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Subsequent Cancellation of Supplier's GST Registration Cannot by Itself Establish Fraudulent ITC Availment – Karnataka HC Grants Anticipatory Bail to Purchaser

The Hon'ble Karnataka High Court in **Venkatasubbaiah C & Anr. v. Superintendent of Central Tax & Anr. [Criminal Petition No. 9023 of 2026 dated August 12, 2026]** granted anticipatory bail to the Petitioners who were apprehending arrest under Section 69 read with Section 132 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) on the allegation of having availed Input Tax Credit (**"ITC"**) on invoices issued by fictitious suppliers without actual supply of goods, and held that cancellation of the supplier's GST registration or closure of the supplier's business subsequent to the supply does not, by itself, disentitle the purchaser from claiming ITC or establish that the purchaser has availed ITC on fraudulent invoices, unless the Department prima facie proves collusion between the supplier and the purchaser. The Court further held that custodial interrogation is not warranted merely because the allegation is of an economic offence, particularly where the accused has no criminal antecedents, has joined the investigation and has undertaken to cooperate.

Facts:

M/s Sri Lakshmi Venkateshwara Enterprises (**"the Firm"**) is a sole proprietorship concern of Smt. Guramma C (**"Petitioner No. 2"**), whose affairs are managed by her husband, Sri Venkatasubbaiah C (**"Petitioner No. 1"**) (collectively, **"the Petitioners"**). The Firm is registered under the CGST Act and is engaged in the business of recycling used lead-acid batteries and manufacture of remelted lead ingots.

The Superintendent of Central Tax, Headquarters Anti-Evasion, Bengaluru East Commissionerate (**"the Respondent"**) issued summons under Section 70 of the CGST Act dated April 10, 2026 (**"the Summons"**) to the Petitioners in connection with the allegation that the Petitioners had claimed ITC on the strength of fraudulent invoices raised by fictitious suppliers without any actual supply of goods, thereby causing loss to the exchequer, an offence

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punishable under Section 132 of the CGST Act and attracting the power of arrest under Section 69 of the CGST Act.

Apprehending arrest, the Petitioners approached the jurisdictional Sessions Court in CrI. Misc. No. 4859 of 2026 seeking anticipatory bail, which was dismissed vide order dated June 16, 2026. Aggrieved, the Petitioners filed a petition under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**the BNSS**") (corresponding to Section 438 of the Code of Criminal Procedure, 1973) before the Hon'ble Karnataka High Court.

The Petitioners contended that the Firm holds a valid GST registration; the goods were actually purchased from various registered suppliers against tax invoices; the invoice value along with the GST component was paid to the suppliers through banking channels; periodical returns have been filed regularly ever since registration; documents are available to prove receipt of the goods from the suppliers who raised the invoices; the Petitioners have no criminal antecedents; and the Petitioners have already appeared before the Respondent and cooperated with the investigating officer.

The Respondent, by way of a statement of objections, contended that all the suppliers of the Petitioners are fictitious entities which are not in existence and could not be traced despite best efforts; the invoices raised by them are, therefore, bogus; the amounts transferred to the bank accounts of the fictitious suppliers were subsequently withdrawn and shared between the suppliers and the Petitioners, thereby cheating the Government; Petitioner No. 1 is the mastermind of the offence; and, having regard to the nature of the allegations, custodial interrogation of the Petitioners is necessary.

Issues:

- Whether anticipatory bail can be granted to a purchaser accused of availing ITC on invoices issued by suppliers who are subsequently found to be non-existent or whose GST registrations have been cancelled, in the absence of prima facie material showing

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collusion between the supplier and the purchaser or a violation of Section 132(1)(a) or (b) of the CGST Act by the supplier?

- Whether custodial interrogation of the accused is warranted merely because the alleged offence under the CGST Act is economic in nature?

Held:

The Hon'ble Karnataka High Court in ***Criminal Petition No. 9023 of 2026*** held as under:

- Observed that, it is not in dispute that Petitioner No. 2 is the holder of a valid GST registration certificate and that Petitioner No. 1 has been managing the affairs of the Firm. According to the Petitioners, the invoice value as well as the tax has been paid to the suppliers through bank transactions ever since registration and returns have been filed periodically.
- Observed that, it is trite law that cancellation of the GST registration certificate of the supplier or closure of the supplier's entity subsequent to the supply does not disentitle the purchaser from claiming ITC unless the Department proves that there was collusion between the supplier and the purchaser, as laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Suresh Trading Company [(1997) 11 SCC 378]*** and by the Hon'ble Calcutta High Court in ***Gargo Traders v. Joint Commissioner, Commercial Taxes (State Tax) [2023 SCC OnLine Cal 1441]***.
- Noted that, clauses (a) and (b) of Section 132(1) of the CGST Act apply only to a supplier. Section 132(1)(c) of the CGST Act, under which the Petitioners are sought to be prosecuted, gets attracted only in the event the prosecution prima facie proves that clause (a) or clause (b) has been violated by the supplier. As on date, there is no material to prima facie show that the suppliers have violated clause (a) or clause (b) of Section 132(1) of the CGST Act.

