

# GST Fake Invoices, Investigation, Arrest & Bail Provision

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# Content of Valid GST Tax Invoice

## Rule 46 (1)

- ▶ Have GST Number
- ▶ should have a consecutive serial number,
- ▶ not exceeding 16 characters
- ▶ in one or multiple series
- ▶ containing alphabets or numerals or special characters and any combination thereof unique for a financial year.
- ▶ Have Name and address of recipient
- ▶ GST Number of recipient (if applicable)
- ▶ HSN Code
- ▶ Description of goods and Services, Taxable Value, GST Rate and Amount

# When to Issue Tax Invoice ?

## Section 35

- ▶ Section 35(1)
- ▶ If there is supply of goods - Before or at the time of removal of Goods
- ▶ In any other case - Before making goods available to recipient
- ▶ Section 35(7)
- ▶ If goods are sent on approval for sale - Earlier of Time of supply or 6 months from removal of goods

# When to Issue Tax Invoice ?

## Section 35

- ▶ In case of supply of service - within 30 days from date of provision of service - section 35 (2)
- ▶ In case of continues service - Section 35 (5)
- ▶ Where due date of ascertainable from Contract - On or before due date of payment
- ▶ Where due date is not ascertainable - Before supplier receives the payment
- ▶ Where payment is linked to completion of an event - on or before the date of completion of event

# Invoicing under special circumstances

## Section 31

- ▶ In case of new registration application - Revised invoice can be issued till one month before from the date of registration
- ▶ No compulsion to issue invoice if Invoice value is less than Rs 200
- ▶ Where due date of ascertainable from Contract - On or before due date of payment
- ▶ Where due date is not ascertainable - Before supplier receives the payment
- ▶ Where payment is linked to completion of an event - on or before the date of completion of event

# Manner of Issuing invoice

## Rule 48

- ▶ Rule 48 (1) - In case of supply of goods
- ▶ Must be in Triplicate - Original for recipient, duplicate for Transporter and Triplicate for Supplier
- ▶ Rule 48 (2) - In case of supply of services
- ▶ In duplicate

# What is Fake invoice?

- ▶ Improper Invoice which is not in accordance with Rule 46
- ▶ Do not meet criteria of section 31 - means
- ▶ An invoice raised without actual supply of good or services for the purpose of
- ▶ Passing excess undue ITC by not supplying goods or by supplying goods to any other person
- ▶ Showing B2C Sales as B2B
- ▶ Inflating turnover to raise Bank finance or increase value of business
- ▶ Diversion of Funds and Trade Based Money Laundering (TBML)
- ▶ In case of export, to claim cash refund.

**Fake Invoice = Original Invoice + Absence of supply of goods**

# Working Mechanism OR Modus Operandi of Fake Invoicing

- ▶ **Stage I**
- ▶ Obtain GST registration on Fake Identity and show business of Wholesaler etc.
- ▶ Identify Super markets, departmental store, Cement, Iron dealers who makes huge B2C Cash sales
- ▶ Those retailers Issue invoice to Fake Business for goods they sold as B2C
- ▶ Against invoices retailer Receive payment via Bank Channel from Fake Business
- ▶ Fake business Pay back in cash to fake recipient after deducting commission
- ▶ Fake company accumulates all the ITC



# Working Mechanism OR Modus Operandi of Fake Invoicing

- ▶ **Stage II**
- ▶ Fake company pass on the ITC to genuinely registered and operating Business
- ▶ Receives payment via bank Channel
- ▶ Pay back in Cash after deducting commission
- ▶ Business is dissolved after completion of targated transactions.
- ▶ Make another fake company and repeat.
- ▶ **Second stage recipient get undue ITC without any flaw also inflate purchase expenses to get undue advantage under Income Tax Act.**
- ▶ **Instead of one Fake company, invoicing may be routed through multiple shell companies**

# Government actions against Fake invoicing Racket

- ▶ **Stage II**
- ▶ Fake company pass on the ITC to genuinely registered and operating Business
- ▶ Receives payment via bank Channel
- ▶ Pay back in Cash after deducting commission
- ▶ Business is dissolved after completion of targeted transactions.
- ▶ Make another fake company and repeat.
- ▶ **Second stage recipient get undue ITC without any flaw also inflate purchase expenses to get undue advantage under Income Tax Act.**
- ▶ **Instead of one Fake company, invoicing may be routed through multiple shell companies**

