

NOTICES, SUMMONS & ARREST UNDER GST

GHIYA LEGAL

PANKAJ GHIYA ADV.
PRIYAMVADA JOSHI ADV.

CA RIBHAV GHIYA
DEEPAK GARG ADV.

Ph: 9829013626

E-mail: pankaj.ghiya@hotmail.com

NOTICES, SUMMONS & ARREST





RELEVANT PROVISIONS

- ▶ CGST Act, 2017 – Sec. 67 to 74
- ▶ CGST Rules, 2017 – Rule 139 to 141
- ▶ Relevant Forms – FORM GST INS 1 – FORM GST INS 5

INTENTION OF LEGISLATURE

Safeguard
interest of
Government

Check Circular
Trading

Check Tax
Evasion

REASONS OF SEARCH AND INSPECTION

CLASSIFICATION

COMPLAINTS

INTELLIGENCE

ADVERSE ADVANCE
RULINGS

BOGUS BILLS

MASTERMIND
CHAIN

DISCREPANCY
IN DATA OF
BILLS

GENUINE
TRANSACTION BUT
VENDOR DOUBTFUL

COMMON REASONS FOR SEARCH



False ITC
through Bogus
Bills

Mismatch of
Invoices

Non-payment of
GST

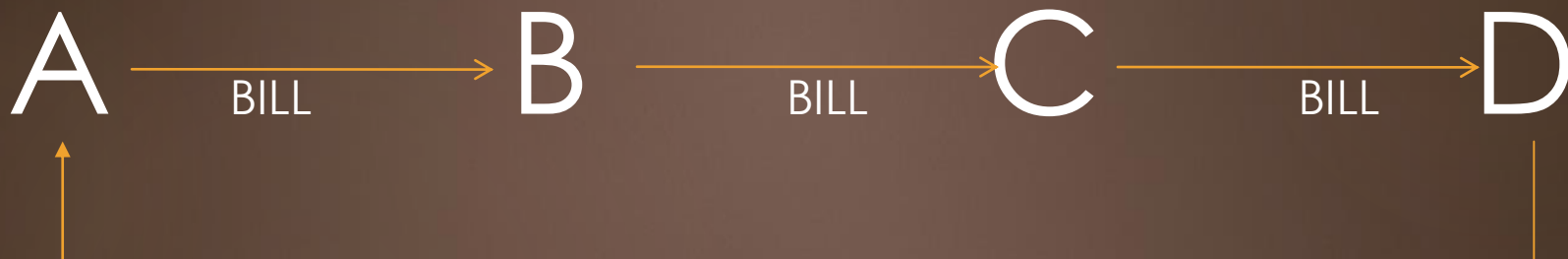
Refund claim of
Exports w/o
payment of IGST

Excess Claim of
ITC

Issues relating to
RCM

BOGUS BILLS / CIRCULAR TRADING

REVERSAL OF CREDIT / TAX PAYMENT



DUMMY FIRM

CIRCULAR TRADING

BILLS SOLD

Consequences



Consequences

FORCED ADMISSION IN STATEMENTS

PRESSURE TO PAY TAX AND INTEREST



**REVERSAL OF ITC IN CASE OF EXCESS CLAIM
OF INPUT TAX CREDIT**

**EFFECTS OF INCOMPLETE ACCOUNTING OR
LOOSE PAPERS**

WAY AHEAD

- **MAINTAIN CONSISTENCY IN STATEMENTS.**
- **ADMISSION SHOULD BE MADE WITH CAUTION.**
- **RETRACTION AT THE EARLIEST, IF REQUIRED.**

WAYAHEAD

- ▶ Reply to Summons and Notices be drafted carefully and precisely.
- ▶ Utmost care to be taken while giving statements during investigation.
- ▶ In case of arrest, the first step should be to file a bail Application
- ▶ In case of rejection, bail application should be moved before the Hon'ble High Court u/s. 439 of CrPC.

