment	<p>Discussion:</p> <ul style="list-style-type: none"> The investigation carried out by the department against the Petitioner revealed that the registration was obtained by submitting false documents, goods were purchased (inward supply) and passed to end users without generating outward supply bills and money was received in cash and was deposited the same in bank account which was not disclosed at the time of seeking registration. It was also alleged that the investigation suggests a large-scale economic fraud by the Petitioner. Based on the investigation conducted, the Department filed a FIR under section 420, 467, 468, 471, 34, 120-B of the IPC. The Petitioner challenged the FIR filed by the Department on the following grounds: <ul style="list-style-type: none"> - Lodging of the FIR is not legally sustainable since no case has been registered under the provisions of the SGST Act, 2017 or under the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and no demand has been raised. - The CGST Act, 2017 / SGST Act, 2017 is a complete code in itself as it contemplates or deals with all kinds of situations and offences relating to

¹ [2019] 6 TMI 55 (All HC) – The High Court of Judicature at Allahabad



registration of firms, tax evasion etc. and it prescribes a specific procedure for arrest and prosecution. Hence, lodging FIR for offences punishable under the IPC by taking recourse to the provisions of the CrPC is not legally justified.

- Reliance was placed on section 69 of SGST Act, 2017, to submit that the power to arrest can be exercised only in limited situations mentioned in section 132(1) of the SGST Act, 2017. It was argued that therefore first a proceeding has to be drawn under the provisions of the SGST Act, 2017 and only then arrest can be made after recording satisfaction. Hence, lodging of the FIR straightaway is not legally permissible.
- Alternatively, it was argued that even if FIR can be registered, there is no justification to effect arrest of the Petitioner pending investigation and since no demand has been raised by the tax authorities.
- The Revenue argued that there is no legal restriction placed on lodging of FIR and can be lodged even where proceedings could be undertaken for recovery of tax. Reliance was placed on the decision of the Hon'ble Supreme Court in *State of West Bengal v. Narayan K. Patodia* [2000 (4) SCC 447] and on the decision of Hon'ble Allahabad High Court in *Ashok Kumar v. State of U.P. and others* [2000 UPTC 916].
- The Revenue relied on section 131 of the SGST Act, 2017 to submit that the provisions of the SGST Act, 2017 / CGST Act, 2017 do not override the provisions of the IPC in any manner or prohibit the applicability of the provisions of the CrPC in respect of offences punishable under the IPC.

Judgment:

- The Hon'ble High Court referred to the provisions of section 26 of the General Clauses Act, 1897 which provides that if any offence or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. It was noticed that the provisions of section 69, 134 and 135 of the SGST Act, 2017 are applicable in respect of offences punishable under the SGST Act, 2017. There is no provision under the SGST Act, 2017, which overrides or expressly or impliedly repeals the provisions of the IPC. There is no bar in SGST Act, 2017 on lodging FIR for offences punishable under the IPC, rather section 131 of the SGST Act, 2017 impliedly saves applicability of the IPC.
- Section 132(4) of the SGST Act, 2017 renders all offences except specified under section 132(5) as non-cognizable and bailable for the limited purpose of the SGST Act, 2017 and not in respect of offences under the IPC. Thus, the impugned FIR is not liable to be quashed.
- The writ petition filed by the Petitioner was dismissed in view of the above reasons.

**Dhruva
Comments /
Observations**

- The judgment of the Hon'ble Allahabad High Court is in line with the decision of the Hon'ble Supreme Court in *State of Maharashtra and anr. v. Sayyed Hassan Sayeed Subhan and others* [CA No. 1195 of 2018] where the prosecution under IPC was



allowed for which a proceeding could also be drawn under the provisions of the Food Safety and Standards Act. The ruling held that there is no bar to conduct a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for an offence following doctrine of double jeopardy enshrined under Article 20(2) of Constitution of India.

- Recently, there has been a spree of litigation challenging power of arrest exercised by the tax department. The High Court of Karnataka in case of circular bill trading granted anticipatory bail, subject to certain conditions in case of *Mahendra Kumar Singhi v. The Commissioner of Commercial Taxes, Karnataka and Others* [2019-VIL-264-KAR].
- However, The Telangana High Court in a similar matter took a divergent view and choose not to grant relief against arrest. The SLP in the said matter was dismissed by the Supreme Court.
- The Supreme Court in a recent SLP filed in case of *Union of India v. Sapna Jain & Ors.* [SLP(CrI.) 4322-4324/2019 etc], has refrained from interfering with the Order passed by Bombay High Court granting pre-arrest bail in the matter of circular trading.
- Since divergent views are adopted by various High Courts, the Supreme Court shall constitute a three-member bench to clarify the position in law.

2. Shree Enterprises v. The Commercial Tax Officer²

Issue for Consideration

Whether an order for confiscation of goods / conveyances is tenable without issuance of penalty order?