# Notable incidences

- ▶ In 2018 Around 6000 cases registered involving worth Rs 11,250 crore of fake invoicing
- ▶ In December 2019, Vadodara Tax Unit has busted racket of 206 dummy companies in 10 states involving Fake ITC of Rs. 1,101 crore.
- ▶ A racket of 50 people have created more than 500 firm, including fake manufacturers of 'Hawai chappal' where input is Taxed at 18% while output is taxed at 5%. This group managed to created and pass fake credit worth Rs 600 crore before authorities cracked them down

# Penal Provisions in GST Act for Fraudulent Practices - Sec 122 and Sec 132

- ▶ **Section 122**
- ▶ Includes penal provision not covered in Sec 73 and Sec 74
- ▶ In finance bill 2020 new amendment in Sec 122 brought in and sub section (1A) has been introduced.
- ▶ This section 122 (1A) talks about “which person is liable for penalty”
- ▶ Penalty is 100% of Tax Evaded or ITC vailed or ITC Passed on applied to both or all parties involved who is wrongdoer or beneficiary

## Section 122 (1) - Description of offences liable for **Penalty for Taxable Person**

- ▶ (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- ▶ (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- ▶ (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- ▶ (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

## Section 122 (1) - Description of offences liable for **Penalty for Taxable Person**

- ▶ (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
- ▶ (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
- ▶ (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

## Section 122 (1) - Description of offences liable for **Penalty for Taxable Person**

- ▶ (viii) fraudulently obtains refund of tax under this Act;
- ▶ (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
- ▶ (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- ▶ (xi) is liable to be registered under this Act but fails to obtain registration;
- ▶ (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

# Section 122 (1) - Description of offences liable for **Penalty for Taxable Person**

- ▶ (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- ▶ (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- ▶ (xv) suppresses his turnover leading to evasion of tax under this Act;
- ▶ (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- ▶ (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;



## Section 122 (1) - Description of offences liable for **Penalty for Taxable Person**

- ▶ (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- ▶ (xix) issues any invoice or document by using the registration number of another registered person;
- ▶ (xx) tampers with, or destroys any material evidence or document;
- ▶ (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,
- ▶ he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

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- ▶ (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,
- ▶ he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

## Section 122 (1) - Description of offences liable for **Any Registered Person**

- ▶ Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—
- ▶ (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
- ▶ (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

# Section 122 (1) - Description of offences liable for **ANY PERSON**

- ▶ (a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);
- ▶ (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- ▶ (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- ▶ (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

## Section 122 (1) - Description of offences liable for **ANY PERSON**

- ▶ (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

# Section 132 - Punishment/Imprisonment for certain offences

1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” namely:

- ▶ (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- ▶ (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- ▶ (c) “avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;”
- ▶ (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

# Section 132 - Punishment/Imprisonment for certain offences

- ▶ (e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- ▶ (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- ▶ (g) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- ▶ (h) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

# Section 132 - Punishment/Imprisonment for certain offences

- ▶ (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) clauses (a) to (f) and clauses (h) and (i) of this section,
- ▶ shall be punishable—
- ▶ i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **five hundred lakh rupees**, **with imprisonment for a term which may extend to five years and with fine**;
- ▶ (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **two hundred lakh rupees** but does not exceed five hundred lakh rupees, **with imprisonment for a term which may extend to three years and with fine**;



# Section 132 - Punishment/Imprisonment for certain offences

- ▶ shall be punishable—
- ▶ (iii) in the case of any other offence an offence specified in clause (b) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **one hundred lakh rupees** but does not exceed two hundred lakh rupees, with **imprisonment for a term which may extend to one year and with fine;**
- ▶ (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with **imprisonment for a term which may extend to six months or with fine or with both.**

# Section 132 - Punishment/Imprisonment for certain offences

- ▶ (2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.
- ▶ (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

# Section 132 - Punishment/Imprisonment for certain offences

- ▶ (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non cognizable and non-bailable.
- ▶ (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.
- ▶ (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

# Section 69 - Power to arrest under CGST Act

- ▶ 1) Where the Commissioner has reasons to believe that a person 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 (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- ▶ (2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

