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Director's prosecution for Company's ITC fraud unsustainable without arraigning the Company as an accused

The Hon'ble Punjab and Haryana High Court in ***Manoj Bansal v. Deputy Director, Directorate of Goods and Services Tax Intelligence, Gurugram [CRM-M-45265 of 2025 (O&M) dated August 01, 2026]*** quashed the criminal complaint filed under Section 132 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") against the Director of a company for alleged fraudulent availment of Input Tax Credit ("**ITC**") of Rs. 15.44 crores on the strength of invoices of non-existent firms, and held that where the offence is admittedly committed by the company, its Director cannot be prosecuted in his individual capacity without arraigning the company as an accused, since commission of the offence by the company is an express condition precedent for fastening vicarious liability under Section 137 of the CGST Act.

Facts:

Mr. Manoj Bansal ("**the Petitioner**") was a Director of M/s Nikita Industries Pvt. Ltd., Kharkhoda, Sonapat, Haryana ("**the Company**"), a person registered under the CGST Act.

Acting on intelligence that the Company was availing ITC on the strength of fake invoices, the Deputy Director, Directorate of Goods and Services Tax Intelligence, Gurugram Zonal Unit ("**the Respondent**") conducted a search at the registered premises of the Company, during which purchase invoices, transport biltis and other incriminating documents were found. The investigation revealed that the suppliers of the Company were bogus/dummy firms created on paper in the names of unsuspecting individuals, without their knowledge and consent, for issuing invoices without actual supply of goods. It was alleged that the Petitioner, in his capacity as Director, purchased lead metal in cash from the open market without invoices and obtained invoices on commission basis from brokers in the names of 31 non-existent firms, on the strength of which the Company wrongly availed ITC of approximately Rs. 15.44 crores.

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The Respondent filed a criminal complaint bearing **COMA-86-2021 dated February 05, 2021 titled Deputy Director v. Manoj Bansal ("the Complaint")** before the Chief Judicial Magistrate, Rohtak under Section 132(1)(b) and (c) of the CGST Act against the Petitioner alone, in his individual capacity, without arraying the Company as an accused. Parallely, a demand-cum-show cause notice dated April 16, 2021 was issued to the Company under Section 74 of the CGST Act, which was confirmed by the Adjudicating Authority vide order dated January 16, 2025, against which the Company filed an appeal under Section 107 of the CGST Act before the Appellate Authority.

The Petitioner filed a petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**") seeking quashing of the Complaint and all consequential proceedings, contending that he was not a "registered person" within the meaning of Section 2(94) of the CGST Act and was therefore incapable of availing or utilising ITC in his individual capacity; that it was admittedly the Company which had availed the disputed ITC; that the Complaint did not even allege that the Petitioner availed ITC for personal use in contravention of Section 16 of the CGST Act, and hence the essential ingredients of Section 132(1)(c) were conspicuously missing; and that Section 137 of the CGST Act, being identical to Section 141 of the Negotiable Instruments Act, 1881 ("**the NI Act**"), permits liability to be fastened on a Director only when proceedings are simultaneously initiated against the Company. Reliance was placed on *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.* [(2012) 5 SCC 661], *Himanshu v. B. Shivamurthy* [(2019) 3 SCC 797], *Dayle De Souza v. Government of India* [(2021) 20 SCC 135] and *Hindustan Unilever Ltd. v. State of Madhya Pradesh* [(2020) 10 SCC 751], besides several decisions of coordinate Benches of the High Court.

The Respondent, while fairly conceding that it was the Company which had wrongly availed ITC of Rs. 15.44 crores without actual supply of goods, contended that the Petitioner was the beneficiary and mastermind of the scheme, was actively involved in the management and operations of the Company including GST-related matters, and could therefore be individually prosecuted under Section 137 of the CGST Act; that the proceedings were founded not on

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vicarious liability but on concrete material and investigation revealing his active participation; and that non-arraignment of the Company as an accused did not invalidate the proceedings.

Issue:

Whether a Director of a company can be prosecuted under Section 132 of the CGST Act in his individual capacity for wrongful availment of ITC by the company, without the company being arraigned as an accused in the complaint?

Held:

The Hon'ble Punjab and Haryana High Court in **CRM-M-45265 of 2025 (O&M)** held as under:

- Observed that, Section 137 of the CGST Act, which deals with offences by companies, and Section 141 of the NI Act are *pari materia*; both provisions use the term “person” with reference to a company, and both embody the settled principle that a company, being a juristic person, cannot claim immunity from criminal prosecution.
- Noted that, a three-Judge Bench of the Hon'ble Supreme Court in *Aneeta Hada* (supra), applying the doctrine of strict construction, held that commission of the offence by the company is an express condition precedent to attract the vicarious liability of others; that the words “as well as the company” make it unmistakably clear that only when the company can be prosecuted can the persons in the other categories be held vicariously liable; and that for maintaining a prosecution under Section 141 of the NI Act, arraigning the company as an accused is imperative. This proposition was reiterated in *Anil Gupta v. Star India (P) Ltd.* [(2014) 10 SCC 373], *Himanshu* (supra), *Sharad Kumar Sanghi v. Sangita Rane* [(2015) 12 SCC 781] and *Dayle De Souza* (supra), and has consistently been followed by coordinate Benches of the High Court.