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- Noted that, the mere fact that the suppliers of the Petitioners are not in existence today or that their GST registrations were subsequently cancelled is, by itself, not sufficient to say that the Petitioners have availed ITC using fraudulent invoices or bills referred to in Section 132(1)(b) of the CGST Act.
- Noted that, the Petitioners' submission that they had earlier appeared before the Respondent was not seriously disputed. Relying on ***Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694]***, where the accused has joined the investigation, is fully cooperating with the investigating agency and is not likely to abscond, custodial interrogation should be avoided.
- Relied on the Coordinate Bench decision in ***Akram Pasha v. Senior Intelligence Officer, DGGI [2025 SCC OnLine Kar 30886]***, against which SLP (Crl.) No. 5143 of 2026 was dismissed by the Hon'ble Supreme Court on March 25, 2026, and on the Hon'ble Delhi High Court in ***Tarun Jain v. Directorate General of GST Intelligence [Bail Appln. No. 3771 of 2021 dated November 26, 2021]***, to hold that offences under the CGST Act, though economic in nature, carry a maximum punishment of five years, are compoundable under Section 138, and are bailable and non-cognizable except where Section 132(5) applies; they are, therefore, not grave to an extent where custody of the accused can be treated as sine qua non, and detention in judicial custody would serve no purpose other than adversely impacting the business of the accused. The Department can well obtain the required information if the accused cooperates with the investigation.
- Held that, since the Petitioners have no criminal antecedents, have undertaken to appear before the Respondent and produce the necessary documents to prove receipt of goods from the suppliers, and have undertaken to abide by any conditions imposed by the Court, the prayer for anticipatory bail deserves to be answered affirmatively.

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- Directed that, the Respondent or any other authority shall release the Petitioners in the event of their arrest pursuant to the Summons, subject to conditions, inter alia, that the Petitioners shall appear before the Respondent at 10:30 a.m. on August 20, 2026, on which date the Respondent shall be at liberty to take them into custody for the purpose of interrogation but shall release them on the same day on or before 6:00 p.m. upon execution of a personal bond of Rs. 5,00,000/- each with two sureties for the like sum; the Petitioners shall cooperate and appear as and when summoned; shall not directly or indirectly induce, threaten or make any promise to any person acquainted with the facts of the case; shall keep their mobile numbers operational and share their location through a Google Maps PIN; and shall surrender their passports (or file an affidavit of non-possession). Breach of any condition would entitle the Respondent to seek cancellation of the anticipatory bail.

Our Comments:

The judgment draws a principled distinction between the two consequences that follow when a supplier is later found to be non-existent: the civil consequence (eligibility of ITC in the hands of the recipient) and the penal consequence (prosecution and arrest of the recipient). On the penal side, the Court reads the offence of the recipient under Section 132(1)(c) of the CGST Act as derivative of the offence of the supplier under Section 132(1)(b). Unless the Department can prima facie demonstrate that the supplier issued invoices without supply, the recipient cannot be branded as a person who has availed ITC on such invoices. Non-traceability of the supplier on the date of investigation, or cancellation of its registration after the transactions, is a circumstance that may warrant enquiry but is not, without more, evidence of the offence.

Relevant provisions

Section 132(1) of the CGST Act enumerates the offences and prescribes graded punishment. Clause (a) covers supply of goods or services without issue of an invoice with intent to evade tax; clause (b) covers issuance of an invoice or bill without supply of goods or services leading

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to wrongful availment or utilisation of ITC or refund; and clause (c), as substituted by the Finance Act, 2020 with effect from January 01, 2021, covers availment of ITC using the invoice or bill referred to in clause (b) or fraudulent availment of ITC without any invoice or bill. Clauses (a) and (b) are, by their language, supplier-side offences, which is precisely the reading adopted by the Court. Punishment ranges from imprisonment up to five years with fine where the amount involved exceeds Rs. 5 crore, up to three years where it exceeds Rs. 2 crore but does not exceed Rs. 5 crore, and up to one year for the offence under clause (b) where it exceeds Rs. 1 crore but does not exceed Rs. 2 crore. Pursuant to the Finance Act, 2023 (effective October 01, 2023), the threshold for prosecution has been raised from Rs. 1 crore to Rs. 2 crore, save for the offence of issuing invoices without supply under clause (b).