Inspection (Sec. 67)

- ▶ Conducted by Officer not below the rank of **Joint Commissioner** or any officer authorized by him in writing.
- ▶ Can inspect place of business of:
 - ▶ Taxable person; or
 - ▶ Transporter; or
 - ▶ Operator or Owner of warehouse;
 - ▶ Any other place if they **deem fit**

Inspection (Sec. 67)

If they have REASONS TO BELIEVE that person has done any of the following acts:

Suppression of transaction
of supply

Suppression of transaction
of Stock in hand

Warehouse keeper kept
goods which have
escaped tax

Excess claim of ITC

Contravention of any of
the provisions of the Act

REASONS TO BELIEVE: “A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.” (Sec. 26 – Indian Evidence Act)

Search (Sec. 67)

- ▶ Stricter than inspection.
- ▶ Post inspection, if Joint Commissioner / Superior officer is satisfied that:
 - ▶ There are goods liable to be confiscated; or
 - ▶ There are any documents or books or things which will be useful during investigation;
 - ▶ Hidden somewhere

Then he can either on his own or through authorized officer search and seize the goods / documents / things. In case of Seizure, receipt of goods seized shall be given to registered person.

Officer authorized is conferred with Powers of a Police Officer u/s. 100 of CRPC.

Norms of Search Operations (S. 67)

- ▶ Possession of Search Warrant.
- ▶ Officers must show their Identity before entering premises.
- ▶ Presence of 2 witnesses. Signatures must be obtained.
- ▶ Panchnama to be prepared, containing:
 - ▶ List of documents seized;
 - ▶ List of articles seized
- ▶ Original to be signed by the person present or the owner and the witnesses present.
- ▶ Copy must also be given. Warrant to be returned once search is concluded.
- ▶ Seized goods / documents not to be retained beyond the necessary period of examination.

Summons (Sec. 70)

Proper Officer –
SUMMONS any person

- ▶ To give evidence; or
- ▶ Produce documents; or
- ▶ Any other thing required in Inquiry.



The provisions of Code of Civil Procedure shall be applicable for issuance of Summons.

Summons (Sec. 70)

- ▶ Person summoned is legally bound to attend either in person or through Authorized representative, as per the officer.
- ▶ Exemption under Section 132, 133 of Code of Civil Procedure, 1908 applies to requisitions for attendance under CGST / SGST.

S. 132: Women who, according to customs and manners in the country, ought not to be compelled to appear in public SHALL be exempt from personal appearance in court.

S.133: Provides exemption to certain dignitaries like President of India, Vice President, etc. from appearance in Court.

Access to Business Premises (S. 71)

- ▶ Authorized Officer can inspect Books of Accounts, documents, computers, Computer software, computer programmes and other things;
- ▶ To carry out audit / verification in the interest of revenue.
- ▶ On demand, person shall make available any of the following:
 - ▶ Records prepared by Registered person
 - ▶ Trial Balance
 - ▶ Statement of Annual Financial Accounts
 - ▶ Cost Audit report
 - ▶ Income-tax Audit report
 - ▶ Other documents

JUDICIAL PROCEEDING

- ▶ The proceedings conducted are deemed “Judicial Proceedings” within the meaning of Section 193 & 228 of Indian Penal Code.
- ▶ Sec. 2(i) of Criminal Procedure Code:
 - ▶ “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath;
- ▶ Proceedings are Quasi-judicial in nature and statement given before proper officer have evidentiary value.

JUDICIAL PROCEEDING

In case of

S. 193: FALSE EVIDENCE

OR

**S. 228: INSULT /
INTERRUPTION OF PUBLIC
SERVANT DURING
PROCEEDINGS**

OFFENCE PUNISHABLE WITH FINE
OR IMPRISONMENT OR BOTH

OTHER RELEVANT PROVISIONS OF IPC

S. 172:

**Absconding to
avoid service of
summons or
other
proceeding**

S. 175:

**Omission to
produce
document to
public servant
by person
legally bound
to produce it**

S. 174:

**Non-
attendance in
obedience to
an order from
public servant**

OFFENCE PUNISHABLE WITH FINE OR IMPRISONMENT OR BOTH

GUIDELINES BY CBIC

- ▶ Summons to be issued as last resort, when Assessee is not co-operating
- ▶ Not to be used for top management. CEO, CFO, etc. should not generally be issued summons. Only in cases where their direct involvement in the decision making process is evident which led to loss of revenue.
- ▶ Language used in summons should not be harsh and legal causing unnecessary stress to the Assessee

