

GIB/TG/P.V.RAMAN/18-04-2019/HC-108

High Court Category : Input Tax Credit

State : Telangana

Order No.: GIB/TG/P.V.RAMAN/18-04-2019/HC-108

Name of Entry :

P.V. Ramana Reddy

Date : 18-04-2019

Breif Issue :

Facts & Issue of the case

The petition has been filed Challenging the summons issued by the Superintendent (Anti Evasion) of the Hyderabad GST Commissionerate, under Section 70 of the Central Goods and Services Tax Act, 2017 and the invocation of the penal provisions under [Section 69](#) of the Act.

The claim of the authority is that the petitioners floated/incorporated several Proprietary concerns/ Partnership Firms/ Limited Companies and such Proprietary concerns/Partnership Firms/Limited Companies claimed input tax credit on the basis of certain invoices, without there being any actual physical receipt of goods. These entities also issued many such invoices from July 2017 onwards charging GST without supply of goods against the invoices. These bogus/fake invoices were used to avail and utilise fraudulent ITC of GST by the recipients of such invoice.

The very same premises of some of these entities were used by all others to do circular trading/bill trading and the petitioners were thus guilty of defrauding the revenue to the tune of Rs.225 crores.

The authority further mentioned that, petitioners have committed offences under clauses (b), (c) and (f) of sub-section (1) of Section 132 of CGST Act, 2017, all of which may be punishable with imprisonment which may extend to 5 years apart from a fine that the offences committed by the petitioners are cognizable and non-bailable in terms of Section 132(5) of the CGST Act.

Further, the main contentions of petitioners are that the maximum punishment that could be imposed under Section 132 of the CGST Act, 2017 is only an imprisonment for 5 years, apart from fine and therefore, under sections 41 and 41-A of the Code of Criminal Procedure, after its amendment, a person cannot be arrested so long as such person complies and continues to comply with the notice for his appearance. Since, it is always open to the respondents to scrutinise the books of accounts and pass orders of assessment reversing the input tax credits availed by the dealers under the Act, there is no necessity to arrest the petitioners, especially when no adjudication has taken place under the Act. So, in any case, all the offences under the Act are compoundable under section 138 of the CGST Act and hence arrest is wholly unnecessary.

Decision of Advance Ruling Authority :

Decision

The court dismissed the Writ Petitions and held that the acts complained of against the petitioners constitute a threat to the very implementation of a law within a short duration of its inception. So, Despite finding that the writ petitions are maintainable and despite finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, the court do not wish to grant relief to the petitioners against arrest, in view of the special circumstances.