

## **Chartered Accountants or Advocates Arrest who assisted the client should not be summoned**

Imp Judgements

**AKHIL KRISHAN MAGGU Versus DY. DIR., D.G. OF GST INTELLIGENCE CWP No. 24195 of 2019 (O&M), decided on 15-11-2019 2020 (32) G.S.T.L. 516 (P&H)**

Summons - Arrest - Fraudulent availment of refunds - Advocate appearing on behalf of four exporters implicated by them in their statement in matter involving fraudulent availment of refunds - Contention that legal professional and his father, erstwhile Customs clearing agent involved in creating dummy firms and need to be interrogated without cover of protection of Court - HELD : Petitioner No. 2 (father) interrogated for two days by DGGI and thereafter arrested - No record showing admission by him and no further statement recorded in jail though he was in judicial custody since 13-9-2019 - Petitioner No. 1 (Advocate) already put appearance on various occasions and there was nothing in file to show which indicates that he was connected with alleged illegal refund sought by exporters - Advocate neither proprietor nor partner nor shareholder of any exporter concern/firm/company, who availed refund of IGST - No evidence of transfer of funds in petitioners' accounts or withdrawal of cash by them - Some misunderstanding between petitioners and officers of DGGI who now want to implicate petitioner and his family members - Investigation to for last couple of months and Authorities are unable to produce any evidence showing direct involvement of petitioners - Petitioners' statement despite being taken in judicial custody for a week at the instance of DGGI - Intention of Authorities only to arrest petitioner No. 1, evident from fact that petitioner No. 2 was handed over to DRI without concluding investigation - Petitioners had already put their appearance under directions of Court - Petitioner No. 2 handed over to DRI on 12-9-2019 and in judicial custody, hence no direction warranted qua him - Authorities directed not to take petitioner No. 1 in custody without prior approval of this Court and

petitioner No. 1 directed to appear before concerned Authority as and when summoned between 10 AM to 5 PM. -

The persons who are having established manufacturing units and paying good amount of direct or indirect taxes; persons against whom there is no documentary or otherwise concrete evidences to establish direct involvement in the evasion of huge amounts of tax, should not be arrested prior to determination of liability and imposition of penalty.

Similarly, arrest of chartered accountant or advocates who had filed returns or otherwise assisted in business but was 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. It is well known that if top brass of a running concern is arrested, there are all possibilities of closure of unit which results into unemployment and wastage of precious natural resources. [paras 10.1, 11, 12, 13]

Arrest - Power to arrest - When to be exercised - Sections 69 and 132 of Central Goods and Services Tax Act, 2017. - Power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, which illustratively may be :

(i) a person is involved in evasion of huge amount of tax and is having no permanent place of business

, (ii) a person is not appearing in spite of repeated summons and is involved in huge amount of evasion of tax

, (iii) a person is a habitual offender and he has been prosecuted or convicted on earlier occasion,

(iv) a person is likely to flee from country

, (v) a person is originator of fake invoices, i.e., invoices without payment of tax, and

(vi) when direct documentary or otherwise concrete evidence is available on file/record of active involvement of a person in tax evasion. [2016 (44) S.T.R. 481 (Del.), 2019 (25) G.S.T.L. 321 (Mad.), (2011) 1 SCC 694 relied on]. [paras 9, 10]

10. Taking cue from judgment of Delhi High Court in the case of MakeMytrip (supra) followed by Madras High Court in the case of Jayachandran Alloys (P.) Ltd. (supra), law laid down by Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre (supra) as well keeping in mind Sections 69 and 132 of CGST Act which empower Proper Officer to arrest a person who has committed any offence involving evasion of tax more than Rs. 5 crore and prescribed maximum sentence of 5 years which falls within purview of Section 41A of Cr.P.C., we are of the opinion that power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, which illustratively may be :

(i) a person is involved in evasion of huge amount of tax and is having no permanent place of business,

(ii) a person is not appearing in spite of repeated summons and is involved in huge amount of evasion of tax,

(iii) a person is a habitual offender and he has been prosecuted or convicted on earlier occasion,

(iv) a person is likely to flee from country,

(v) a person is originator of fake invoices i.e. invoices without payment of tax,

(vi) when direct documentary or otherwise concrete evidence is available on file/record of active involvement of a person in tax evasion.

10.1 The persons who are having established manufacturing units and paying good amount of direct or indirect taxes; persons against whom there is no documentary or otherwise concrete evidences to establish direct involvement in the evasion of huge amounts of tax, should not be arrested prior to determination of liability and imposition of penalty. Similarly, 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. It is well known that if top brass of a running concern is arrested, there are all possibilities of closure of unit which results into unemployment and wastage of precious natural resources.

**Comment:** Judgement should be studied under lenses especially considering the recent amendment provided in Finance Budget 2023 - Implied permissions - A new section 158A in the CGST Act is being inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.