GUIDELINES BY CBIC

- ▶ If issued by Superintendents, prior permission of Officer not below the rank of Assistant Commissioner to be obtained.
- ▶ If due to operational reasons permission cannot be obtained, telephonic permission from such officer must be obtained and conveyed to him at the earliest opportunity.
- ▶ Officer issuing summons should submit a report recording proceedings in brief

ISSUANCE OF NOTICE

DEFAULT UNEARTHED BY DEPARTMENT

WILFUL (S. 74)

FORM DRC-01

NON-WILFUL (S. 73)

ESSENTIAL INGREDIENTS:

- FRAUD
- MIS-REPRESENTATION
- SUPPRESSION

ABSENCE OF:

- FRAUD
- MIS-REPRESENTATION
- SUPPRESSION

NON-WILFUL DEFAULT (S. 73)

- ▶ Issued where tax evasion or excess claim of ITC or other contravention is unearthed.
- ▶ No fraud, suppression or mis-representation present.
- ▶ Notice issued online on the GST Portal in FORM DRC-01 proposing to levy tax, interest and penalty.
- ▶ To be issued at least 3 months prior to the limitation for passing of an order under the said section, i.e. 3 years from the due date of furnishing of Annual Returns for the period to which the tax / refund claim relates.
- ▶ Common grounds for issuance:
 - ▶ Non-registration under GST
 - ▶ Non-filing or delay in Returns
 - ▶ Claiming of refund

WILFUL DEFAULT (S. 74)

- ▶ Issued where tax evasion or excess claim of ITC or other contravention is unearthed.
- ▶ Coupled with fraud, suppression or mis-representation.
- ▶ Notice issued online on the GST Portal in FORM DRC-01 proposing to levy tax, interest and penalty.
- ▶ To be issued 6 months prior to the limitation for issuing an order under this Section, i.e. 5 years from the due date of furnishing of Annual Returns for the period to which the tax / refund claim relates.
- ▶ Common grounds for issuance looking at the malafide intention of the Assessee:
 - ▶ Submission of wrong information to the department
 - ▶ Non-cooperation during investigation
 - ▶ Generating fake invoices
 - ▶ Fraudulent claim of ITC

WILFUL DEFAULT (S. 74)

- ▶ Issued where tax evasion or excess claim of ITC or other contravention is unearthed.
- ▶ Coupled with fraud, suppression or mis-representation.
- ▶ Notice issued online on the GST Portal in FORM DRC-01 proposing to levy tax, interest and penalty.
- ▶ To be issued 6 months prior to the limitation for issuing an order under this Section, i.e. 5 years from the due date of furnishing of Annual Returns for the period to which the tax / refund claim relates.
- ▶ Common grounds for issuance looking at the malafide intention of the Assessee:
 - ▶ Submission of wrong information to the department
 - ▶ Non-cooperation during investigation
 - ▶ Generating fake invoices
 - ▶ Fraudulent claim of ITC

SUPPRESSION

► Explanation 2 to Section 74:

“non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made there under, or failure to furnish any information on being asked for, in writing, by the proper officer.”

Where an Assessee is being tried under the Act for an offence which requires a culpable mental state, such state would be presumed and the burden of proof would be on the Assessee to prove otherwise.

ITC RESTRICTION

ORDER PASSED UNDER SECTION 74

**DEMAND QUANTIFIED AND PAID BY
ASSESSEE**

**ITC DISALLOWED FOR THE AMOUNT
SO PAID [S. 17(5)]**

ARREST (S. 69)

SUPPLY OF GOODS
W/O ISSUE OF
INVOICE

ISSUANCE OF FAKE
INVOICES

COLLECTS TAX BUT
FAILS TO DEPOSIT
FOR > 3 MONTHS

FOR WRONGFUL
AVAILMENT OF ITC /
REFUND

COLLECTS TAX W/O INTENTION TO DEPOSIT OR CLAIMS ITC OR
OBTAINS REFUND OF MORE THAN 1 CR. OR A REPEAT OFFENDER

ARREST (S.69)

OFFENCES	NATURE OF PUNISHMENT
Amount of tax evaded exceeds 500 lacs for offences under Section 132(1) clause (a), (b), (c) and (d)	Cognizable and Non-bailable
Amount of tax evaded exceeds 200lacs but does not exceed 500lacs for offences under section 132(1) clause (a), (b), (c) and (d)	Non-Cognizable and bailable
Repeated offences (S. 132(2))	Non-Cognizable and bailable

