



CWP-13995-2025

**232/3 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

CWP-13995 of 2020 (O&M)

Date of Decision :08.09.2025

Stalwart Alloys Pvt. Ltd.

.... Petitioner

Versus

Union of India and others

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE LISA GILL
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present : Mr. Sandeep Goyal, Advocate with
 Mr. Rishab Singla, Advocate
 for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel, SBIC
for respondent No.1 and 3.

Mr. Sourabh Goel, Addl. AG, Haryana
for respondents No.2 and 4.

LISA GILL, J.(Oral)

1. Challenge in present writ petition is to the vires of Sections 69 and 132 of Haryana Goods and Services Tax Act, 2017 (for short, 'HGST Act') being arbitrary, unreasonable and beyond the legislative competence and being ultravires the Constitution of India.

2. Learned counsel for the parties are *ad idem* that controversy as raised in the writ petition is now squarely covered in favour of revenue in terms of judgment of Hon'ble the Supreme Court in **Radhika Agarwal Vs. Union of India and others, 2025 (2) TMI 1162-Supreme Court (LB)**. Hon'ble the Supreme Court in the said case upheld constitutional validity of Sections 69 and 132 of CGST Act, which is stated to be *pari materia* to



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Sections 69 and 132 of HGST Act. While rejecting the argument in aforementioned case that legislature lacked competence to enact the said provisions, Hon'ble the Supreme Court held that Article 246A of the Constitution is a special provision, defining the source of power and field of legislation for the Parliament and State Legislature with respect to CGST and that Parliament under Article 246A of the Constitution has the power to make laws regarding GST and as a necessary corollary, enact provisions against tax evasion. It was held as under:-

*“75. The Parliament, under Article 246-A of the Constitution, has the power to make laws regarding GST and, as a necessary corollary, enact provisions against tax evasion. Article 246-A of the Constitution is a comprehensive provision and the doctrine of pith and substance applies. The impugned provisions lay down the power to summon and arrest, powers necessary for the effective levy and collection of GST. Time and again this Court has held that while deciding the issue of legislative competence, entries should not be read in a narrow or pedantic sense but given their broadest meaning and the widest amplitude because they are intrinsic to a machinery of government. **Mineral Area Development Authority and Another v. Steel Authority of India and Another, (2024) 10 SCC 1; Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta and Others, (1955) 1 SCR 1284; Elal Hotels & Investments Ltd. and Others v. Union of India, (1989) 3 SCC 698; State of Rajasthan v. G. Chawla and Another, 1958 SCC OnLine SC 33.** The ambit of an entry or article laying down the legislative field extends to all ancillary and subsidiary matters which fairly and reasonably can be said to be comprehended in it. **The United Provinces v. Mst. Atiq Begum and Others, AIR 1941 FC 16 : 1940 SCC OnLine FC 11; Mineral Area Development Authority (supra); Express Hotels (P) Ltd. v. State of Gujarat and Another, (1989) 3 SCC 677; Sardar Baldev Singh v. Commissioner of Income Tax Delhi and Ajmer, 1960 SCC OnLine SC 147.** This settled dictum regarding the interpretation of legislative entries equally applies to the special provision of Article 246-A of the Constitution. In the context of the legislative power to levy and collect tax, a Constitution Bench of Seven Judges in **R.S. Joshi, Sales Tax***



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Officer, Gujarat and Others v. Ajit Mills Limited and Another, (1977) 4 SCC 98 held:

“47. The principle in construing words conferring legislative power is that the most liberal construction should be put on the words so that they may have effect in their widest amplitude. None of the items in the List is to be read in a narrow restricted sense. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. All powers necessary for the levy and collection of the tax concerned and for seeing that the tax is not evaded are comprised within the legislative ambit of the Entry as ancillary or incidental. It is also permissible to levy penalties for attempted evasion of taxes or default in the payment of taxes properly levied.”

Thus, a penalty or prosecution mechanism for the levy and collection of GST, and for checking its evasion, is a permissible exercise of legislative power. The GST Acts, in pith and substance, pertain to Article 246-A of the Constitution and the powers to summon, arrest and prosecute are ancillary and incidental to the power to levy and collect goods and services tax. In view of the aforesaid, the vires challenge to Sections 69 and 70 of the GST Acts must fail and is accordingly rejected.”

3. Reference has been made by Hon’ble the Supreme Court to circulars dated 17.08.2022 and 25.05.2022 in respect to passing of an order of arrest. It has been held as under:-

“56. It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of sub-section (5) to Section 132 of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state his satisfaction and refer to the ‘material’ forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses (a) to (d) of sub-section (1) to Section 132.



The computation of the tax involved in terms of the monetary limits under clause (i) of subsection (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.

57. The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of Section 132 are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing – to the satisfaction of the Commissioner – that the requirements of sub-section (5) to Section 132 of the GST Act are met.

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59. However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under clauses (a) to (d) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (i) of subsection (1) to Section 132 of the GST Acts with sufficient degree of certainty. In such cases, the Commissioner may authorise arrest when he is able to ascertain and record reasons to believe. As indicated above, the reasons to believe must be explicit and 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. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.

60. The findings and the ratio recorded in paragraphs 30 to 47 above with reference to the Customs Act would equally apply



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insofar as maintenance of records as well as obligations of the arresting officer and rights of the accused/person arrested are concerned. Compliance in this regard must be made.

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77. *In view of the aforesaid discussion the challenge to the constitutional validity as also the right of the authorized officers under the Customs Act and the GST Acts to arrest are rejected and dismissed with elucidation and clarification on the pre-conditions and when and how the power of arrest is to be exercised.”*

4. Learned counsel for the parties are *ad idem* that in the present factual matrix, challenge to vires of Sections 69 & 132 HGST Act, which is *pari materia* to Sections 69 and 132 CGST Act, no longer survives. It is submitted that present writ petitions be disposed of in accordance with judgment of Hon’ble the Supreme Court in **Radhika Agarwal’s case (supra)**.

5. Keeping in view the facts and circumstances as above, challenge to vires of Sections 69 & 132 HGST Act is negated and prayer in this respect is rejected. Present writ petition is accordingly disposed of in terms of judgment of Hon’ble the Supreme Court in **Radhika Agarwal Vs. Union of India and others, 2025 (2) TMI 1162-Supreme Court (LB)**.

6. Pending misc. application(s), if any, stand(s) disposed of, accordingly.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

08.09.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No