Sections 132(4) and 132(5) of the CGST Act classify the offences. All offences are non-cognizable and bailable, except offences under clauses (a) to (d) of Section 132(1) where the amount involved exceeds Rs. 5 crore, which are cognizable and non-bailable. Under **Section 132(6)**, no Court can take cognizance of an offence except with the previous sanction of the Commissioner. **Section 135** creates a rebuttable presumption of culpable mental state in any prosecution requiring such mental state, and **Section 138** permits compounding of offences either before or after institution of prosecution. The Court's reliance on the maximum sentence, the compoundable nature of the offences and their classification under Section 132(4) is the foundation for its conclusion that custody is not a sine qua non in CGST prosecutions.

Section 69 of the CGST Act empowers the Commissioner to authorise arrest only where he has "reasons to believe" that a person has committed an offence specified in clauses (a) to (d) of Section 132(1) which is punishable under clause (i) or (ii) of Section 132(1) or under Section 132(2). Where the offence is cognizable and non-bailable, the arrested person must be informed of the grounds of arrest and produced before a Magistrate within twenty-four hours; where it is non-cognizable and bailable, the Deputy or Assistant Commissioner exercises the powers of an officer-in-charge of a police station for the purpose of releasing the person on

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bail. **Section 70** confers the power to summon any person to give evidence or produce documents, and every such enquiry is deemed to be a judicial proceeding. In the present case, the Summons under Section 70 triggered the apprehension of arrest under Section 69, and the petition was maintained under Section 482 of the BNSS, which now houses the remedy of anticipatory bail earlier contained in Section 438 of the Code of Criminal Procedure, 1973.

On the civil side, **Section 16(2)(b) and (c) of the CGST Act** condition the recipient's ITC upon receipt of the goods or services and upon the tax charged having actually been paid to the Government by the supplier, and **Section 155** places the burden of proving eligibility to ITC on the person claiming it. **Section 122(1A)**, inserted by the Finance Act, 2020, additionally exposes any person who retains the benefit of a transaction involving an invoice issued without supply, and at whose instance such transaction is conducted, to a penalty equal to the tax evaded or ITC availed. The Court's findings in the present case are prima facie findings rendered at the anticipatory bail stage and do not foreclose adjudication under Section 74 or imposition of penalty under Section 122 of the CGST Act, which will turn on the documentary evidence of actual receipt of goods that the Petitioners have undertaken to produce.

Pari materia judgments

The judgment is consistent with the guardrails on the power of arrest laid down by the Hon'ble Supreme Court in ***Radhika Agarwal v. Union of India [W.P. (Crl.) No. 336 of 2018 dated February 27, 2025]***, wherein it was held that the power under Section 69 of the CGST Act must be exercised with great circumspection and not casually; the Commissioner must record reasons to believe, founded on material, that the person has committed a non-bailable offence satisfying the pre-conditions of Section 132(5); arrest cannot be resorted to merely to investigate whether those conditions are met; the grounds of arrest must be communicated; coercion to pay tax under threat of arrest is impermissible; and a person apprehending arrest may seek anticipatory bail even in the absence of an FIR. The Hon'ble Supreme Court directed that ***CBIC's Instruction No. 02/2022-23 [GST-Investigation] dated August 17, 2022*** (which

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cautions that arrest is not to be made in a routine manner merely because the monetary threshold is crossed, and requires consideration of factors such as likelihood of tampering with evidence, absconding or intimidating witnesses) and Instruction No. 01/2025-GST dated January 13, 2025 (requiring the grounds of arrest to be furnished in writing) be read along with its directions.

On the specific question of pre-arrest protection in alleged fake ITC cases, the Coordinate Bench in *Akram Pasha v. Senior Intelligence Officer, DGGI* [2025 SCC OnLine Kar 30886] and the Hon'ble Delhi High Court in *Tarun Jain v. Directorate General of GST Intelligence* [Bail Appln. No. 3771 of 2021 dated November 26, 2021] had earlier held that offences under the CGST Act do not contemplate punishment beyond five years, are compoundable, and do not justify custodial interrogation where the accused is cooperating. The dismissal of the SLP against *Akram Pasha* on March 25, 2026 lends significant weight to this line of authority.

