

फा. सं. GST/INV/Instructions/2021-22

वित्त मंत्रालय

राजस्व विभाग

केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड

GST-Investigation Wing

10वां माला, टावर-2,

जीवन भारती बिल्डिंग

कनाट सर्कस, नई दिल्ली-110001.

दिनांक 17 अगस्त, 2022

INSTRUCTION No. 02/2022-23 [GST – Investigation]

SUBJECT: GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017 – REG.

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

2. Board has examined the above-mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws i.e. Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.

3. Conditions precedent to arrest:

3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the

Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of sub-section (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of *mens rea* / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while

ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.

4. Procedure for arrest

4.1 Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) read with section 69(3) of CGST Act relating to arrest and the procedure thereof, must be adhered to. It is, therefore, advised that the Pr. Commissioner/Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

4.2 The arrest memo must be in compliance with the directions of H'ble Supreme Court in the case of D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 (see paragraph 35). Format of arrest memo has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019. The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition,

4.2.1 The grounds of arrest must be explained to the arrested person and this fact must be noted in the arrest memo;

4.2.2 A nominated or authorized person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;

4.2.3 The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment.

4.3 A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event when there are several arrests in a single case.

4.4 Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Any lapse in this regard will be viewed seriously.

4.5 Further there are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:

4.5.1 A woman should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure, 1973.

4.5.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female, then such an examination shall be made only by or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

4.5.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

4.5.4 Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.

5. Post arrest formalities

5.1 The procedure is separately outlined for the different categories of offences, as listed in sub-section (4) and (5) of Section 132 of the CGST Act, 2017, as amended:

5.1.1.1 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017, the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.

5.1.1.2 The conditions will relate to, *inter alia*, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, *inter-alia*, on the amount of tax involved. It has to be ensured that the amount of Bail bond /Surety should not be excessive and should be commensurate with the financial status of the arrested person.

5.1.1.3 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. If necessary, the arrested person may be handed over

to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

5.1.2 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

5.2 Formats of the relevant documentation i.e. Bail Bond in the Code of Criminal Procedure, 1973 (2 of 1974) and the Challan for handing over to the police should be followed.

5.3 After arrest of the accused, efforts should be made to file prosecution complaint under Section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within a definite time frame.

5.4 Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc. The money/instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/ documents received as surety are kept valid till the bail is discharged.

6. Reports to be sent

6.1 Pr. Director-General (DGGI)/ Pr. Chief Commissioner(s)/Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in **Annexure-I**. To maintain an all India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, hereby prescribed in **Annexure-II**, by the 5th of the succeeding month. The monthly reports received from the formations shall

be compiled by DGGI, Hqrs. and a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 10th of every month.

6.2 Further, all such reports shall be sent only by e-mail and the practice of sending hard copies to the Board should be stopped with immediate effect.

7. The field formations are hereby directed to circulate these guidelines/instructions to all the formations under their charge for strict compliance. Difficulties, if any, in implementation of the aforesaid guidelines/instructions may be brought to the notice of the Board.

8. Receipt of this Instruction may please be acknowledged. Hindi version will follow.



(Vijay Mohan Jain)

Commissioner (GST-Inv.), CBIC

Tel. No.: 011-21400623

Email id: gstinvcbic@gov.in

Encl.: As Above

To

1. Principal Director General [DGGI], New Delhi/All DGs (SNU), DGGI.
2. Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, All Zones.
3. Webmaster, CBIC (www.cbic.gov.in) for uploading on the website of CBIC under Instructions.

ANNEXURE-I

(To Board's Instruction No. 02/2022-23)

F. No.

Date:

From: The Principal Chief Commissioner/ Chief Commissioner,
CGST Zone _____/Pr. Director General, DGGI

To,

The Member (Compliance Management)
CBIC

Intimation of Arrest

(In terms of Para 6 of Board's Instruction No. 02/2022-23 dated 17.08.2022)

1. Date of Arrest :
2. Time of arrest :
3. Place of arrest with address :
4. Name of the person :
5. Date of birth :
6. S/o, D/o, W/o :
7. Identification document type :
8. Identification document No. :
9. Nationality : Indian / Others (if others, specify)
10. Offence committed :
11. Details of offence :
(not more than 50 words)
12. Whether any seizure made : Yes/ No
13. If yes, specify :

Signature

Name of the Pr. Director General/
Pr. Chief Commissioner/Chief Commissioner

Copy to:

Member (In-charge of the Zone)

ANNEXURE-II

(To Board's Instruction No. 02/2022-23)

Monthly Report on Person(s) Arrested in the Zone

| Sr. No. | CGST Zone | Name of the Arrested person | Age | Date of Arrest | Status of Person [Proprietor, Partner, Director, Professional (Lawyer/ Chartered Accountant/ Company Secretary, etc.)] | Amount of tax evaded (Rs. Crore) | Name of the entity involved | GSTIN of the entity involved | Brief description of role played by the Arrested Person |
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