

Issue of fake Invoicing under GST and Arrest provisions

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Media Limelight



UP GST officials detect Rs 3 crore tax fraud by Hapur resident in Aligarh



Anuja Jaiswal | TNN | Updated: Jul 11, 2019, 14:29 IST



AGRA: GST officials in Uttar Pradesh (UP) have unearthed an alleged tax fraud of nearly Rs 3 crore and detected fake invoices worth Rs 16 crore by

UP GST officials detect Rs 3 crore tax fraud by Hapur resident in...

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Fake invoice fraud: Case studies presented to PM Narendra Modi

U Sudhakar Reddy | TNN | Updated: Jul 15, 2019, 10:52 IST



HYDERABAD: The Director General of GST Intelligence (DGGI) made a presentation to Prime Minister Narendra Modi on the modus operandi and the severity of the fake invoices fraud in Hyderabad, where several top infrastructure companies

Fake invoice fraud: Case studies presented to PM Narendra Modi

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Rs 12.84-crore GST evasion: Bizman held

Friday, 09 August 2019 | PNS | BALANGIR



SHARE



Sai International Mines & Minerals owner Tirthankar Patel was on Thursday arrested in Titilagarh of Balangir district for allegedly evading Goods and Services Tax (GST) amounting to Rs 12.84 crore.

Acting on a directive of the State GST Commission, a joint enforcement team raided Patel's residence and arrested him at around 11 am. He was produced in the Court of SDJM, Titilagarh and sent to judicial custody after rejection of his bail plea.

The accused has allegedly evaded the tax through fake bills of purchase of items worth Rs 84.6 crore and sale of items costing Rs 84.71 crore without buying or selling anything, official source said.



NEWS / CITY NEWS / SURAT NEWS / SURAT: DGGI UNEARTHES YET ANOTHER FAKE BILLING RACKET OF RS 42 CRORE

Surat: DGGI unearths yet another fake billing racket of Rs 42 crore

Melvyn Thomas | TNN | Updated: Aug 7, 2019, 21:14 IST



SURAT: The Surat zonal unit of the Directorate General of GST Intelligence (DGGI) on Wednesday arrested a person involved in the issuance of fake invoices to fraudulently claim Input Tax Credit (ITC) to



Surat: DGGI unearths yet another



Massive plantation drive to



Roads to Saputara blocked

Chartered Accountant and Four Others held for creating Fake GST Invoices

June 7, 2019 1:15 pm | By: Tax Scan Team



Chartered accountant arrested for GST fraud

| Thursday | 21st February, 2019



Chartered accountant Gaurav Jindal, 27, has been arrested for allegedly running the racket. One such exporting firm involved in the said racket is GJA Industries ltd, Delhi, which is being controlled and managed by Jindal. He was sent to Meerut jail for the offence on Tuesday. Elaborating on the matter, senior intelligence officer Devender Kumar said, "These offenders created multiple companies/firms using

करोड़ों की जीएसटी चोरी करने वाली जयपुर की सीए गिरफ्तार, जेल भेजा

■ 26 फर्जी फर्म बनाई, फर्जी बिलिंग से 20 करोड़ रुपए हड़पे
 ■ जोधपुर स्टेट टैक्स डिपार्टमेंट की कार्रवाई



सीए परिधि जैन मुंह ढंके हुए।

जोधपुर | परिचित, अनजान या साथी कर्मचारियों के पैन कार्ड, आधार और अन्य दस्तावेजों से फर्जी फर्म बनाकर डमी बिलिंग करने और करोड़ों रु. की जीएसटी चोरी के मामले में जयपुर की सीए परिधि जैन को जोधपुर स्टेट टैक्स डिपार्टमेंट ने गिरफ्तार कर लिया। विभाग ने उन्हें कोर्ट में पेश किया। जहां से जेल भेज दी गई। जीएसटी लागू होने के साथ ही मिली शक्तियों का जोधपुर में पहली बार प्रयोग करते हुए विभाग ने यह कार्रवाई की है। परिधि ने जोधपुर के शंकर नगर निवासी सीए गौरव माहेश्वरी के साथ मिलकर करीब 26 फर्जी फर्म बनाई थी और इनमें करीब 90 करोड़ की बोगस बिलिंग कर 15-20 करोड़ रु. की जीएसटी चोरी की।

