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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5454/2020**

DHRUV KRISHAN MAGGUPetitioner

Through: Mr. Ayush Mittal, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Harpreet Singh, SSC, CBIC.

12 WITH

+ **W.P.(CRL) 2020/2020 & CRL.M.A. 16840/2020**

SARTAJ ALIPetitioner

Through: Mr. Siddharth Bhardwaj, Adv.

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Harpreet Singh, SSC, CBIC.

13 AND

+ **W.P.(CRL) 2064/2020 & CRL.M.A. 3401/2021**

CHAWLA PLASTICS INDUSTRIES (INDIA)Petitioner

Through: Mr. Arjun Wadhwa, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Ms. Arti Bansal, SPC with Ms. Shruti
Goel, Adv.

Mr. Harpreet Singh, SSC, CBIC.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **11.08.2025**

1. This hearing has been done through hybrid mode.
2. All these three petitions raise a common issue in respect of the powers of arrest exercised by officers of the GST Department under Sections 69 and 70 of the Central Goods and Services Tax Act, 2017 (hereinafter “CGST Act”).



3. In these writ petitions, allegations of tax evasion were raised against the Petitioners and investigations/searches were conducted by the CGST Department. In the said process, the Petitioners were even arrested but were granted bail by the concerned Courts.

4. The prayer in these writ petitions is for declaration, *inter alia*, that Sections 69, 70 and 132 of the CGST Act are beyond the legislative competence of the Parliament and the same are *ultra vires* the Constitution of India. In one of the writ petitions compensation has also been sought. The prayers in these petitions are as under:

“W.P.(C) 5454/2020

i) Declare that Section 69 and 132 of Central Goods and Services Tax Act, 2017 being arbitrary, unreasonable and beyond the legislative competence of the Parliament are ultra vires the Constitution of India.

W.P.(CRL) 2020/2020

i. Issue an appropriate Writ, order(s) or direction(s) declaring Sections 69 & 132 of the Central Goods Service Tax Act, 2017, as unconstitutional and ultra vires to Article 21 of the Constitution of India and hence unconstitutional, illegal and unenforceable;

ii. Issue an appropriate Writ, order(s) or direction(s) to the Respondent to comply with the mandatory procedure under Chapter XII of the Code of Criminal Procedure, 1973 including Section 154, 157, 167, 172 etc for valid commencement of investigation into any offence qua the petitioner.

iii. Declare the entire investigations erroneously commenced by the Respondents qua the Petitioner as non est, illegal, void ab initio for not following the mandatory procedure under Chapter XII of the of the Code of Criminal Procedure 1973 and therefore violative of the “procedure established by law”.

iv. Issue an appropriate Writ, order(s) or direction(s)



declaring Section 70(1) of the Central Goods Service Tax Act, 2017, as unconstitutional and ultra vires to Article 20(3) of the Constitution of India and hence unconstitutional, illegal and unenforceable;

v. Issue an appropriate Writ, order(s) or direction(s) declaring Section 67 (1) and S. 69 of the CGST Act are ultra vires and violative of the principles of nature justice, as the said Section does not provide for recording of reasons to believe in writing, unlike other statutes such as Prevention of Money Laundering Act, 2002

vi. Issue an appropriate Writ, order(s) or direction(s) declaring Notification No. 14/2017 dated 1st July, 2017 issued by the Government of India, Ministry of Finance investing the powers of Commissioner to Additional Director General, GST Intelligence as contrary to the settled principle of law as held by the Hon'ble Supreme Court in **Ajaib Singh Vs. State of Punjab, AIR 1965 SC 1619.**

vii. Issue an appropriate Writ, order(s) or direction(s) declaring Provisions of Section 137 of the CGST Act 2017 contrary to the settled principles of law, which provide that there can be no fastening of vicarious liability for a criminal offence requiring mens rea, without there being an active role being proved by the prosecution.

viii. Issue an appropriate Writ, order(s) or direction(s) declaring provisions of Section 135 of CGST Act, 2017, unconstitutional as it requires Accused to disprove the reverse burden of proof not by preponderance of probability but beyond reasonable doubt.

ix. Issue an appropriate Writ, order(s) or direction(s) declaring provisions of Section 136 of the CGST Act 2017 unconstitutional as it is contrary to section 32 & 33 of the Indian Evidence Act and is ultra vires as it is against the basic principle of law that no person shall be condemned on ex-parte evidence.

x. Any other relief as this Hon'ble Court may deem fit



and proper in view of the facts and circumstances of the present case.

W.P.(CRL) 2064/2020

A. Issue a writ, order or direction to set aside and declare the entire investigation of the Respondent No 2 & 3 qua the Petitioner as non est, illegal, without jurisdiction and void ab initio and further as not in compliance with the mandatory requirements of Chapter XII of the Code of Criminal Procedure, 1973

B. Issue a writ, order or direction to Respondent No.2 & 3 to accept the payment of Rs. 1,00,00,000 made by Petitioner as under protest and to adjust the amount paid towards any liability incurred by the Petitioner after following due process of law

C. Issue a writ, order or direction that any alleged undertaking signed by the Petitioner including to deposit Rs. 8,28,00,000/- (Rupees Eight Crore Twenty-Eight Lakhs Only) i.e. the input credit towards purchases and sales made in financial year 2018-2019 in installments was under involuntary, made under coercion, and therefore non est, illegal and unenforceable

D. Issue a write, order or direction that the Respondent No.2 and 3 conduct the investigation in accordance with the procedure established by law and restrain from insisting on compliance of the coerced undertaking signed by the Petitioner

