

**GIB/CH/RAKESH ARORA/28.01.2021/HC-176**

**High Court Category :** AVAILMENT OF ITC

**State :** Chandigarh

**Order No.:** GIB/CH/RAKESH ARORA/28.01.2021/HC-176

**Name of Entry :**  
RAKESH ARORA

**Date :** 28-01-2021

**Breif Issue :**

In the above case the petitioner, having been arrested under Section 132 of the Central Goods and Services Tax Act, 2017 [for brevity 'the Act']

The Goods and Services Tax Department had information that three firms by the name of M/s La Mode Fashions, M/s Decent Fashions and M/s Murari Enterprises [hereinafter referred to as 'firms'] were engaged in availing and passing bogus Input Tax Credits ['ITC'].

The firms had issued bills worth ? 158 crores involving ? 13.39 crores of tax. Firms had availed fake ITC of ? 21.60 crores and claimed refund of ? 5.02 crores.

The mechanism adopted by these firms was of procuring bills from Delhi based firms who had no purchases and further billing was done to export units for utilizing the ITC.

The argument is that petitioner has not issued any bill or invoice for availing ITC; moreover the assessment is not complete.

**Decision of Advance Ruling Authority :**

**DECISION:**

It was held that power to arrest under Sections 69 and 132 of the Act should not be exercised for terrorizing or creating atmosphere of fear. Illustrative circumstances where arrest be made were of no avail to the petitioner. It was held that power of arrest under Section 69 read with Section 132 of the Act can be invoked before completion of adjudication of process. The prerequisite being that Commissioner has reasons to believe that person had committed offence under clauses (a) to (d) of sub clause (1) of Section 132 of the Act. In case in hand reasons were recorded for arresting the petitioner.

The bail cannot be granted solely on the ground that *vires* of Section 132 and 69 of the Act are under challenge. There is always presumption of validity of the provision. The operation of the provisions has not been stayed - In the case in hand, bills were being procured from

the firms based at Delhi who had no purchases. The tax which was not deposited for these transaction was utilized by the firms for not only availing ITCs but for getting the refunds by showing the sales to export units. In other words, the refund was received for the tax which was actually never received by the Revenue.

The factual error pointed out in impugned order cannot in itself be a reason for allowing the prayer. The Court below had given other reasons also for denying the bail. While deciding the present petition, the facts have been re-considered and this court has reached the same conclusion that the prayer of petitioner for grant of bail is liable to be rejected - Petition dismissed.