सीए गौरव है गिरोह का मास्टरमाइंड, दोनों पर जयपुर सहित कई जिलों में मामले इस गिरोह के मास्टरमाइंड सीए गौरव माहेश्वरी के खिलाफ जोधपुर के विभिन्न थानों में अब तक 7 मामले दर्ज हो चुके हैं। इसके अलावा जयपुर के वैशाली नगर थाने में भी परिधि और गौरव के खिलाफ केस दर्ज कराने के लिए पीड़ित थानों के चक्कर लगा रहे हैं। साथ ही जयपुर गिरोह

पत्रिका सिटीजन

जीएसटी चोरी: जयपुर की महिला सीए को किया गिरफ्तार

पत्रिका न्यूज़ नेटवर्क
 pstrika.com

जयपुर/जोधपुर: राज्य जीएसटी विभाग की एंटी इवेजन टीम ने सोमवार को बड़ी कार्रवाई करते हुए दस्तावेजों में हेराफेरी कर फर्जी फर्म बनाने और करोड़ों रुपए की जीएसटी चोरी मामले में शामिल जयपुर की महिला चार्टर्ड एकाउंटेंट परिधि जैन को गिरफ्तार कर लिया। राज्य कर आयुक्त डॉ. प्रोणम वी यशवंत के आदेश के बाद मयुक्त आयुक्त (जोधपुर) केके व्यास के निर्देश पर एंटी इवेजन टीम परिधि को जयपुर से जोधपुर लाई और कर भवन में गिरफ्तार किया।

टीम ने उमे न्यायाधीश के आवास पर पेश किया, जहां से उसे 24 दिसम्बर तक न्यायिक हिरासत में भेजने के आदेश दिए गए। महिला सीए की गिरफ्तारी का यह संभवतः पहला मामला है।

अन्य आरोपी जेल में: इस मामले में अन्य आरोपी जोधपुर का सीए गौरव माहेश्वरी धारवाधड़ी के मामले में न्यायिक हिरासत में हैं। स्टेट जीएसटी विभाग की ओर से जीएसटी में अपराध के तहत धारा 132 के मामले में आरोपी गौरव माहेश्वरी की गिरफ्तारी वाकी है। उसे प्रॉडक्शन वारंट पर तलब कर नियमानुसार कार्यवाही की जाएगी।

बोगस बिलों से करोड़ों का फर्जीवाड़ा

परिधि ने कर चोरी की मंशा से अन्य आरोपी गौरव माहेश्वरी के साथ मिलकर रजिस्ट्रार रची। इसके तहत रिलेवेंट परिधियों के नाम ग्रामक लुभाने विज्ञानों को अण्ड में दस्तावेज हासिल किए। जीएसटी में फर्जी तथ्य व अंकड़े पेश कर फर्मों का पंजीयन कराया व जाली आइटीसी बनाकर रिटर्न में डिन नाल व सेवाओं को प्रोगस दिलाने में दूरगो। जिनसे 90.90 करोड़ रिटर्न में दलत कर कुल 16.75 करोड़ की जीएसटी चोरी की।

इधर, आरोपी सीए को नहीं मिली राहत

दस्तावेज में हेराफेरी कर फर्जी फर्म बनाने और करोड़ों रुपए की जीएसटी चोरी के आरोपी चार्टर्ड एकाउंटेंट गौरव माहेश्वरी के जमानत प्रार्थना पत्र पर सोमवार को सुनवाई हुई। कोर्ट ने केस डायरी तलब करते हुए अगली सुनवाई 6 जनवरी को तय की है। न्यायाधीश संदीप मेहता की एकलपीठ ने अनिश्चित महादिवक्ता फरजंद अली को अगली सुनवाई पर जीएसटी विभाग के अधिवक्ता को भी उपस्थित रखने को कहा है।

Quick: TIOL | Ino su | GST P | No G | Ta: x | Fake | Two | UP G | Govt | CBIC | Hotel | +

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THE NEW INDIAN EXPRESS Friday, September 06, 2019 01:50:14 PM

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Tax officials detected Rs 37,946 crore fraud in FY19, Finance Ministry tells Parliament

In 2018-19, 1,620 cases of fake invoicing were detected involving Rs 11,251.23 crore, and 154 persons were arrested.