# Section 69 - Power to arrest under CGST Act

- ▶ (3) Subject to the provisions of the Code of Criminal Procedure, 1973,
- ▶ (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
- ▶ (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

# Conditions precedent for arrest by Commissioner

- ▶ On a combined reading section 69 and section 132 it is observed that following are the primary conditions which should exist for an arrest – – The Commissioner must have “reasons to believe”; – Offence has been committed as specified under any of the clause (a) to (d) of sub-section (1) of section 132 or under section 132(2); – Amount involved in the offence exceeds the monetary limit specified in clause (i) or clause (ii) of sub-section (1) of section 132; and – The Commissioner by an order has authorised any central officer for the purpose of arrest of such offender

# Some Important Legal terms

- ▶ The terms Reasons to believe, Arrest, Cognizable Offence, Non cognizable Offence, Bailable Offence, Non-Bailable Offence are not defined in the CGST Act. In the absence of definitions in the CGST Act, we need to import those definitions available in General Clauses Act. In absence of such definitions even in General Clauses Act, those are to be borrowed from CrPc.

# Some Important Legal terms - Reasons to believe

- ▶ One of the important term 'Reasons to believe' which is the foundation of arrest provision has also not been defined anywhere in the act. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.



# Some Important Legal terms - Reasons to believe

- ▶ In the case of *Desai Brothers v. DCIT* reported in 204 ITR 121 (Gujarat) it was held that the words “reason to believe” suggest that the belief must be that of an honest and reasonable person based upon reasonable ground; not a mere ipse dixit, suspicion, guess work, conjecture or surmises, gossip or rumour and such belief must lead to a conclusion that the offence has been committed by the concerned person.

# Some Important Legal terms - Reasons to believe

- ▶ In the case of Sheth Brothers v JCIT reported in 251 ITR 270 (Guj), wherein settled legal position has been summarized what the “reasons to believe” includes as under: a) There must be material for the belief. b) The circumstances must exist and cannot be deemed to exist for arriving at an opinion. c) The Reason to believe must be honest and not based on the suspicion, gossip, rumour or conjecture.

## Some Important Legal terms - Reasons to believe

- ▶ d) The Reasons referred to must disclose the process of reasoning by which he holds the “reasons to believe” and change of opinion does not confer the jurisdiction to reassess. e) There must be nexus between the material and the belief; and f) The reasons referred to must show application of mind by the Assessing Officer.

## Some Important Legal terms - Cognizable offence

- ▶ Generally, as per Cr. PC, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.

## Some Important Legal terms - Non-cognizable offence

- ▶ Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order, except as may be authorized under special legislation.

## Some Important Legal terms - Arrest

- ▶ The term 'arrest' has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.

# The process of arrest and bail

- ▶ The process of arrest and bail for committing an offence under section 132 of the CGST Act, is governed by the procedure of arrest and bail as mentioned under the Code of Criminal Procedure

# The process of arrest and bail

- ▶ Section 46 Cr. PC. – Arrest how made – Section 46 lays down the procedure of how arrest is to be made. The arrest made under section 69 of the CGST Act are read in consonance with section 46 of the Code of Criminal Procedure.



# The process of arrest and bail

- ▶ Section 436A – Maximum period for which an under trial prisoner can be detained – the said provision sets a cap for pre-trial custody. It prevents an under trial, who has undergone detention for a period extending up to one-half of the maximum period of the imprisonment specified for any said offence under the law, shall be released by the Court on a personal bond without sureties.

# The process of arrest and bail

- ▶ Section 437 – When bail may be taken in the case of non bailable offences – this section provides for bail to be granted by the lower (Magistrate's) court.
- ▶ Section 438 . – Direction for grant of bail for a person apprehending arrest – this section provides for anticipatory bail to a person who apprehends being arrested. Such bail may be applied to the Sessions Court or the High Court (both have concurrent jurisdiction).

# The process of arrest and bail

- ▶ Section 439 – Special powers of the High Court or Court of sessions regarding bail – this section provides concurrent jurisdiction of the Sessions Court and High Court to grant bail (regular bail, or interim bail).
- ▶ Default bail -Section 167(2) Cr. P.C.

# The process of arrest and bail

- ▶ Right to default bail under the first proviso to Section 167(2) CrPC not a mere statutory right but a fundamental right. [Bikramjit Singh v. State of Punjab, 2020 SCC OnLine SC 824, decided on 12.10.2020].
- ▶ As the term implies, default bail is issued on the default of the investigating agency to conclude its investigation and file its report within time.

