

REFERENCE TO CRIMINAL PROCEDURE CODE UNDER CENTRAL GOODS AND SERVICES TAX ACT, 2017

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Abstract

An important question that arises for consideration after the enactment of the Goods and Services Tax (GST) Act, 2017 (both Central as well as State) is as to whether police can investigate a cognisable offence of evasion of tax under the GST Act by taking resort to Section 4(2) of the Code of Criminal Procedure (CrPC), 1973 and whether police has the power to conduct search and seizure in respect of a cognisable offence under the GST Act without specific power having been conferred on the police and/or the Bureau of Investigation which comes under the police department under the GST Act to investigate into any offence committed under the GST Act.

Section 132 of the Central Goods and Services Tax (CGST) Act, 2017 prescribes punishment for certain offences. It provides that whoever commits any of the offences enumerated in sub-section (1) of Section 132 of the Act, shall be punishable with imprisonment for different terms on the basis of the nature of offence. Sub-section (4) of Section 132 provides that notwithstanding anything contained in the CrPC, 1973, all offences under the Act, except the offences referred to in sub-section (5) of Section 132 shall be non-cognisable and bailable. Sub-section (5) of Section 132 provides that the offences specified in clauses (a), (b), (c) or (d) of sub-section (1) and punishable under clause (i) of sub-section (1) of Section 132 shall be cognisable and non-bailable. Sub-section (6) of Section 132 provides that a person shall not be prosecuted for any offence under Section 132 except with the previous sanction of the Commissioner. Section 134 of the Act of 2017 provides that no court shall take cognisance of any offence punishable under the Act of 2017 or the Rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence. Similar provisions are contained in the Assam Goods and Services Tax Act, 2017.

Keywords: GST, TDS, TCS, GSTR, Central Goods and Services Tax Rules, 2017

Introduction

The offences specified in clauses (a), (b), (c), (d) of sub-section (1) of section 132 have therefore been made cognisable and non-bailable. As such whoever supplies any goods or services or both without issue of an invoice, in violation of the provisions of the Act of 2017 and the Rules made thereunder, with the intention to evade tax, or issues any invoice or bill without supply of goods or services or both in violation of the provision of the Act of 2017 and the Rules made

thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax or avails input tax credit using an invoice or bill without supply of goods or services or both or collects any amount as tax but fails to pay the same to the Government beyond the period of three months from the date on which such payment becomes due, are cognisable offences and the same are non-bailable.

Chapter XIV of the CGST Act, 2017 deals with powers of inspection, search, seizure and arrest. Section 67 of the Act confers power of inspection, search and seizure on a proper officer who should not be below the rank of Joint Commissioner. Sub-section (10) of Section 67 provides that the provisions of CrPC relating to search and seizure, shall, so far as may be, apply to search and seizure under section 67 subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted. The question that arises for consideration is as to whether Section 67 of the Act of 2017 does away with the powers and functions of the authorities other than the proper authorities as specified in the Act of 2017 to act in accordance with the provisions of Section 132(1) read with section 132(5) of the CGST Act, 2017 and sub-section 2 of section 4 of the CrPC. Section 4 of the CrPC reads as under –

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions herein contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

Sub-section (2) of section 4 of CrPC provides about the investigation of all offences under any law other than the Indian Penal Code which are to be investigated and inquired into and tried in accordance with the provisions of CrPC except in respect of offences for which any law for the time being in force regulates the manner and place of investigation, inquiring into or trying or otherwise dealing with such offences. As such the offences other than the offences under the Indian Penal Code, procedure relating to investigation, inquiry and trial would be applicable if provided under any other law other than the CrPC.

However, in the absence of such procedures specifically providing the procedure regulating the manner and place of investigation, inquiring into or trying or otherwise dealing with such offences, all such offences are to be investigated,

inquired and tried according to the procedure provided under the CrPC. Section 132 of the Act of 2017 does not provide for trial of an offence under the Act or its investigation or inquiry for its trial and convictions.

There is no provision under the Act of 2017 specifically providing any procedure for investigation, inquiry or trial other than as provided in CrPC or for trial of an offence under section 132 of the Act of 2017. Section 132 of the Act of 2017 indicates the offences and provides for penalty for committing the offences, where an offence is proved and a person is found guilty.