Published: 16th July 2019 05:00 PM | Last Updated: 16th July 2019 07:10 PM

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tribuneindia.com/news/chandigarh/132-bogus-firms-to-lose-gst-number/814178.html

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Chandigarh

Posted at: Aug 7, 2019, 7:44 AM, last updated: Aug 7, 2019, 7:58 AM (IST)

132 bogus firms to lose GST number

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Data on Prosecution

The government has detected Goods and Services Tax (GST) evasion of over **Rs 45,000 crore** during the financial year **2018-19**. Of this, tax sleuths have recovered an amount of Rs 25,000 crore during this period, as per the data available with the finance ministry. The revenue department of the ministry has registered around **37,000** cases in the last fiscal. The cases registered by the tax authorities range from misuse of Input Tax Credit (ITC), misdeclaration to non-filing of GST returns. **The most common modus operandi of evasion is the use of fake invoices. Close to 2,000 cases of fake invoices involving Rs 8,000 crore were registered during 2018-19.** Tax sleuths recovered Rs 736 crore of the total tax evaded on account of fake invoices.

Source: DNA India

ARREST UNDER GST



ARREST

VS

PROSECUTION

Statutory Provisions



No person shall be shall be **deprived** of his **life** or **personal liberty** except according to the procedure specified by the law

SECTION 69

POWER TO ARREST

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:

SECTION 132

Whoever commits 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 utilization of input tax credit or refund of tax;
- (c) avails input tax credit** using such invoice or bill referred to in clause (b);
- (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

Undisclosed Sales



Points of discussion

- Falling u/s 132 (a)
- Most common way of evasion of tax
- Normally the information comes from records seized during search under GST or other laws

Issuing Fake Invoices by making Bogus Firms



Points of discussion

- Falling u/s 132 (b) and (c)
- Creation of bogus firms by using personal details with or without information
- Raising bogus claims of credit
- Possible on account of technical incompetency of the system
- Layering of entities to hide the actual beneficiary
- Credit is being to the business in lieu of commission
- Refund is taken of the credit

SECTION 132

Whoever commits 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 utilization of input tax credit or refund of tax;
- (c) avails input tax credit** using such invoice or bill referred to in clause (b);
- (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