# CBIC guidelines for arrest and bail in GST offences

- ▶ When a person has committed an offence and his arrest is to be done, then the question arises as to who can arrest, in which circumstances arrest can be made, what is the procedure to be followed for arrest, what is the procedure for bail, and what are the rights of accused. Keeping all these aspects the CBIC has recently issued detailed instructions, vide Instruction No. 2/2022-23 dated 17.08.2022,

# CBIC guidelines for arrest and bail in GST offences

- ▶ regarding arrest and bail in relation to offences punishable under the CGST Act on the basis of the judgement given by the Hon'ble Supreme Court in Siddharth v State of UP (2022) 1 SCC 676. The above-mentioned instruction covers **three aspects**

## (A) Conditions precedent to arrest

- ▶ i) All legal formalities and requirements must be fulfilled before placing a person under arrest. The reasonable belief of the Commissioner must be unambiguous, clear and based on credible sources of information or material.

## (A) Conditions precedent to arrest

- ▶ ii) The Commissioner before authorizing the arrest of any person must answer the following questions in affirmative: –
- ▶ Whether or not credible information has been received or reasonable suspicion against the said person exists to or the offence committed by the person is a non-bailable offence?
- ▶ Whether the arrest is necessary to ensure proper investigation?



## (A) Conditions precedent to arrest

- ▶ Whether person not been restricted is likely to hamper the evidence during the course of investigation or has the capacity to influence any witness?
- ▶ Whether the said person is the mastermind or the key operator who effected the Benami/proxy transaction in the name of the dummy GSTIN or non-existent person for the purpose of fraudulently passing ITC?
- ▶ Where the intention (mensrea) is fully and entirely established, only then the arrest should be made.

## (A) Conditions precedent to arrest

- ▶ iii) In cases of technical nature (e.g., demand of tax being based on a difference arising out of interpretation of law), arrest should not be adopted as a mechanism to resolve the issue.
- ▶ iv) Other factors that are to be taken into consideration regarding arrest include
  - ▶ (i) cooperation during the investigation,
  - ▶ (ii) possibility that evidence would be tampered or witnesses be influenced.

## (B) Procedure of arrest

- ▶ i) The Commissioner, on having substantial reason to believe that an offence under the CGST Act has been committed by a person, shall record on file the
  - ▶ (a) nature of the offence,
  - ▶ (b) role of the person involved, and
  - ▶ (c) the evidence available against him.

## (B) Procedure of arrest

- ▶ ii) The arrest of the person has to be made as per the provisions of Code of Criminal Procedure, 1973, read with section 69 of the CGST Act. It is the duty of the Commissioner to ensure that all the officers are fully familiar with the provisions of arrest as mentioned in the CrPC.

## (B) Procedure of arrest

- ▶ It should clearly indicate the relevant sections attracted under the CGST Act or any other law under which the person has been arrested.
- ▶ iv) The grounds of arrest are to be explained to the person being arrested and the same has to be mentioned on the arrest memo.
- ▶ v) The details of the arrest should be provided to a duly nominated person and the same has to be mentioned in the arrest memo.

## (B) Procedure of arrest

- ▶ vi) The arrest memo should have the date and time of arrest clearly mentioned and a copy of the same should be given to the arrested person with proper acknowledgement. Each individual arrested shall be given a separate arrest memo in the event that there are several simultaneous arrests in one particular case.

## (B) Procedure of arrest

- ▶ vii) As per CBIC's Circular No. 122/42/2019-GST it is mandatory to generate a Document Identification Number (DIN) on any communication issued by an officer of CBIC to the tax payer or any other concerned person for the purpose of investigation.

## (B) Procedure of arrest

- ▶ viii) The general guidelines to be followed during the time of arrest are
- ▶ A woman should only be arrested by a woman officer as per the provisions of Section 46 of the Cr.P.C.
- ▶ The medical examination of the person being arrested needs to be conducted by a Central/State Government medical officer. In case of no medical officer being present, a registered medical practitioner can conduct the medical examination soon after the arrest has been made. The medical examination in case of a woman shall be made strictly in the presence of a female medical officer/practitioner.