Sub-section (5) of Section 132 of the Act makes the offences enumerated in clauses (a), (b), (c) and (d) of sub-section (1) of Section 132 to be cognisable and non-bailable meaning thereby a police officer can take cognisance of the offence committed by a person under clauses (a), (b), (c) and (d) of sub-section (1) of Section 132 without any orders of the Magistrate. As such in the absence of any provision specifically providing for investigation, inquiry and trial of offences under Section 132(1)(a), (b), (c), (d), the provisions of CrPC would be applicable under Section 4(2) of the CrPC.

The provision of sub-section (6) of Section 134 of the Act of 2017 to the effect that no court shall take cognisance of any offence punishable under the Act or the Rules made thereunder except with the previous sanction of the Commissioner and that no court inferior to that of a Magistrate of the First Class shall try such offence and the provisions of sub-section(6) of Section 132 of the Act providing for that a person shall not be prosecuted for any offence under Section 132 of the Act except with the previous sanction of the Commissioner, is only for the purpose of the court to take cognisance of any offence and for the purpose of prosecution for the said offence, meaning thereby the court shall have the right to proceed in the matter only after previous sanction of the Commissioner and not otherwise.

Objective:

Present paper seeks to understand the implications of the GST Act: Power Of Police To Investigate Offenses with reference to criminal procedure code under central goods and services tax act, 2017

Nature Prosecution under GST

Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Offences liable for prosecution

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges.

- Supplies any goods/services without an invoice in order to evade tax
- Issues any invoice without supplying any goods/services- thus taking input credit or refund by fraud

- Collects any GST (even if in contravention of provisions) but does not submit it to the government within 3 months.
- Obtains refund of any CGST/SGST by fraud.
- Submits fake financial records/documents or files fake returns to evade tax
- Obstructs the proper officer during his duty (for example, he hinders the officer during the audit by tax authorities)
- Acquires/receives any goods/services with full knowledge that it is in violation of GST rules and is liable for confiscation
- Destroys any evidence
- Does not provide information/gives false information during proceedings
- Helps any person to commit fraud under GST

Power of inspection, search and seizure

Section 67(1) of the Act gives powers to the proper officer to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place. The authorization for inspecting etc., shall be made in writing. The other sub sections of section 67 give the procedure for inspection, search and seizure. \\\

Section 67(10) of the Act provides that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

Section 165(1) of the Cr.PC provides that Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place with the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

Section 165(2) of Cr.PC provides that a police officer proceeding under sub- section (1), shall, if practicable, conduct the search in person. Section 165(3) of Cr.PC provides that If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

Section 165(5) of Cr.PC provides that copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

Under the Act the required records shall be forwarded to the Commissioner of CGST instead of Magistrate.

Power to arrest

Act under section 69(3) of the Act.

Section 69(3) of the Act provides that Subject to the provisions of the Code of Criminal Procedure, 1973-

where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Punishment for certain offences

Section 132(1) of the Act

A third reference to Cr.PC is, in relation to the non cognizable and bailable offences, made in section 132(4). Section 132(4) of the Act Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

Punishment

The person committing any of the offences above shall be punished as follows:

Tax amount

involved 100-200 lakhs 200-500 lakhs Above 500 lakhs

Bailable or Non-Bailable Bailable Bailable Bailable**

Jail term Upto 1 year Upto 3 years Upto 5 years

**If a person commits the following offences AND the amount involved exceeds 500 lakhs then the offences are non-bailable-

Supplies any goods/services without an invoice in order to evade tax

Issues any invoice without supplying any goods/services- thus taking input credit or refund by fraud

Collects any GST (even if in contravention of provisions) but does not submit it to the government within 3 months.

This is in keeping with the government's anti-tax evasion stance by bringing in stricter measures.

Punishment for destroying evidence

For destroying evidence, preventing the officer from his duty, falsifying information or helping someone in the same, he is liable for up to 6 months imprisonment with fine

Repeat offenders

If the offense is repeated a second time then punishment can extend up to 5 years with fine.

A person can not be prosecuted without the prior sanction of the Commissioner.