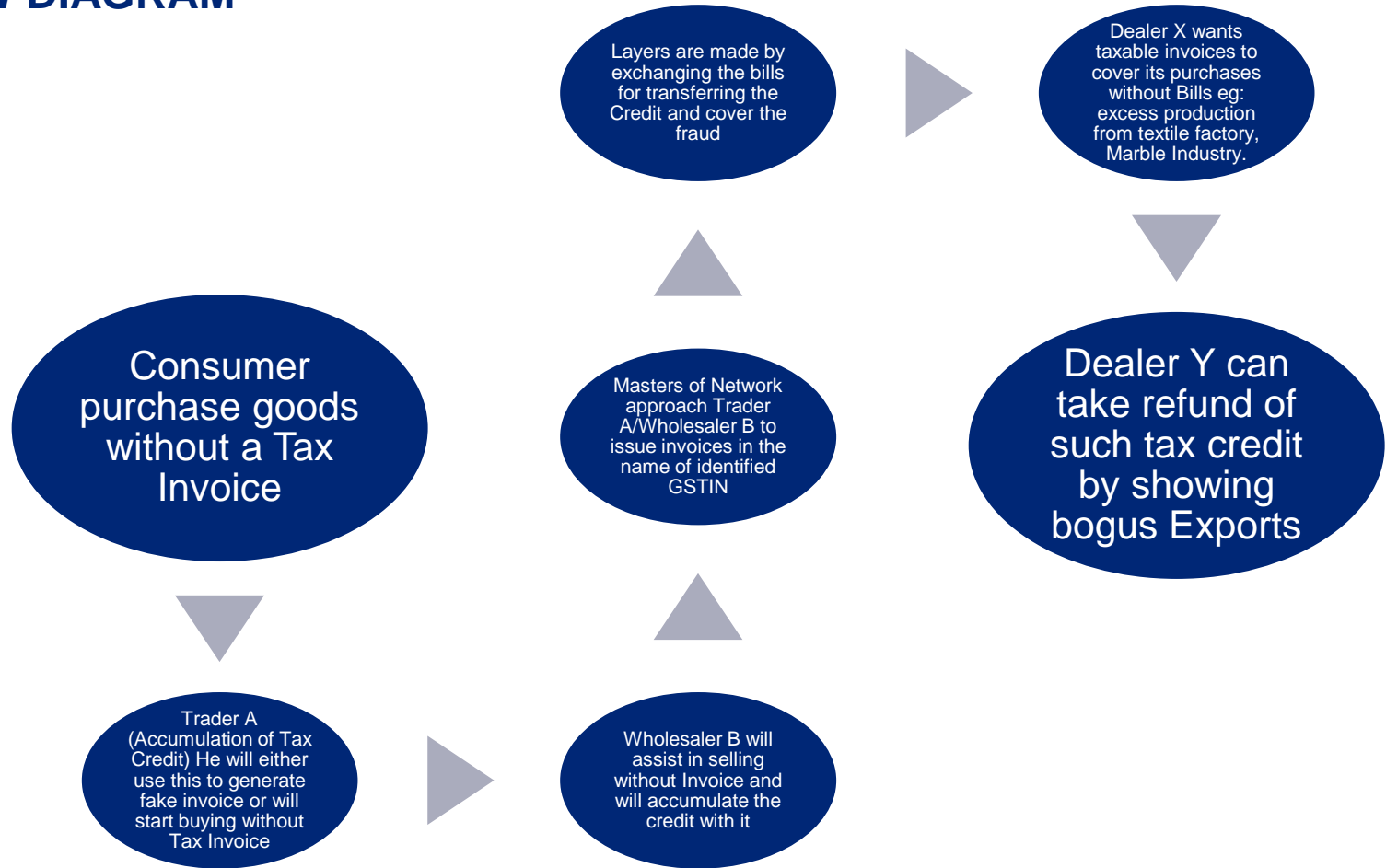
Discounting of Accumulated Credit



Points of discussion

- Indirect loss of revenue
- Section 132(1)(b) and (c) of the CGST Act is triggered
- Can be understood with the flow diagram
- Can be duly taken care with E-invoice or digital payment

FLOW DIAGRAM



SECTION 132

Whoever commits 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 utilization of input tax credit or refund of tax;
- (c) avails input tax credit** using such invoice or bill referred to in clause (b);
- (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

Circular Trading



Points of discussion

- No loss of revenue
- Falls in the four corner of section 132(1)(b) and (c) of the CGST Act
- Only to inflate the turnover
- Repercussion under other statues
- Lack of transportation document

SECTION 132

Whoever commits 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 utilization of input tax credit or refund of tax;
- (c) avails input tax credit** using such invoice or bill referred to in clause (b);
- (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

Using tax collected



Points of discussion

- section 132(1)(d) of the CGST Act
- To cover the persons who collect the taxes and do not deposit
- Language covers genuine cases also
- Interest is very well a compensation for delay payment but can not extend beyond the specified limit

Monetary Limits



Clause	Amount of evasion	Cases	Term of Imprisonment
(i)	> 5 Cr.	Tax evasion/ Wrong availment/ utilization of Input tax credit/ Refund	Upto 5 Years with fine
(ii)	Duty evasion > 2 Cr < 5 C	Tax evasion/ Wrong availment/ utilization of Input tax credit/ Refund	Upto 3 Years with fine
(iii)	Duty evasion > 1 Cr < 2 Cr	Tax evasion/ Wrong availment/ utilization of Input tax credit/ Refund	Upto 1 Year with fine
(iv)	-----	Where one commits or abets the commission of offence specified in clause (f) or (g) or (j) (Falsifies/Obstructs/Tampers)	Upto 6 months or with fine

SECTION 132 (2)

REPEAT OFFENCES

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.