Discussion & Judgment

Discussion:

- The Commercial Tax Officer ('CTO') intercepted the vehicle of the Petitioners carrying Areca nuts. Suspecting the genuineness of the tax invoice and the e-way bill shown by the driver, the CTO initiated an inquiry.
- The Petitioners contended that the CTO presumed the invoices were issued fraudulently without movement of goods and passed a confiscation order after issuing penalty notice without considering the objections filed by the petitioners.
- Further, no penalty order was passed in the instant case quantifying the amount of tax or penalty liable to be paid for release of the goods and vehicle prior to issuance of confiscation order. The Petitioners also contended that the CTO has detained the goods and vehicle illegally for more than a month and the said detention is in violation of the procedure prescribed by the Government.
- The High Court observed the following:
 - Reliance placed on the Circular dated December 31, 2018 issued by the GST Policy Wing, wherein it has been clarified that the consignor or consignee should be deemed to be the owner where the goods are accompanied by invoice or any other specified document;

² TS-396-HC-2019 (KAR)-NT - The High of Court of Karnataka



- The High Court also referred to Circular No. 41/15/2018-GST dated April 13, 2018 wherein the procedure for interception, detention, release and confiscation of the goods have been prescribed. The High Court noted that in cases where no discrepancies are found, the proper officer shall issue a release order. However, where the officer is of the opinion that the goods/ conveyance should be detained a notice should be issued specifying tax and penalty.
- It was noted that the notice under section 129(1)(b) of the CGST Act, 2017 was issued by the CTO to which the objections/ replies were filed by the Petitioner.
- Further, it is necessary to consider the objections filed and pass a speaking order quantifying tax and penalty and thereafter to release the goods subject to payment of tax and penalty or to confiscate the goods. Thus, the said order of confiscation cannot be said to be treated as an order quantifying penalty.
- The High Court also observed that the confiscation order directly without providing an opportunity to the owner of goods/ person in-charge of conveyance for payment of tax and penalty cannot be considered as a mistake, defect or omission within the ambit of section 160 of the CGST Act, 2017.

Judgment:

- The High Court quashed the order and restored the penalty notice, ordering the CTO to pass appropriate orders considering the objections filed by the Petitioner.

**Dhruva
Comments /
Observations**

It is a settled law that unless the tax and penalty is quantified, no confiscation order could be passed. The judgment is in conformity with the Circulars issued by the GST Department.

Press Release under GST:

3. Transition plan to the new GST return³

Background

- In its 31st meeting, GST Council decided to roll out new simplified GST return system consisting of one main return RET-01 along with annexures Form GST ANX-1 and Form GST ANX-2.
- In order to ease the transition, the Government has issued a transition plan highlighting the timelines for current returns and new returns.

**Functionality
and Timelines**

Month	Functionality	Remarks
May 2019	Offline Tool - The prototype is made available on the GSTN portal to give the look and feel of the tool to the users	During this period until September 2019, the taxpayer shall continue to file FORM GSTR - 3B and FORM GSTR - 1 and the new return functionalities shall be available only from a
July 2019	FORM GST ANX-1 - Uploading invoices on trial basis for familiarisation	
	FORM GST ANX-2 - Viewing and downloading the inward supply of invoices.	

³ Press release dated June 11, 2019 issued by Ministry of Finance, Government of India



	The user can also view the summary of inward supply invoices	familiarisation perspective
August 2019	Import their purchase register in the offline tool and match it with the downloaded inward supply invoices	
From October 2019 and onwards	FORM GST ANX-1 shall be made compulsory, thus replacing FORM GSTR - 1	<ul style="list-style-type: none"> • Small Taxpayer* – Quarterly FORM GST ANX – 1 to be uploaded for October to December 2019 in January 2020 • Large Taxpayer** – Monthly FORM GST ANX - 1 to be uploaded from October 2019
	FORM GST PMT-08 to be filed instead of FORM GSTR - 3B by small taxpayers	Small Taxpayers to file their FORM GST RET - 1 for the quarter October to December 2019 from January 20, 2020
	FORM GST ANX-2 can be viewed simultaneously during this period but no action shall be allowed on such FORM GST ANX-2	
For October and November 2019	FORM GSTR – 3B to be continued for large taxpayers	Large Taxpayer to file FORM GST RET – 1 for the tax period December 2019 on January 20, 2020
January 2020 onwards	All taxpayers shall be required to file FORM GST RET - 01 and FORM GSTR - 3B shall be completely phased out	

**Small taxpayer - Aggregate annual turnover in the previous financial year up to ₹5 Crore*

***Large taxpayer - Aggregate annual turnover in the previous financial year was more than ₹5 Crore*

**Dhruva
Comments /
Observations**

- The transition plan has provided breathing time to the industry to transition smoothly to new return formats from the current ones. This will help the industry in making required changes in their IT systems so that returns are filed smoothly under the new formats.



- However, given the challenges faced on the GST network, it will be interesting to see whether the GST network will work smoothly and without glitches with the new return formats.
- The Government is also intending to introduce e-invoicing under GST. It will also be interesting to see how this will be integrated with the new GST return system.



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