Compounding of offences under GST

What is compounding of offences?

Compounding of offences is a shortcut method to avoid litigation. In the case of prosecution for an offence in a criminal court, the accused has to appear before the Magistrate at every hearing through an advocate. Court proceedings are time-consuming and expensive. In compounding, the accused is not required to appear personally and can be discharged on payment of compounding fee which cannot be more than the maximum fine leviable under the relevant provisions.

GST Act also allows for compounding of offences.

Non-availability of compounding

Compounding will not be available for-

Anyone who has already committed any of the offences mentioned under prosecution above, i.e., second-time offenders will not be allowed to compound.

A person who had committed an offence before under GST involving supplies above Rs. 1 crore and has been allowed to compound before. Thus, it stands, any person previously enjoying compounding for goods/services over Rs. 1 crore will not enjoy compounding a second time.

Any person who is also being tried under other acts such as Narcotic Drugs Act, FEMA etc.

Any person convicted by a court under GST

Any person giving false information during proceedings, or preventing the officer from his duty or destroying evidence

Compounding will be allowed only after payment of all tax, interest and penalty dues.

Amount payable for compounding

The amount payable for compounding of offences shall be 50% of the tax involved subject to a minimum Rs. 10,000.

Maximum amount for compounding is 150% of the tax

OR

Rs. 30,000

-Whichever is higher.

Abatement of further proceedings

On payment of the compounding amount, no further proceedings shall be initiated against the accused person for the same offence and any criminal proceedings, if already initiated, will be abated.

Apart from prosecution, the offender can also be arrested. Please read our article on arrest under GST.

Thus, we find that GST has severe prosecutions to punish tax evaders and the corrupt thus keeping in mind the government's anti-tax evasion stance.

Conclusion

The power of the proper officer under Section 67 of the Act of 2017 for the purpose of the provisions of the Act do not take away the powers of police to investigate cognisable offences under sub-section (5) of Section 132 of the Act. The proper officer not below the rank of the Joint Commissioner shall have the power to inspect, search and seize accounts, registers, documents, goods etc. on having reason to believe that any person has evaded tax or is attempting to evade tax under the Act and in that case the provisions of CrPC relating to search and seizure shall as so far as may be applicable, but if any person has committed the offences enumerated in clauses (a), (b), (c), (d) of Section 132(1), namely cognisable offence, a police officer may be entitled to resort to the provisions of Section 4(2) of the CrPC.

A similar view has been taken by a Division Bench of the Hon'ble Guwahati High Court in *Crompton Greaves Ltd. v. Commissioner of Taxes*, (2000) 3 GLR 429 while examining the similar question in respect of the Assam Finance

(Sales Tax) Act, 1956. The appeal filed before the Supreme Court against the said judgment was also dismissed, no doubt for non-prosecution.

In view of the above, it appears that the police officer shall have the power to investigate, conduct search and seizure in respect of the cognisable offences under the GST Act, 2017. It may be that the Police while exercising the power to investigate a cognisable offence under the Act exceeds its jurisdiction which may be a case of exercise of jurisdiction in excess but the same cannot be said to be without jurisdiction.

References:

1. The Economic Times (2009) Featured Articles from The Economic Times.
2. Gst India (2015) Economy and Policy.
3. Mehra P (2015) Modi govt.'s model for GST may not result in significant growth push. The Hindu.
4. Sardana M (2005) Evolution Of E?Commerce In India Part 3.
5. TRAI (2015) Highlights of Telecom Subscription Data as on 28th February.
6. Patrick M (2015) Goods and Service Tax: Push for Growth. Centre for Public Policy Research (CPPR).
7. SKP (2014) GST: Impact on the Telecommunications Sector in India.
8. The Central Goods and Services Tax, 2017
9. The Integrated Goods and Services Tax, 2017
10. The Union Territory Goods and Services Tax, 2017
11. The Goods and Services Tax (Compensation to States), 2017
12. The Constitution (One hundred and First Amendment) Act, 2016
13. Gupta, S.S. , GST- How to meet your obligations (April 2017), Taxmann Publications
14. Halakandhi, S., G.S.T (Vastu and Sevakar) (Hindi) Vol-1, 2017