*E. Issue an appropriate Writ, order(s) or direction(s) till the show cause notice is issued a fair opportunity is accorded to **the** Petitioner to present his side of version i.e., "Audi Alteram Partem" which is a settled proposition of law and following the law of natural justice, no coercive action be taken against the Petitioner;*

F. Pass any such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."



5. The issue relating to the legislative competence and validity of Sections 69 and 70 of the GST Act, has now been squarely decided by the Supreme Court in the case of ***Radhika Agarwal v. Union of India & Ors., 2025 INSC 272*** wherein the powers of the CGST officials to summon as also to seize documents, seek production of documents, and arrest persons who may be suspected of evading tax, has been discussed in detail. The Supreme Court has also stipulated the safeguards *qua* arrest under the CGST Act in reference to Section 132 of the said Act. The relevant observations of the Supreme Court are 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.

58. Our attention was drawn to the judgment of the High Court of Delhi in Makemytrip (India) Private Limited and Another v. Union of India and Others, 50 which is a decision interpreting the power of arrest under the Finance Act, 1994. These provisions are related to service tax. Excise duty, service tax, and other taxes are subsumed under the GST regime. Accordingly, we are in agreement with the findings recorded in this decision to the extent that the power of arrest should be used with great circumspection and not casually. Further, as in the case of service tax, the power of arrest is not to be used on mere suspicion or doubt, or for even investigation, when the conditions of subsection (5) to Section 132 of the GST Acts are not satisfied.

[...]

62. The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the GST Act. The provisions of the Code, read with Section 69(3) of the GST Acts, relating to arrest and procedure thereof, must



be adhered to. Compliance must also be made with the directions in D.K. Basu (supra). The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23.12.2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws. In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GSTInvestigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo. Instruction 02/2022-23 GST (Investigation) dated 17.08.2022 further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgement. The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. It further states that efforts should be made to file a prosecution complaint under Section 132 of the GST Acts at the earliest and preferably within 60 days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time frame. A report of arrests made must be maintained and submitted as provided in



paragraph 6.1 of the Instruction. The aforesaid directions in the Circular/instruction should be read along with the specific directions outlined in the earlier judgments of this Court and the present judgment.

[...]

72. The last issue for our determination concerns the constitutional validity of Sections 69 and 70 of the GST Acts which provide for the power to arrest and the power to summon. The petitioners assail the vires of these provisions on the grounds of legislative competence. It is submitted that Article 246-A of the Constitution while conferring legislative powers on Parliament and State Legislatures to levy and collect GST, does not explicitly authorize the violations thereof to be made criminal offences. Our attention was drawn to Lists I and II of the Seventh Schedule to the Constitution which demarcate the legislative fields for the Union and the States to enact laws and make violations of the enactments as offences. Referring to Entry 93 of List I to the Seventh Schedule, it is submitted that the Parliament can enact criminal provisions only for the matters in List I. It is further submitted that the power to summon, arrest and prosecute are not ancillary and incidental to the power of levying GST and therefore, are beyond the legislative competence of the Parliament under Article 246-A of the Constitution.

73. This argument, in our opinion, must be rejected. Article 246-A of the Constitution is a special provision defining the source of power and the field of legislation for the Parliament and the State Legislature with respect to GST:

“246-A. Special provisions with respect to goods and services tax.—(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the



legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State. (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article 279- A, take effect from the date recommended by the Goods and Services Tax Council.”

74. This Court in Union of India and Others v. VKC Footsteps (India) Private Ltd., 57 took note of the change brought about by Article 246-A of the Constitution and observed:

“52.1. Firstly, Article 246-A defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to travel to the Seventh Schedule. 52.2. Secondly, the provisions of Article 246-A are available both to Parliament and the State Legislatures, save and except for the exclusive power of Parliament to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce. (...).”

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. 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. 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, 60 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.

76. In some of the cases, Section 135 of the GST Acts which relates to culpable mental intent has been challenged. We are not examining the said aspect as prosecution has not been initiated in any of these cases. If any person is aggrieved and is advised to challenge the said Section, he/she may do so before the High Court.

77. In view of the aforesaid discussion the challenge to the constitutional validity as also the right of the authorised 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.”

6. Thus, the Supreme Court speaking through Hon’ble Justice Sanjiv Khanna and Hon’ble Justice M. Sundresh has clearly held that the Parliament has the legislative competence to enact the provisions under Section 69 and 70 of the CGST Act.

7. It would also be relevant to note that in a concurring judgment by Hon’ble Ms. Justice Bela M. Trivedi, it has also been observed as under:

“12. It is pertinent to note that the Special Acts are enacted to achieve specific purposes and objectives. The power of judicial review in cases of arrest under such Special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the Special Acts may frustrate the very purpose and objective of the Acts. It hardly needs to be stated that the



offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. Frequent or casual interference of the courts in the functioning of the authorized officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in Technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorized officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes.

13. Though, the power of judicial review keeps a check and balance on the functioning of the public authorities and is exercised for better and more efficient and informed exercise of their powers, such power has to be exercised very cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities. To sum up, the powers of judicial review may not be exercised unless there is manifest arbitrariness or gross violation or non-compliance of the statutory safeguards provided under the special Acts, required to be followed by the authorized officers



*when an arrest is made of a person prima facie guilty of
or having committed offence under the special Act.”*

8. In view of the above judgment of the Supreme Court, the challenges raised in present petitions no longer require adjudication. None of the other reliefs sought in these writ petitions are pressed. Accordingly, these writ petitions are disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 11, 2025

Rahul/msh