

---

**[2019] 103 taxmann.com 50 (Karnataka)**

---

**GST : Where a complaint had been filed against petitioners for offence punishable under section 137 for indulging in continuous issuance of fake invoices without actual supply of goods with an intention to enable them to fraudulently avail input tax credit, it was held that said offences are compoundable by Commissioner on payment and maximum punishment of five years and, therefore, petitioners were ordered to be released on bail by imposing some stringent conditions**

**[2019] 103 taxmann.com 50 (Karnataka)****HIGH COURT OF KARNATAKA****Avinash Aradhya****v.****Commissioner of Central Tax****B.A. PATIL, J.****CRIMINAL PETITION NOS. 497 AND 498 OF 2019****FEBRUARY 18, 2019**

**C.V. Nagesh**, Sr. Counsel and **Sandeep Patil**, Adv. for the Petitioner. **Jeevan J. Neeralgi**, Standing Counsel for the Respondent.

**ORDER**

---

1. These two petitions have been filed by petitioners – accused under Section 438 of Cr.P.C to release them on anticipatory bail in the event of their arrest in O.R.No.40/2018-19 by the respondent for the offence punishable under Section 137 of Goods and Services Tax Act, 2017 (Hereinafter it has been used as 'GST Act' for short).
2. I have heard learned senior counsel Sri C.V. Nagesh for petitioners and learned standing counsel Sri Jeevan J. Neeralgi for respondent and perused the record.
3. Before going to consider the submission made by the learned counsel appearing for the parties, I feel it just and proper to mention in brief the gist of the complaint. Companies of Aradhya group along with M/s. Spiegel Enterprises Pvt. Ltd., M/s Bhavasteel Metalloys Pvt. Ltd., M/s Infocert Enterprises, M/s Bhavani Steel Corporation, M/s Vijayalakshmi Industries were indulging in continuous issuance of fake invoices without actual supply of goods with an intention to enable them fraudulently avail the input tax credit.
4. It is further case of the prosecution that invoices are issued and circulated among the companies M/s Spiegel Enterprises Pvt. Ltd., M/s Bhavasteel Metalloys Pvt. Ltd., M/s Infocert Enterprises, M/s Bhavani Steel Corporation, M/s Vijayalakshmi Industries till they reach back to the originating companies i.e., M/s Aradhya Groups without actual movement of goods, thereby transferring the irregular input credit to the originating companies for payment of GST and sales tax. It is further alleged that the act is an offence and it is criminal in nature. On the basis of the same, complaint was registered.
5. It is submitted by the learned senior counsel that as per the GST Act, maximum punishment which is liable to be imposed even if an offence has been made out and convicted is five years and even as per Section 138 of the GST Act, the said offence is compoundable before the Commissioner on payment. He further submitted that even there is no irregularity no loss of revenue has been caused to the State or Central Government. He further submitted that they have paid the GST by creating invoice. It is further submitted that the accused have not availed any loan or not raised any amount from the bank, even in the input tax, the credit has also been given and that has not been deducted or claimed from the State or

Central Government. It is submitted that they are ready to co-operate with the investigation. He further submitted that in the preamble it is made clear that it is intended to levy and collect tax. It has not been defected by the accused. The Learned counsel further submitted that they are apprehending their arrest and even the objection which has been filed by the respondent to the present petition itself clearly goes to show that there is a apprehension of arrest. He further submitted that they are not defaulter to the bank or to the State. It is further submitted that the only allegations which has been alleged as against the petitioners – accused is that they have given only inflated transaction, therefore, he submitted that input tax credit and the sale is not an offence under the said Act. He further submitted that liberty of the person is also involved in this case. They are ready to abide by the terms and conditions to be imposed by this Court and ready to offer surety. On these grounds, both petitioners pray to allow the petition and to release them on bail.

**6.** Per contra, learned standing counsel on behalf of the respondent vehemently argued and submitted, if the entire case is looked into without there being any movement of goods, the petitioners have claimed input tax credit and thereby without payment of any tax by them, they claimed input tax credit. In that event the economy of the country is going to be affected. He further submitted that though it is the contention of the petitioner – accused that the input tax credit has been paid, but actually, no tax has been paid to anybody. It is only a paper transaction and it is going to affect the trade transfer of the nation and in the State. He further submitted that it is a scam and if it is allowed to be continued then it will be having its own cumulative effect on the economy as a whole. He further submitted that still investigation is in progress and if the petitioners – accused are released on bail, it is going to affect the entire investigation and they may tamper with the prosecution case. On these grounds, he prays to dismiss the petition.

**7.** I have carefully and cautiously gone through the contents of the complaint and other materials, which has been produced in this behalf.

**8.** Though several contentions have been raised with reference to the initiation of the action under the GST Act, since the scope of these petitions is limited only to consider the bail application, in that light, the other points which have been raised have not been dealt with in these petitions.

