GST by Sudhir Halakhandi

ARREST PROVISIONS UNDER GST

GST is going to be introduced in our country from 1st. July 2017 and now it is a matter of Public discussion these days and it is natural also because Lakhs of Dealers from big to small are involved in this transition period where the whole Indirect system is replaced by a New system of Taxation – Goods and Service tax.

One cannot stop the change but resistance of change is a natural phenomena and it is natural state of Mind in which there are some substance of fear attached to the change. Some sensational topics will also add their own share of fear and anxiety in the minds of persons who are the part of change. These all aspects are also attached with the GST also but the fact is that now in India GST is going to be a reality. One of such topic which we are taking today is **"Arrest under GST"** which is very much in talk in various stake holders of GST. The reason is very simple arrest is after all "Arrest" and is very serious action.

Let us have a Look at this GST provision very carefully to know that how it will affect the GST dealers and in which situation and circumstances which one should keep in mind must be connected with "Evasion of Tax".

When can person be arrested under the provisions of Goods and Service Tax?

-If the Commissioner of CGST/SGST believes a person has committed an offence u/s 132, he can be arrested by any authorised CGST/SGST officer. In this matter the decision of the commissioner will only be there and the arresting officer will also be authorised by the commissioner.

The arrested person will be informed about the grounds of his arrest in writing. He will be produced before the magistrate within 24 hours in case of cognizable offence. In case of non cognisable offence he will be released on bail immediately after the arrest.

-What type of the offences u/s 132 where arrest provisions become applicable?

Offences u/s 132 where arrest provisions become applicable are:-

1. A person supplies any goods/services without any invoice or issues a false invoice with a intention to evade Tax.
2. He issues any invoice or bill without supply of goods/services in violation of the provisions of GST leading to wrongful availment or utilisation of input credit or refund of Tax.
3. avail input credit on the bills or invoices on which there will no supply of Goods and Services as mentioned in Para -2.
4. He collects any GST but does not submit it to the government within 3 months.

All these cases are related to evasion of Tax.

On reading section 132 with arrest provisions, it essentially stands that a person can be arrested only where the tax evasion is with respect to the offences mentioned are more than **200 lakhs rupees.**

One more point to be noted here that if a person is already convicted for an earlier occasion u/s 132 with reference to these 4 offences mentioned above then in case of his second offence the arrest provisions will be applicable on him without Rs.200 Lakhs monitory limit of evasion of Tax. The persons once convicted should take this provision of arrest very seriously.

<u>GST – COGNISABLE AND NON COGNISABLLE OFFENCE</u>

In GST the Cognizable offence means an offence related to taxable goods and services where the amount of Tax evasion, input credit or Refund wrongly taken is Rs. 5.00 Crores or More.

These are cognizable offence hence Non-bailable.

Other offences as mentioned above under GST related to Tax evasion, Input credit or Refund wrongly taken are cognizable offence and are bailable.

Now In GST when Cognizable and Non Cognizable both offences are there hence in Legal terms we should know what is the meaning of Cognizable offence and Non cognizable offence.

Cognizable offenses are those where the police can arrest a person without any arrest warrant. They are serious offences and crimes. Non-cognizable offenses are those, where a police officer cannot arrest a person without a warrant issued by competent authority. They are less serious offences and crimes.

WHO CAN MAKE A ARREST

Only commissioner can authorised an officer to arrest a person in situation mentioned above. All the field officers are not automatically empowered to take a decision in the matter of arrest and use the powers since the "arrest" itself is a very sensitive matter.

Which officers are required to assist CGST/SGST officers?

- The GST authorities empowered with the power of arrest may require the assistance and services of other Law enforcing and other agencies with respect to complete the task and for this purpose it is provided that all officers of –

Police
Railways
Customs
State/Central Government officers engaged in collection of GST
Officers collecting land revenue
Village officers

The Commissioner of CGST/SGST can also require any other class of officers to assist the CGST/SGST officers.

All the provisions of Indian penal code should be kept in Mind while authorising and using the powers of arrest under GST since we have already mentioned above that the matter is very sensitive. It should not be used as a routine affair. In this respect the provisions of Criminal Procedures, 1973 (2 of 1974) must be adhered to and in that case the arresting officer must have the knowledge of code of criminal procedure, 1973.

In the case of DK Basu vs. State of Bengal 1997(1) SCC 416 the Hon. Supreme court has laid down the guide Lines required to be followed in case of arrest and these all are also applicable to the Arrest under GST also. Let us have a look at some important guidelines here:-

The Arresting officers should bear accurate, clear and visible identification with them having their name and designation.
The arrest memo must be signed by one of the relative of the arrestee or in absence one of the respectable person of the locality and counter signed by the arrestee.
The arrestee person shall have the right to inform one of the relative or friend from the place where he is kept after arrest may be a police station, Lock up or a interrogation place
The arrestee should be subjected to Medical examination in every 48 hours during his detention.
The arrestee should be allowed to meet his Lawyer during the interrogation though not throughout the interrogation.
Copies of all Documents including the Memo of arrest should be sent to the Magistrate for his record.

WHY ARREST!!!!!!

It is purely based on the discretionary decision of the Commissioner but this power should be used very carefully. The power should be used after taking the following factors into consideration while taking the decisions:-

1. Proper investigation of the offence.
2. To prevent the person from absconding.
3. To prevent the possibility of tempering the evidence.
4. To prevent intimidating or influencing the witness or witnesses.

These are some of the factors which should be considered while making the decision to arrest a person.

CONCLUSION

The powers of arrest in GST are not new in any indirect tax system in India and we have such similar or not so similar type of provisions in central excise and the Service tax Laws but Trade and Industry always have apprehensions about misuse of these powers. GST is a new law and the taxpayers will not like these provisions at the initial stage of applicability of the GST.

Further, problem of interpretation, difference of opinion may mar the actual use of these provisions.

But is the fact that the lower Limit of Rs.200 Lakhs of Tax evasion amount will keep majority of dealers out of the scope of these provisions.

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