## (B) Procedure of arrest

- ▶ It is the duty of the person being arrested to take reasonable care of the health and safety of the arrested person.
- ▶ The arrest should be done using minimal amount of force and publicity and without any violence.

## (C) Post-arrest formalities and bail

- ▶ The procedure of arrest varies according to the section under which a person has been arrested i.e., whether the charged offence is a non-cognizable and bailable offence or it is a cognizable and non-bailable offence:

## Case of CA Aman Gupta

- ▶ In a recent decision, the Delhi High Court addressed a case involving allegations of GST evasion and forgery against a Chartered Accountant. The court's ruling in *CA Aman Gupta v. State* [Bail Application No. 3408 of 2022] has significant implications for professionals accused of economic offenses.

## Case of CA Aman Gupta

- ▶ The Hon'ble Delhi High Court refused the anticipatory bail of Chartered Accountant Aman Gupta v who is an alleged offender and being charged with issuing fake invoices and e-way bills. The case also involves offences covered under Section 467 r.w. 471 of the IPC which is an economic offence involving loss to the public exchequer.

## Case of CA Aman Gupta - Fact of Case

- ▶ Mr. Umang Garg (“the Complainant”) the owner of M/s Ulagarasan Impex Pvt. Ltd. was arrested by Directorate General of Goods and Services Tax Intelligence (DGGI), Gurugram (“the Respondent”) on April 05, 2022 on the ground that various companies owned by him were involved in GST evasion by way of availing and passing fake Input Tax Credit (ITC) claims. However, the Complainant was granted bail on April 19, 2022 after depositing INR 1 crore as GST.

## Case of CA Aman Gupta - Fact of Case

- ▶ The Complainant stated that he appointed CA Aman Gupta (“the Applicant”) to look into the books of accounts of his companies for day-to-day business for last two years.

# Case of CA Aman Gupta - Fact of Case

- ▶ Firstly, the Complainant filed police complaint on May 30, 2022 and later filed FIR on September 04, 2022 and alleged that the Applicant induced him to purchase goods through different firms, which the Applicant claimed to be of his known persons.
- ▶ The Complainant purchased goods from such firms and made regular payment of taxes and deposited payments of the said goods in various accounts, existing in different names on the order of the Applicant. However, the Complainant later got to know that the said firms are bogus and non-existent.

## Case of CA Aman Gupta - Fact of Case

- ▶ Moreover, the Complainant also alleged that the Applicant and his associates have duped him of INR 2,81,99,475/- by creating fake, forged and fabricated firms and received payments including GST in different accounts against the purchased goods from the Complainant, but have not deposited GST.



## Case of CA Aman Gupta - Fact of Case

- ▶ The Applicant filed anticipatory bail before the Session court who dismissed the first anticipatory bail application vide order dated September 15, 2022.
- ▶ Thereafter, the Applicant filed the next anticipatory bail before the Hon'ble Delhi High Court.

## Case of CA Aman Gupta - Fact of Case

- ▶ The Applicant submitted that it has never worked on accounts/returns of the Complainant since, the regular accounting and filing work was handled by the team of accountants of the Complainant.

## Case of CA Aman Gupta - Fact of Case

- ▶ The Applicant contended that, there was no bar for the Applicant to file a fresh anticipatory bail application as the Applicant was willing to deposit a sum of INR 75 lakhs and settle the matter with the Complainant and the present dispute is civil in nature, which pertains to recovery of money and the criminal proceedings cannot be resorted to for making recoveries of money

## Can professional who is suspect in evasion of tax under GST can seek anticipatory bail?

- ▶ The primary issue in the case of Aman Gupta v. State before the Delhi High Court was whether the professional, in this case, a Chartered Accountant (CA), who was accused of being involved in GST evasion and forgery, was eligible to seek anticipatory bail.

## Can professional who is suspect in evasion of tax under GST can seek anticipatory bail?

- ▶ The case revolved around allegations that the CA had played a role in issuing fake invoices and e-way bills, which were part of a scheme to evade GST (Goods and Services Tax).
- ▶ Additionally, the case involved charges under Section 467 of the Indian Penal Code (IPC) along with Section 471 of the IPC, which pertains to economic offenses and forgery.