ARREST

OFFENCES	PUNISHMENT
Amount Of Tax evaded exceeds 500lacs	5 years imprisonment and fine
Amount of Tax evaded 200lacs but not exceeds 500lacs	3 years imprisonment and fine
Amount of Tax evaded 100lacs but not exceeds 200lacs	1 years imprisonment and fine
For three specified offences under clause (f), (g), (j)	6 month imprisonment or fine or both
Repeated Offence	5 year imprisonment and fine
Minimum Imprisonment for clause (i), (ii) & (iii) of section 132 (1) and 132(2)	Not less than 6 months

IMPORTANT TERMS

- ▶ **“Bailable offence”** means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence; [S. 2(a) of CrPC]
- ▶ **“Cognizable offence”** means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant; [S. 2(c) of CrPC]
- ▶ **“Non-cognizable offence”** means an offence for which, and "non- cognizable case" means a case in which, a police officer has no authority to arrest without warrant; [S. 2(l) of CrPC]

ASSISTANCE (S. 72)

- ▶ Following department officer shall assist in implementation of the Act:
 - ▶ Police;
 - ▶ Railways;
 - ▶ Customs;
 - ▶ State/Central Government engaged in collection of GST;
 - ▶ Officers collecting land revenue;
 - ▶ Village Officers

RECOURSE - BAIL

IN CASE OF AN OFFENCE FOR WHICH ARREST HAS BEEN PRESCRIBED
UNDER GST LAW

REGULAR BAIL
APPLICATION

S. 439

Filed after the Arrest
before the Court of
Sessions / High Court

ANTICIPATORY BAIL
APPLICATION

S. 438

Filed before the Arrest
on such apprehension
before the Court of
Sessions / High Court

JUDICIAL PRONOUNCEMENT

Sapna Jain vs. Union of India:

Bombay High Court Interim Order dt. 11.04.2019:

Anticipatory Bail allowed. *{No coercive action shall be taken against the petitioner till the next date}*

Union of India vs. Sapna Jain (SLP Filed by the Government):

Supreme Court of India Order dt. 29.05.2019:

No interference with the Order of the High Court as to privilege of Pre-arrest bail.

However, remarks were made: **As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court.**

However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP(Crl.) No. 4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

JUDICIAL PRONOUNCEMENT

Sapna Jain vs. Union of India:

Bombay High Court Interim Order dt.
08.07.2019:

Ad-interim relief to continue

Remarks: *Since the Apex Court has proposed to decide the issue in question by referring it to the Bench of three Judges, awaiting the decision of Apex Court, we continue the ad-interim relief granted earlier till further orders*

JUDICIAL PRONOUNCEMENT

IN FAVOUR OF THE ASSESSEE

Jayachandran Alloys (P.) Ltd. v. Superintendent of GST & Central Excise, Salem [2019]

MADRAS HIGH COURT Order dated 04.04.2019:

Writ Petition allowed. The interim protection sought for to prevent the respondents from invoking the powers under section 69 read with section 132 thereof in respect of petitioner is liable to be granted, and was answered in favour of the petitioner.

Remarks: Whether act of committal of offence is to be fixed first before punishment is imposed - Held, yes - Whether thus, power to punish set out in section 132 would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post-determination of demand due from an assessee, that itself has to necessarily follow process of an assessment - Held, yes

JUDICIAL PRONOUNCEMENT

C. Pradeep vs. Commissioner of GST & Central Excise Selam & Anr.:

Supreme Court of India Interim Order dt. 06.08.2019:
Interim protection (Anticipatory Bail) granted till the disposal of SLP.

Rakesh Kumar Khandelwal vs. Union of India:
Rajasthan High Court Order dt. 14.10.2019

Bail Application under Section 439 of the CrPC. Bail rejected by Session Judge, Jaipur.
High Court allowed the Bail Application on furnishing of personal bond of Rs. 1000000.00

JUDICIAL PRONOUNCEMENT

Vimal Yashwant Giri Goswami vs. State of Gujarat:

Gujarat High Court Order dt. 07.08.2019:

Anticipatory Bail granted.

