Constitutional validity of arrest powers under Section 69 of the CGST Act stands conclusively settled by the Supreme Court

The Hon'ble Supreme Court in ***Rakesh Kumar v. Union of India & Anr. [Writ Petition (Criminal) No. 439 of 2024 dated June 29, 2026]*** disposed of the writ petition challenging the constitutional validity of Section 69 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), which empowers GST officers to arrest offenders, holding that the constitutional validity of the said provision has already been upheld by a three-Judge Bench of the Hon'ble Supreme Court in ***Radhika Agarwal v. Union of India & Ors. [(2025) 6 SCC 545]*** and, accordingly, disposed of the writ petition in terms of the said judgment, while vacating the interim order, if any.

Facts:

Mr. Rakesh Kumar (**"the Petitioner"**) filed a writ petition (criminal) before the Hon'ble Supreme Court, primarily challenging the constitutional validity of Section 69 of the CGST Act, which empowers GST officers to arrest persons believed to have committed specified offences under Section 132 of the CGST Act. The Petitioner had also sought ex-parte ad-interim relief by way of an interlocutory application.

During the pendency of the writ petition, a three-Judge Bench of the Hon'ble Supreme Court in ***Radhika Agarwal v. Union of India & Ors. [(2025) 6 SCC 545]*** (**"Radhika Agarwal"**) upheld the constitutional validity of Sections 69 and 70 of the CGST Act, as well as the right of the officers under the Customs Act, 1962 and the GST Acts to arrest, while simultaneously laying down detailed safeguards circumscribing the exercise of such power.

Issue:

Whether Section 69 of the CGST Act, which empowers GST officers to arrest offenders, is constitutionally valid?

Held:

The Hon'ble Supreme Court in ***Writ Petition (Criminal) No. 439 of 2024*** held as under:

- Observed that, the present writ petition has been filed primarily challenging the constitutional validity of Section 69 of the CGST Act, which empowers GST officials to arrest the offenders.

- Noted that, the legal validity of the said provision has already been upheld by a three-Judge Bench of the Hon'ble Supreme Court in *Radhika Agarwal*, wherein the 'constitutional validity' as well as the 'right of the officers' under the Customs Act and the GST Acts to arrest were upheld.

- Held that, consequently, the present writ petition is disposed of in terms of the aforesaid judgment of the Hon'ble Supreme Court and the interim order, if any, stands vacated. Pending application(s), if any, shall also stand disposed of.

Our Comments:

Section 69 of the CGST Act prescribes the "Power to arrest". It provides that where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a), (b), (c) or (d) of Section 132(1) of the CGST Act, which is punishable under clause (i) or (ii) of Section 132(1), or under Section 132(2) of the CGST Act, he may, by order, authorise any officer of central tax to arrest such person. Further, where a person is arrested for a cognizable and non-bailable offence, he is required to be informed of the grounds of arrest and produced before a Magistrate within twenty-four hours, whereas in the case of non-cognizable and bailable offences, the Deputy Commissioner or the Assistant Commissioner exercises the powers of an officer-in-charge of a police station for the purpose of releasing the arrested person on bail.

The present ruling reaffirms that the controversy surrounding the vires of the arrest provisions under the GST law stands conclusively settled by the three-Judge Bench of the Hon'ble Supreme Court in *Radhika Agarwal*, wherein the following key principles were laid down:

- The powers to summon, arrest and prosecute are ancillary and incidental to the power to levy and collect goods and services tax under Article 246-A of the Constitution of India, and hence, well within the legislative competence of the Parliament. A penalty or prosecution mechanism for the levy and collection of GST, and for checking its evasion, is a permissible exercise of legislative power.

- No arrest can be made until the Commissioner is able to show and establish, on the basis of material and evidence, that the conditions of clauses (a) to (d) read with clause (i) of Section 132(1) of the CGST Act are satisfied, and that the offence is cognizable and non-bailable.

- The 'reasons to believe' must be explicit and must refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable, and the principle of benefit of doubt is equally applicable both before the Commissioner and the Magistrate.

- Relying upon the Constitution Bench judgment in ***Sushila Aggarwal v. State (NCT of Delhi) [(2020) 5 SCC 1],*** it was clarified that in appropriate cases an application for anticipatory bail can be allowed, which may also be conditional, and it is not essential that such application be moved only after an FIR is filed, so long as the facts are clear and there is a reasonable basis for apprehending arrest.

- Section 74(5) of the CGST Act merely gives an option to the assessee to make payment and does not confer any right on the tax authorities to compel or extract tax by threatening arrest. The ***CBIC Instruction No. 01/2022-23 dated May 25, 2022 and Instruction No. 02/2022-23 [GST – Investigation] dated August 17, 2022*** are binding on the Department and are to be adhered to in letter and spirit. The Hon'ble Supreme Court further desired that the CBIC promptly formulate clear guidelines to ensure that no taxpayer is threatened with the power of arrest for recovery of tax in the garb of self-payment.

- On judicial review, it was enunciated that when the legality of an arrest under Special Acts like the GST Acts is challenged, the Courts would be slow in exercising the power of judicial review, and such review would be confined to ascertaining whether the officer was an authorised officer under the Act, whether the 'reason to believe' was based on the material in possession of the authorised officer, and whether the arrestee was informed of the grounds of arrest as soon as may be after the arrest.

It is pertinent to note that the principles laid down in *Radhika Agarwal* are being consistently applied by the High Courts. The Hon'ble Karnataka High Court in *Viral Narendra Gosalia*, relying on the bail jurisprudence including *Radhika Agarwal*, granted bail on the ground that the assessee-arrestee had been arrested for offences without issuance of a notice of appearance under the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"). Similarly, in *J Ramesh Chand*, the Hon'ble Karnataka High Court held that collection of tax under coercion at the time of search, inspection and seizure operations is contrary to the CBIC instructions, as reiterated by the Hon'ble Supreme Court in *Radhika Agarwal*, since such payment is clearly not voluntary and is at the behest of the Revenue, and accordingly directed the Revenue to refund Rs. 10 crores together with interest at 6% from the date the amount was collected by coercion till the date of payment, within a period of two months.

Therefore, while the constitutional validity of Section 69 of the CGST Act now stands beyond the pale of challenge, the power of arrest remains hedged with substantive and procedural safeguards. Taxpayers facing investigation, summons or the threat of arrest would be well advised to insist upon strict compliance with the conditions of Sections 69 and 132 of the CGST Act, the requirement of recorded 'reasons to believe', communication of the grounds of arrest, and the binding CBIC instructions, and any coercive recovery made during search or investigation, being involuntary, is liable to be refunded with interest.

CLICK HERE FOR OFFICIAL JUDGMENT COPY

(Author can be reached at info@a2ztaxcorp.com)