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- Noted that, penal statutes require strict construction, and the analysis of Section 141 of the NI Act by the Hon'ble Supreme Court in the binding precedents squarely applies to the interpretation of Section 137 of the CGST Act.
- Noted that, it was not disputed by the Respondent that the offence of wrongly availing ITC of Rs. 15.44 crores had been committed by the Company and that the role of the Petitioner was that of its Director; the Complaint itself, in para 30.4, alleged that it was the Company which wrongly availed ITC on the basis of invoices of 31 firms.
- Observed that, under Section 16 of the CGST Act, only a "registered person", as defined in Section 2(94), is entitled to take credit of input tax; undeniably it was the Company, and not the Petitioner, which was the registered person and which had availed the ITC, and it was the Company to which the show cause notice under Section 74 was issued and which had filed the appeal under Section 107.
- Held that, commission of the offence by the Company is an express condition precedent to attract the vicarious liability of the Petitioner, who was its Director at the relevant time; it is only when the Company is prosecuted that the Director could be vicariously liable for the offence, and the Respondent's insistence that prosecution of the Petitioner as the "main architect" of the fraud is legally sustainable lacks legal basis in view of the settled position of law.
- Held that, in the absence of the Company being arraigned as an accused, the Complaint against the Petitioner was not maintainable; unless the Company is prosecuted, no vicarious liability can be fastened on the Petitioner, and his prosecution in his personal capacity without arraigning the Company cannot proceed contrary to settled principles of law.
- Accordingly, the Complaint and all subsequent proceedings arising therefrom were quashed in exercise of the inherent jurisdiction of the Court.

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- Directed that, the Respondent shall be at liberty to proceed for the offence under Section 132 of the CGST Act in accordance with law, and that a copy of the judgment be forwarded to the Additional Director General, DGGI, Zonal Unit, Gurugram for information and necessary action.

Our Comments:

Relevant provisions:

Section 132(1) of the CGST Act enumerates the offences under the Act. Clause (b) covers the issuance of any invoice or bill without supply of goods or services, in violation of the Act or the rules, leading to wrongful availment or utilisation of ITC or refund of tax, while clause (c) covers availment of ITC using such invoice or bill, or fraudulent availment of ITC without any invoice or bill. Where the amount of tax evaded or ITC wrongly availed or utilised exceeds Rs. 5 crores, the offence is punishable under clause (i) of Section 132(1) with imprisonment which may extend to five years and with fine, and is cognizable and non-bailable in terms of Section 132(5).

Section 137 of the CGST Act deals with offences by companies. Sub-section (1) provides that where an offence committed by a person under the Act is a company, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business, "as well as the company", shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Sub-section (2) provides that where an offence under the Act "has been committed by a company" and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of that offence. Sub-section (3) extends the principle to partnership firms, LLPs, HUFs and trusts, while sub-section (4) affords a defence to any such person who proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent its commission.

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Section 2(94) of the CGST Act defines a “registered person” as a person who is registered under Section 25, excluding a person holding a Unique Identity Number, and Section 16(1) confers the entitlement to take credit of input tax only on a “registered person”, subject to the prescribed conditions and restrictions.

Analysis of the ruling

The judgment transplants into GST law the well-settled jurisprudence developed under Section 141 of the NI Act. The textual foundation is compelling: the expression “as well as the company” in Section 137(1) and the opening words of Section 137(2), “where an offence under this Act has been committed by a company and it is proved that”, both presuppose the commission of the offence by the company and treat the company as the principal offender. The liability of a Director is derivative and arises only by way of a statutory deeming fiction, which, being contained in a penal statute, must be strictly construed. Where the complaint does not arraign the company, the very foundation on which the fiction operates is absent.

Two features of the ruling deserve particular attention. First, the Court rejected the Department’s argument that the Director was being prosecuted for his own “concrete” role as the mastermind rather than vicariously. Read with Sections 2(94), 16 and 132(1)(c), the ITC in question could only have been availed by the registered person, i.e., the Company; the Director, not being a registered person, could not have availed ITC in his own right. His alleged role in orchestrating the transactions is precisely the “consent or connivance” limb of Section 137(2), which can be reached only after the Company is arraigned and the offence is proved against it. Second, the relief is procedural and not on merits. The Court expressly reserved liberty to the Department to proceed under Section 132 in accordance with law. Unlike proceedings under Section 138 of the NI Act, where the statutory demand notice on the company operates as a pre-condition and precludes belated arraignment of the company (as held in *Himanshu*), the CGST Act contains no such pre-condition, and since the offence under Section 132(1)(i) is punishable with imprisonment up to five years, the bar of limitation under

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Section 514 of the BNSS (corresponding to Section 468 of the Code of Criminal Procedure, 1973) would not stand in the way of a fresh complaint arraigning the Company along with its Director.