## Will CA Aman Gupta get bail?

- ▶ The key legal issue was whether the accused CA, Aman Gupta, could be granted anticipatory bail given the serious nature of the allegations against him, including economic offenses, GST evasion, and forgery. The court needed to decide whether custodial interrogation of the accused was necessary and whether there were sufficient grounds to grant anticipatory bail?

## What court held in CA Aman Gupta case?

- ▶ Observed that, the present case is not just relating to the Applicant having duped the Complainant of a huge sum of money, it also involves allegations of issuing fake invoices and e-way bills for the purposes of GST evasion, which is an economic offence involving loss to the public exchequer. Thus, such offences need to be viewed seriously

## What court held in CA Aman Gupta case?

- ▶ Noted that, considering the overall facts and circumstances of the case and the fact that the Applicant, the court is of the view that custodial interrogation of the Applicant is required.



## What court held in CA Aman Gupta case?

- ▶ Held that, since the allegations levied against the Applicant are serious and being in the nature of forgery and GST evasion by creating false invoices issued by non-existent entities.
- ▶ **Rejected the anticipatory bail of the Applicant.**

# What we learn in CA Aman Gupta case?

- ▶ The Delhi High Court, in Bail Application No. 3408 of 2022, refused to grant anticipatory bail to CA Aman Gupta. The court's decision hinged on the gravity of the allegations, which included GST evasion and forgery.

## What we learn in CA Aman Gupta case?

- ▶ It emphasized the importance of custodial interrogation in cases involving economic offenses that can harm the nation's economy. As a result, the court concluded that no grounds for anticipatory bail were established in this case.

## What we learn in CA Aman Gupta case?

- ▶ The Delhi High Court's decision in Aman Gupta v. State underscores the seriousness with which economic offenses, such as GST evasion and forgery, are treated by the judiciary. The court's refusal to grant anticipatory bail in this case sets a significant precedent for professionals facing similar allegations, highlighting the need for thorough investigations in such matters

## In case the offence is a non-cognizable and bailable offence (section 132(4) of the Act)

- ▶ – Person arrested is bound to be released on bail against a bail bond by the Assistant Commissioner or Deputy Commissioner.
- ▶ – The bail conditions are to be informed in writing to the arrested person as well as to the nominated person on telephone.
- ▶ – The arrested person should be allowed to talk to the nominated person.

## In case the offence is a cognizable and non-bailable offence (section 132(5) of the Act)

- ▶ – Person to be informed about the grounds of his arrest and be produced before the within 24 hours.
- ▶ – If production before a magistrate is not possible, the accused shall be handed over to the nearest police station for his safe custody under proper challan and be produced before the magistrate the next day.

## In case the offence is a cognizable and non-bailable offence (section 132(5) of the Act)

- ▶ ii) The bail granted would be subject to the 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 of the bail bond is to be decided based on the facts and circumstances of the case and it shall not be excessive but commensurate with the financial status of the arrested person.

## In case the offence is a cognizable and non-bailable offence (section 132(5) of the Act)

- ▶ iii) On fulfilling the conditions of bail, the arrested person shall be released by the concerned officer.
- ▶ iv) After the arrest of the accused, a prosecution complaint shall be filed by the officer in charge under section 132 of the CGST Act, preferably within 60 days of arrest, where no bail has been granted



# Types of Bail and Factors to be considered for grant of bail

- ▶ There are three types of bail i.e.
- ▶ Regular Bail,
- ▶ Anticipatory Bail and
- ▶ Default Bail.

# Types of Bail and Factors to be considered for grant of bail

- ▶ Regular Bail,
- ▶ Regular Bail or post arrest bail is taken after the arrest. It is generally attached with certain conditions. The provisions in law are laid out U/s 437 of Criminal Procedure Code, 1973.

# Types of Bail and Factors to be considered for grant of bail

- ▶ Anticipatory Bail or pre arrest bail is taken prior to arrest.
- ▶ However, it becomes effective from the time of arrest. As the word anticipation itself means, it is in expectation of some sort of accusation by the applicant. The provisions in law are laid out U/s 438 of Criminal Procedure Code, 1973.

# Types of Bail and Factors to be considered for grant of bail

- ▶ Default Bail is issued on the default of the investigating agency to conclude its investigation and file its report within time and its provisions are laid down in u/s 167(2) of CRPC.

