IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: July 18 , 2025.

1. Civil Writ Petition No. 18184 of 2020(O&M)

Rajesh Mittal ...... PETITIONER(s)

Versus

State of Haryana and others ...... RESPONDENT(s)

2. Civil Writ Petition No. 19130 of 2021(O&M)

Sahil Garg ...... PETITIONER(s)

Versus

Union of India and another ...... RESPONDENT(s)

3. Civil Writ Petition No.4442 of 2021(O&M)

Vishavanath Pathak ...... PETITIONER(s)

Versus

Union of India and others ...... RESPONDENT(s)

4. Civil Writ Petition No. 14314 of 2020(O&M)

Rajinder Bassi and another ...... PETITIONER(s)

Versus

State of Punjab and others ...... RESPONDENT(s)

5. Civil Writ Petition No.15838 of 2020(O&M)

Nitin Jain ...... PETITIONER(s)

Versus

Union of India and others ...... RESPONDENT(s)

6. Civil Writ Petition No. 6038 of 2023(O&M)

Ram Alias Raman Chaggar ...... PETITIONER(s)

Versus

Union of India and others ...... RESPONDENT(s)

7. Civil Writ Petition No.10415 of 2023(O&M)

Anurag Aggarwal ...... PETITIONER(s)

Versus

State of Punjab and others ...... RESPONDENT(s)

8. **Civil Writ Petition No. 13096 of 2023(O&M)**

Ganga Ram ...... PETITIONER(s)

Versus

State of Punjab and others ...... RESPONDENT(s)

9. **Civil Writ Petition No.9957 of 2023(O&M)**

Rashi Khanna and others ...... PETITIONER(s)

Versus

Union of India and others ...... RESPONDENT(s)

10. **Civil Writ Petition No. 3438 of 2024(O&M)**

Pankaj Kumar ...... PETITIONER(s)

Versus

State of Punjab and others …... RESPONDENT(s)

CORAM : HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Sardavinder Goyal, Advocate in CWP-9957-2023
Mr. Rajiv Malhotra, Advocate in CWP-15838-2020
for the petitioner(s).

None for the petitioners in other Writ Petitions.

Mrs. Mamta Singla Talwar, DAG, Haryana.

Mr. Saurabh Kapoor, Addl.AG, Punjab.

Mr. Sourabh Goel, Advocate
for respondent-Union of India.

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<u>LISA GILL, J.</u>

1. Challenge in all these writ petitions is to the vires of Sections 69 and 132 of Goods and Services Tax Act, 2017 (for short, 'GST Act') on the ground of lack of legislative competence and being violative of Articles 14, 20 and 21 of Constitution of India.

2. Learned counsel for the parties, present in Court, are *ad idem* that controversy as raised in these writ petitions is now squarely covered in favour of revenue in terms of judgment of Hon'ble the Supreme Court in **<u>Radhika Agarwal</u>**

<u>Vs. Union of India and others</u>, *2025 (2) TMI 1162-Supreme Court (LB).* In the said case, Hon'ble the Supreme Court upheld constitutional validity of Sections 69 and 132 of the GST Act. While rejecting the argument in aforementioned case that legislature lacked the 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 GST 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 Nurenburg* v. *Superintendent, Presidency Jail, Calcutta and Others*, (1955) 1 SCR 1284; *Elel 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. Atiqa 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 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 sub-section (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 sub-section (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 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 present writ petitions be disposed of in accordance with judgment of Hon'ble the Supreme Court in **Radhika Agarwal's case** **(supra)**, however, liberty be afforded liberty to petitioners to avail their remedies for challenging the complaint registered against petitioners.

5. In the given facts and circumstances, wherein Hon'ble the Supreme Court has categorically upheld the provisions laying down power to arrest and

prosecution mechanism for levying and collection of GST and checking its evasion, the said ground for quashing the complaint as raised in present writ petitions necessarily does not survive. In respect to any other ground as may be available, petitioners are always at liberty to avail remedy(ies) as may be available to them in accordance with law.

6. Learned counsel for the parties are *ad idem* that present writ petitions be disposed of in accordance with judgment of Hon'ble the Supreme Court in **Radhika Agarwal's case (supra)**. It is to be noted that petitioners in some of the writ petitions are still unrepresented today, despite present petitions being adjourned from 15.07.2025 on account of absence of learned counsel. Similar writ petitions were disposed of in terms of **Radhika Agarwal's case (supra)** on 15.07.2025 and present petitions were adjourned in the interest of justice to await appearance of learned counsel. In the given factual matrix, we do not deem it appropriate to further adjourn the matters where learned counsel for petitioners are not present.

7. Keeping in view the facts and circumstances as above, all the abovesaid writ petitions are 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)***.

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

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 18 , 2025
'om'

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