It is also relevant that the CBIC's Guidelines for launching of prosecution under the CGST Act (***Instruction No. 04/2022-23 [GST-Investigation] dated September 01, 2022***) themselves recognise that, in the case of companies, both the legal person as well as the natural persons are liable for prosecution under Section 132 read with Section 137. A complaint which omits the company, therefore, departs not only from the statutory scheme but also from the Board's own instructions.

Pari materia decisions

- *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.* [(2012) 5 SCC 661]: A three-Judge Bench of the Hon'ble Supreme Court held that for maintaining a prosecution under Section 141 of the NI Act, arraigning of the company as an accused is imperative, and the other categories of offenders can be brought in only on the touchstone of vicarious liability as stipulated in the provision itself.
- *Sharad Kumar Sanghi v. Sangita Rane* [(2015) 12 SCC 781]: Even in a complaint under Section 420 of the Indian Penal Code, 1860, where the allegations were principally against the company which had not been arrayed as a party, the Hon'ble Supreme Court quashed the proceedings against the Managing Director, holding that when a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened by statute.
- *Himanshu v. B. Shivamurthy* [(2019) 3 SCC 797]: A complaint against a Director who had signed the cheque for and on behalf of the company was held not maintainable in the absence of the company being arraigned as an accused.

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- *Dayle De Souza v. Government of India* [(2021) 20 SCC 135]: In a prosecution under the Minimum Wages Act, 1948, the Hon'ble Supreme Court reiterated that a Director cannot be prosecuted vicariously where the company, being the principal offender, has not been arraigned as an accused.
- *Hindustan Unilever Ltd. v. State of Madhya Pradesh* [(2020) 10 SCC 751]: In the context of the Prevention of Food Adulteration Act, 1954, the Hon'ble Supreme Court reiterated that the vicarious liability of the officers of a company is dependent upon the company itself being prosecuted for the offence.
- *Sunil Bharti Mittal v. Central Bureau of Investigation* [(2015) 4 SCC 609]: Vicarious liability of a director for the acts of the company arises only where the statute specifically provides for it; the "alter ego" principle cannot be applied in reverse so as to impute the acts of the company to its directors, and there must be sufficient evidence of the director's active role coupled with criminal intent.
- *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [(2005) 8 SCC 89] and *Maksud Saiyed v. State of Gujarat* [(2008) 5 SCC 668]: A complaint must contain specific averments that the director was in charge of and responsible for the conduct of the business of the company at the relevant time; the mere designation as a director is insufficient, and vicarious liability can be fastened only where the statute provides for it.

Contrary and distinguishable decisions

- *Sheoratan Agarwal v. State of Madhya Pradesh* [(1984) 4 SCC 352] and *Anil Hada v. Indian Acrylic Ltd.* [(2000) 1 SCC 1]: These decisions had taken the view that the person in charge of the company could be prosecuted even where the company was not arraigned, provided the commission of the offence by the company was proved. Both stand expressly overruled by *Aneeta Hada* (supra), subject to the limited qualifier that

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where the company itself cannot be prosecuted on account of a legal impediment, the persons in charge may still be proceeded against.

- *U.P. Pollution Control Board v. Modi Distillery* [(1987) 3 SCC 684]: Where the complaint named the industrial unit rather than the company owning it, the defect was treated as a curable technical irregularity. *Aneeta Hada* (supra) has confined this decision to its own facts.
- On the civil side, Section 122(1A) of the CGST Act (inserted w.e.f. January 01, 2021) independently makes any person who retains the benefit of the specified transactions, and at whose instance such transactions are conducted, liable to a penalty equivalent to the tax evaded or ITC availed or passed on, without any requirement that the company be proceeded against first. The dichotomy between the civil penalty regime and the criminal prosecution regime under Section 137 must, therefore, be borne in mind while advising directors and promoters.

Way forward:

For the Department, the ruling is a cautionary reminder that prosecution complaints under Section 132 in respect of offences committed through a company must arraign the company as the principal accused, with the directors and officers being impleaded under Section 137(1) or (2) on the strength of specific averments as to their role. For directors and officers facing prosecution, the array of accused in the complaint should be the first point of scrutiny; where the company has been omitted, the complaint is vulnerable to quashing under Section 528 of the BNSS. Equally, directors should be conscious that the relief is of a procedural character and that the Department retains the liberty to file a fresh complaint arraigning the company, in which event the statutory defence under Section 137(4), of absence of knowledge or exercise of all due diligence, would become the substantive battleground. The ruling also dovetails with the Hon'ble Supreme Court's decision in ***Radhika Agarwal v. Union of India* [W.P. (Crl.) No. 336 of 2018 dated February 27, 2025]**, which subjected the power of arrest under Section 69 of

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the CGST Act to the discipline of “reasons to believe” founded on material on record, reinforcing that coercive criminal action under GST must rest strictly on the statutory scheme.

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