**Reason to Believe is
pre requisite**



'REASON TO BELIEVE' UNDER S. 69

Opinion may be subjective but must be based on material evidence on record

Reason must appear on the face of the notice or available in materials on record

Reason must have rational basis for forming the belief

Must be something which a reasonable person would believe on the basis of facts before him

Cannot be a mere 'reason to suspect'

'REASON TO BELIEVE' UNDER S. 69

Examples:

- Information from previous investigations conducted by another authority
- Statements against accused corroborated by Evidence
- Inference based on previous searches conducted in other premises of the Assessee
- Documents and business account-related information
- Information from FIU

Basics of CrPC



COGNIZABLE AND NON-COGNIZABLE OFFENCES

Cognizable

- Authority to make an arrest without a warrant and to start an investigation with or without the permission of a court

Non-Cognizable

- an investigation cannot be initiated without a court order
- Other offences under the Act are non-cognizable and bailable
- all arrested persons shall be released on bail by Deputy/ Assistant Commissioner.

Non Bailable

- Bail has to be taken from Economic Offences Court u/s 437 of CrPC Or from High Court or Court of Session
- Offences where the amount of tax evaded or the amount of ITC wrongly availed or the amount of refund wrongly taken **exceeds 5 crore,**

Bailable

- DC/Ac has power to grant bail by way of a bail bond

Types of Bail

438

- Anticipatory Bail

437/439

- Regular Bail.

482/Writ

- Quashing of FIR along with interim protection application

167(2)

- Default Bail

Judgements on Default Bail

Application u/s 439 of Cr.P.C for grant of bail was filed before the High Court of Judicature of Madhya Pradesh at Gwalior by Nitin Nikhra [2019 (28) G.S.T.L 199].


Section 167(2) of Cr.P.C has not been complied which requires that Charge Sheet is to be filed within a period of 60 days. Applicant has already suffered confinement of 63 days. Held that right of "default bail" has accrued to assessee after the completion of 60 days following the principle reiterated by Apex Court in case of Achpal alia Ramswaroop . Applicant was released on bail with certain conditions.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD in case SANDEEP MAGANBHAI CHANIYARA Vs COMMISSIONER, CENTRAL EXCISE AND CGST, RAJKOT reported in TOG-673-HC-GUJ-GST-2019.


Application is filed u/s 439 of the Code of Criminal Procedure, 1973 for regular bail. The applicant is arrested on 08.07.2019 and the fact that till date even after passage of 60 days, neither any complaint nor chargesheet is filed and, therefore, the applicant would be entitled for default bail with other terms and conditions.

SAFEGUARDS FOR A PERSON WHO IS PLACED UNDER ARREST – SECTION 69

If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest



If a person is arrested for a non- cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in - charge of a police station under section 436 of the Code of Criminal Procedure, 1973



All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest

Power to issue Summon



Summon

- Section 70 empower the proper officer to issue 'summon
- 'Enquiry shall be deemed to be 'judicial proceedings' under IPC
- Statements will be taken as admissible evidences
- A person can be imprisoned in case of non-compliance
- Used to collect evidences from the person who have taken the bills
- 'Sec. 136 corresponding to section 9D of the Excise Act

Retraction of statement



Bannalal Jat Constructions Pvt Ltd vs ACIT, Jaipur DB IT Appeal 140/2018 Raj HC

This court in CIT, Bikaner Vs. Ravi Mathur, supra, which was relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under [Section 132\(4\)](#) of the IT Act have great evidentiary value and it cannot be discarded in a summary and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the (11 of 19) [ITA-140/2018] retraction takes place. **Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion.**