Remarks: The powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is “liable to a penalty”. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee. In the two decisions referred to above, emphasis has been laid on the safeguards as enshrined under the Constitution of India and in particular Article 22 which pertains to arrest and Article 21 which mandates that no person shall be deprived of his life and liberty for the authority of law. The two High Courts have extensively relied upon the decision of the Supreme Court in the case of D.K. Basu vs. State of West Bengal reported in 1997 (1) SCC 416. In the meantime, **no coercive steps of arrest shall be taken against the writ applicant.**

JUDICIAL PRONOUNCEMENTS

AGAINST THE ASSESSEE (BAIL DENIED)

Bharat Raj Punj v. Commissioner of Central Goods & Service Tax Department, Jaipur [2019] 104 taxmann.com 174 (Rajasthan)

ORDER DATED 12.03.2019 BY HON'BLE RAJASTHAN HIGH COURT:

Where petitioner was Managing Director of a company 'L' and Competent Authority conducted raid upon company 'L' and its two officials and served summons under section 70 upon petitioner, company 'L' and its two officials and after recording statements of officials arrested them on plea that company 'L' had fraudulently availed input tax credit of Rs. 40.53 crores, petitioner being Managing Director was responsible and department had right to proceed under sections 69 and 70 against him

JUDICIAL PRONOUNCEMENTS

Sanjay Dhingra v. Director General of Goods & Services tax Intelligence [2020] 116 taxmann.com 35 (Punjab & Haryana)

ORDER OF HIGH COURT OF PUNJAB AND HARYANA dated 23.01.2020:

Where assessee for commission of economic offence of high magnitude punishable under section 132 was arrested on 7-10-2019, he was not entitled for grant of bail

JUDICIAL PRONOUNCEMENTS

**Himani Munjal v. Union of India [2019] 111 taxmann.com 509
(Rajasthan)**

**ORDER DATED 30.09.2019 BY HON'BLE RAJASTHAN HIGH
COURT:**

**Where assessee (a lady) for offence punishable under section
132(1)(i) and (iv) was in custody since 3-8-2018, keeping in
view seriousness of allegations levied against assessee, bail
application required to be rejected**

JUDICIAL PRONOUNCEMENTS

**Mohammed Yunus v. State of Rajasthan [2020] 114 taxmann.com 159 (Rajasthan)
ORDER DATED 16.12.2019 BY HON'BLE RAJASTHAN HIGH COURT:**

Where assessee for offences punishable under section 132(1)(b) and (c) was in custody and he applied for grant of bail, since as per revenue matter was still at stage of investigation and assessee had issued fake invoices to facilitate claiming of input tax credit to tune of Rs. 108.36 crores, bail application required to be rejected

ARREST OF PROFESSIONALS

Akhil Krishan Maggu v. Deputy Director, Directorate General of GST Intelligence [2019] 111 taxmann.com 367 (Punjab & Haryana)
Order dated 15.11.2019 by HIGH COURT OF PUNJAB & HARYANA:

HELD: Arrest of Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of statement without any corroborative evidence linking the professional with alleged offence should be avoided.

Where there was no evidence against petitioner Advocate and his father to indicate that they were connected with alleged illegal refund sought by Exporters and petitioners were neither proprietor nor partners/shareholders of any Exporter Concern/Firm/Company, who availed fraudulently refund of IGST and also there was no evidence of transfer of funds in accounts of petitioners or withdrawal of cash by any one of them, they could not have been arrested

ARREST OF PROFESSIONALS

**Paridhi Jain v. State [2020] 114 taxmann.com 401
(Rajasthan)**

**Order dated 20.01.2020 by HIGH COURT OF
RAJASTHAN:**

Where assessee, a practising lady Chartered Accountant, for offence punishable under section 132(1)(i) was in custody, in view of undertaking submitted by assessee to fully cooperate with investigating agency and provide information/documents asked for by investigating agency, bail application deserved to be accepted



THANK
YOU

GHIYA LEGAL

PANKAJ GHIYA ADV.

PRIYAMVADA JOSHI ADV.

CA RIBHAV GHIYA

DEEPAK GARG ADV.

Ph: 9829013626 E-mail: pankaj.ghiya@hotmail.com