On the substantive proposition that a bona fide purchaser cannot be visited with adverse consequences for the subsequent default or disappearance of the supplier, the judgment aligns with a long line of authority. In *State of Maharashtra v. Suresh Trading Company* [(1997) 11 SCC 378], the Hon'ble Supreme Court held that a purchasing dealer is entitled to rely on the certificate of registration of the selling dealer as on the date of the transaction and cannot be prejudiced by its retrospective cancellation. In *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi* [W.P. (C) No. 6093 of 2017 dated October 26, 2017], the Hon'ble Delhi High Court read down Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 to exclude bona fide purchasers who had paid tax to the selling dealer, and the SLP against the said judgment was dismissed by the Hon'ble Supreme Court in *Commissioner of Trade & Taxes v. Arise India Ltd.* [SLP (C) No. 36750 of 2017 dated January 10, 2018]. Under the GST regime, the Hon'ble Madras High Court in *D.Y. Beathel Enterprises v. State Tax Officer* [W.P. (MD) No. 2127 of 2021 dated February 24, 2021] and the Hon'ble Calcutta High Court in *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax* [MAT No. 1218 of 2023 dated August 02, 2023] (SLP dismissed by the Hon'ble Supreme Court on December 14, 2023) held that the Department

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must first proceed against the defaulting supplier before reversing ITC in the hands of the recipient, save in exceptional cases of collusion or where the supplier is missing. The Hon'ble Calcutta High Court in *Gargo Traders* (supra) and the Hon'ble Kerala High Court in *Diya Agencies v. State Tax Officer* [W.P. (C) No. 29769 of 2023 dated September 12, 2023] remanded matters with a direction to examine the recipient's documentary evidence of genuineness rather than deny ITC solely on the basis of the supplier's cancelled registration or absence of the credit in GSTR-2A. The Court's reading of Section 132(1)(c) is also in harmony with Circular No. 171/03/2022-GST dated July 06, 2022, which proceeds on the footing that the recipient's liability in a fake invoicing case arises only where the invoice is established to have been issued without any underlying supply.

Contrary view

The Department's principal counter-authority remains the decision of the Hon'ble Supreme Court in *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd.* [Civil Appeal No. 230 of 2023 dated March 13, 2023], rendered under Section 70 of the Karnataka Value Added Tax Act, 2003 (which is pari materia with Section 155 of the CGST Act), holding that the burden of proving the genuineness of a transaction lies on the dealer claiming ITC, and that mere production of tax invoices and proof of payment through banking channels is not sufficient; the dealer must establish the actual physical movement of goods by furnishing details such as the name and address of the selling dealer, vehicle numbers, transport and delivery documents and payment of freight. The Hon'ble Patna High Court in *Aastha Enterprises v. State of Bihar* [CWJC No. 10395 of 2023 dated August 18, 2023] went further to hold that ITC, being a concession, is unavailable to the purchaser where the supplier has not remitted the tax, the purchaser's remedy being only against the supplier. Notably, the present judgment does not dilute these principles; the Petitioners have specifically undertaken to produce documents evidencing receipt of goods, and the Court's observations regarding payment through banking channels were made in the context of the prima facie assessment required for anticipatory bail and not as a finding on ITC eligibility.

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On pre-arrest protection, a stricter line of authority also exists. In *P.V. Ramana Reddy v. Union of India* [W.P. No. 4764 of 2019 dated April 18, 2019], the Hon'ble Telangana High Court declined to grant protection from arrest to persons accused of circular trading and fake ITC, holding that the power under Section 69 is not contingent upon prior adjudication of the tax liability; the SLP against the said judgment was dismissed by the Hon'ble Supreme Court on May 27, 2019, and in *Union of India v. Sapna Jain* [SLP (Crl.) Nos. 4322-4324 of 2019 dated May 29, 2019] the Hon'ble Supreme Court directed the High Courts to keep the said dismissal in mind while considering pre-arrest bail in GST matters. Further, in *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation* [(2013) 7 SCC 439] and *P. Chidambaram v. Directorate of Enforcement* [(2019) 9 SCC 24], the Hon'ble Supreme Court characterised economic offences as a class apart requiring a different approach to bail, with anticipatory bail to be granted sparingly where custodial interrogation is necessary to unearth the money trail. The present judgment, following *Akram Pasha* (supra), distinguishes CGST offences from offences under statutes such as the Prevention of Money Laundering Act, 2002 on the basis of the quantum of punishment and the compoundable nature of the offence, and the intervening decision in *Radhika Agarwal* (supra) has substantially narrowed the field in which arrest can precede a properly reasoned and material-backed "reason to believe".

In practical terms, the judgment reinforces that in cases where the Department's case rests only on the supplier's non-existence or cancelled registration, the recipient can legitimately resist custodial interrogation by demonstrating no criminal antecedents, cooperation with the Summons under Section 70, payment through banking channels and readiness to produce evidence of receipt of goods. Taxpayers would, however, be well advised to maintain a robust trail of actual movement of goods, including e-way bills, transporter documents, weighment slips, goods receipt notes and stock registers, since the same evidence will be decisive in the adjudication proceedings under Section 74 of the CGST Act that ordinarily follow such investigations. For the Department, the judgment underscores that the case against a recipient under Section 132(1)(c) must be built on prima facie material establishing the supplier's

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offence under Section 132(1)(b) and collusion of the recipient, rather than on inference from the supplier's subsequent disappearance.

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