**No arrest before
completion of
Adjudication**



Important Judgments

- Make My Trip Pvt Ltd Vs UOI :2016 44STR 481 (Del HC)
 - (vi) In the case of MMT, without even an SCN being issued and without there being any determination of the amount of service tax arrears, the resort to the extreme coercive measure of arrest followed by the detention of Mr. Pallai was impermissible in law.
- Jayachandran Alloys (P) Ltd vs Superintendent of GST 2019 25 GSTL 321 (Mad)
 - When recovery is made subject to 'determination' in an assessment, the argument of the department that punishment for the offence alleged can be imposed even prior to such assessment, is clearly incorrect and amounts to **putting the cart before the horse**.
- VIMAL YASHWANTGIRI GOSWAMI Vs STATE OF GUJARAT 2019-TIOL-1746-HC-AHM-GST
 - To put it in other words, the powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is "liable to a penalty". Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

Relief in case of pre-deposit



Points of discussion

- Hon'ble Supreme Court in the case of C. PRADEEP Petitioner(s) VERSUS THE COMMISSIONER OF GST AND CENTRAL EXCISE SELAM & ANR. Special Leave to Appeal (Crl.) No(s). 6834/2019
- Learned counsel for the petitioner submits that indisputably assessment for the relevant period has not been completed by the Department so far. In which case, invoking Section 132 of the Central Goods and Services Tax Act, 2017 does not arise. He further submits that, even if, the alleged liability of Rs. 19 crores as is assumed by the Department is accepted, it is open to the petitioner to file appeal after the assessment order is passed; and as per the statutory stipulation, such appeal could be filed upon deposit of only 10% of the disputed liability. In that event, the deposit amount may not exceed Rs. 2,00,00,000/- (Rupees Two Crores), which the petitioner is willing to deposit within one week from today without prejudice to his rights and contentions in the assessment proceedings and the appeal to be filed thereafter, if required.

POSITION of PROFESSIONALS



NO ARREST OF CA OR ADVOCATES WHO ARE NOT BENEFICIARY OR PART OF FRAUD: P&H HC

Akhil Krishna Maggu & Anr. vs DGGI CWP No 24195 of 2019

Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of the statement without any corroborative evidence linking the professional with an alleged offence should be avoided

New Measure introduced by the Revenue Authorities



7 **JUST IN** 2hrs Indian-American adoptive father of Sherin Mathews denied new trial

8 2hrs Delhi Court adjourns Aircel-Maxis case against Chidambarams sine

9 2hrs Pakistani national charged for molesting minor Indian girl in Dubai

10 2hrs Arif Mohammed Khan sworn in as Kerala Governor

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Fake GST registrations found in 'evasion-prone' commodities



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Points of discussion

- Adhar authentication based registration
- Rule 36(4) to block credit which can not be verified from GSTR 2A
- Rule 86(A) for blocking credit if the officer has reason to believe
- Scrutiny of refunds in cases where SION are breached

Power to inspect goods in movement



E- Way Bill

- Section 69 provides power of inspection
- For goods no tax evasion is possible without transportation
- Advance information of every movement to the department
- Link between E way Bill portal and GST Bill Portal

Inspection by means of dummy purchases



Dummy Purchases

- Section 69 (12) provides power of making dummy purchases
- Authorize officer may purchase goods or services from any dealer from his business premises
- To ensure issuance of Invoice/Bill of Supply
- On return of goods by said officer the dealer shall cancel the Tax Invoice/Bill of Supply and shall return the money

Prevention of Money Laundering Act



PMLA and GST

- Amendment is to be brought in PMLA act to include GST frauds under the list of schedule crimes
- Infrastructure projects using fake invoices for withdrawing funds and managing profits
- Conversion of funds generated from crimes into legal tender
- Taking out public money by making fictitious service transactions
- Involvement of shell companies to take bank loans

GST Audit



Points of consideration for GST Audit

- Scope of GST audit
- Verification of stock instead of blindly relying on management representation
- Accounts and Records rules
- Analyzing the corroborative records to identify the receipt of goods
- Avoid audit in case the entity is under investigation or making required disclosures

THANKS!