# Types of Bail and Factors to be considered for grant of bail

- ▶ Cognizable and non bailable offence does not mean that bail will not be granted.
- ▶ In such cases the accused shall be produced before the Magistrate and bail shall be granted by the court considering the facts of the case or the court may grant remand.

## Types of Bail and Factors to be considered for grant of bail

- ▶ In case of non-cognizable and bailable offence bail is bound to be granted.
- ▶ In such cases the Deputy Commissioner or the Assistant Commissioner shall grant the bail and release the person arrested on furnishing of bail bond. In case of default of bail the person shall be forwarded to the custody of Magistrate.

# No arrest without enquiry/ assessment/ adjudication

- ▶ In following cases various honourable courts has held, in pre GST regime as well in GST regime, that no arrest can happen without enquiry/ assessment/ adjudication:
- ▶ 1. Make my Trip Vrs UOI (2016) 44 STR 481 (Del.) Pre GST Regime
- ▶ 2. Clear Trip P Ltd & Others Vrs UOI (2016) 42 STR (Bom.) Pre GST Regime
- ▶ 3. Akhil Krishnan Maggu Vrs DGGI (2020) 32 GSTL 516 (P&H)

# No arrest without enquiry/ assessment/ adjudication

- ▶ Akhil Krishnan Maggu Vrs DGGI (2020) 32 GSTL 516 (P&H) Held
- ▶ Arrest should be exercised in exceptional circumstances during investigation, such as:
- ▶ involved in evasion of huge amount of tax
- ▶ no permanent place of business
- ▶ not appearing in spite of repeated summons
- ▶ person is a habitual offender



# Arrest without enquiry/ assessment/ adjudication is permitted in GST Act

- ▶ It has been held in following cases that arrest can happen even if no enquiry/ assessment/ adjudication has commenced.
- ▶ 1. PV Ramana Reddy Vs UOI (2019) TIOL 873 (Telangana)
- ▶ 2. Bharath Raj Punj Vs CCGST (2019) TIOL 678 (Raj.)
- ▶ 3. Vimal Yashwantgiri Goswami Vs State of Gujarat (2020) 121 taxmann.com (Gujarat)

# Arrest without enquiry/ assessment/ adjudication is permitted in GST Act

- ▶ PV Ramana Reddy Vs UOI (2019) TIOL 873 (Telangana)
- ▶ Facts: In the matter, the petitioner assessee had filed SLP (Special Leave Petition) before the Supreme Court challenging the order passed by the Telangana High Court.
- ▶ The GST tax-evasion Authorities had issued summon and arrested the assessee by virtue of Section 69 of CGST Act. It was the contention of the Authorities that the assessee had been issuing fake invoices since 2017 without actual supply of goods and availing ITC on such fraudulently.

# Arrest without enquiry/ assessment/ adjudication is permitted in GST Act

- ▶ PV Ramana Reddy Vs UOI (2019) TIOL 873 (Telangana)
- ▶ Further, the Telangana HC had dismissed the pleas of representatives of the petitioner not to arrest them.
- ▶ They had also questioned the power of GST officials. HC had said that even before the GST regime was put in place, someone could exploit the law without purchase or sale of goods or hiring or rendering services, projecting a huge turnover that remained on paper, giving rise to a claim for input tax credit

# Arrest without enquiry/ assessment/ adjudication is permitted in GST Act

- ▶ PV Ramana Reddy Vs UOI (2019) TIOL 873 (Telangana)
- ▶ There is nothing wrong in GST officials thinking that persons involved should be arrested. Generally, in other fiscal laws, the offences revolve around evasion of liability. In such cases, the government is only deprived of what is due to them. In the fraudulent input tax credit claims, a huge liability is created for the government,” the HC had said in its order.

# Arrest without enquiry/ assessment/ adjudication is permitted in GST Act

- ▶ PV Ramana Reddy Vs UOI (2019) TIOL 873 (Telangana)
- ▶ The petitioner aggrieved by the order of High Court filed this SLP.
- ▶ Held: The Supreme Court dismissed the SLP filed by the assessee and upholds decision of Telangana HC.

# Arrest of CA or Advocate..!!!

- ▶ In the case of Akhil Krishnan Maggu Vs DGGI [(2020) 32 GSTL 516 (P&H)], the hon'ble court held that a CA or an advocate cannot be arrested if he simply files GST Returns and not involved in fraud with his client.

# Thank You..!!

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