**9.** Before going to consider the submission made by the learned counsels appearing for the parties, I feel it just and proper to extract Sections 132, 137 and 138 of the GST Act which reads as under:

*132. Punishment for certain offences.*—(1) Whoever commits any of the following offences, namely:-

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any

provisions of this Act or the rules made thereunder;

- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable –
  - (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
  - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
  - (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
  - (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

137. *Offences by companies*:—(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded

against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

138. *Compounding of offences.*—(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to –

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty percent of the tax involved whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

**10.** By going through the above provision, question which arises before the Court is whether the alleged offences are non cognizable or cognizable. This aspect has been dealt with by the Hon'ble Apex Court in the case of *Om Prakash & Anr. v. Union of India & Anr.* reported in AIR 2012 SC 545 at paragraph Nos. 24 to 27, it has been held as under:

24. As we have indicated in the first paragraph of this judgment, the question which we are required to answer in this batch of matters relating to the Central Excise Act, 1944, is whether all offences under the said Act are non-cognizable and, if so, whether such offences are bailable? In order to answer the said question, it would be necessary to first of all look into the provisions of the said Act on the said question. Sub-section (1) of Section 9A, which has been extracted hereinbefore, states in completely unambiguous terms that notwithstanding anything contained in the Code of Criminal Procedure, offences under Section 9 shall be deemed to be non-cognizable within the meaning of that Code. There is, therefore, no scope to hold otherwise. It is in the said context that we will have to consider the submissions made by Mr. Rohatgi that since all offences under Section 9 are to be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, such offences

must also be held to be bailable. The expression "bailable offence" has been defined in Section 2(a) of the code and set out hereinabove in paragraph 3 of the judgment, to mean an offence which is either shown to be bailable in the First Schedule to the Code or which is made bailable by any other law for the time being in force. As noticed earlier, the First Schedule to the Code consists of Part I and Part II. While Part I deals with offences under the Indian Penal Code, Part II deals with offences under other laws. Accordingly, if the provisions of Part 2 of the First Schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only, being the third item under the category of offence indicated in the said Part. An offence punishable with imprisonment for three years and upwards, but not more than seven years, has been shown to be cognizable and non-bailable. If, however, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable, then, in such event, even the second item of offences in Part II could be attracted for the purpose of granting bail since, as indicated above, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable.

25. This leads us to the next question as to meaning of the expression "non-cognizable"

26. Section 2(i), Cr.P.C. defines a non-cognizable offence", in respect whereof a police officer has no authority to arrest without warrant. The said definition defines the general rule since even under the Code some offences, though "non-cognizable" have been included in Part I of the First Schedule to the Code as being non-bailable. For example, Sections 194, 195, 466, 467, 476, 477 and 505 deal with non-cognizable offences which are yet non-bailable. Of course, here we are concerned with offences under a specific Statute which falls in Part II of the First Schedule to the Code. However, the language of the Scheme of 1944 Act seem to suggest that the main object of the enactment of the said Act was the recovery of excise duties and not really to punish for infringement of its provisions. The introduction of Section 9A into the 1944 Act by way of amendment reveals the thinking of the legislature that offences under the 1944 Act should be non-cognizable and, therefore, bailable. From Part 1 of the First Schedule to the Code, it will be clear that as a general rule all non-cognizable offences are bailable, except those indicated hereinabove. The said provisions, which are excluded from the normal rule, relate to grave offences which are likely to affect the safety and security of the nation are lead to a consequence which cannot be revoked. One example of such a case would be the evidence of a witness on whose false evidence a person may be sent to the gallows.

27. In our view, the definition of "non-cognizable offence" in Section 2(1) of the Code makes it clear that a non-cognizable offence is an offence for which a police officer has no authority to arrest without warrant. As we have also noticed hereinbefore, the expression "cognizable offence" in Section 2(c) of the Code means an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In other words, on a construction of the definitions of the different expressions used in the Code and also in connected enactments in respect of a non-cognizable offence, a police officer, and, in the instant case an Excise Officer, will have no authority to make an arrest without obtaining a warrant for the said purpose. The same provision is contained in Section 41 of the Code which specifies when a police officer may arrest without order from a Magistrate or without warrant.

**11.** A close glancing of the above proposition of law with present Act, the punishment imposed is five years. In that light, the alleged offences are non-cognizable offences. By keeping the above proposition of law and on plain reading of all these sections together, one thing in the case is clear that the said offences are compoundable by the commissioner on payment and maximum punishment of five years with fine and they are not punishable with death or imprisonment for life. When the maximum punishment which can be imposed is only up to five years with fine, will throw light on the seriousness of the offence. Though it is argued during the course of the argument made by the learned standing counsel for the respondent that the activities involved by the petitioners would have a cumulative effect and if the accused – petitioners are allowed to act in the manner in which they are doing, ultimately economy of the country is going to be affected. In this context no material is produced to show the magnitude of the loss of revenue going to be caused and the manner in which it will affect the economy of the country. But anyhow that is a matter which has to be considered and appreciated only when the entire investigation is completed and full charge sheet is filed. Now this Court is dealing with only anticipatory bail application, what are the parameters which can be taken into consideration has been elaborately discussed by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*, reported in (2011)

1 SCC 694. At paragraph-112 of the said decision, it has been observed as to what are the parameters that can be considered into while dealing with the bail application, which read thus:-

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

**12.** In the light of the above proposition of law, by taking into consideration the gravity of the offence and punishment which is liable to be involved, I am of the considered opinion that by imposing some stringent conditions, if accused – petitioners are ordered to be released on bail, it will meet the ends of justice.

**13.** In that light, petitions are allowed and the petitioners/accused are ordered to be enlarged on anticipatory bail in the event of their arrest in O.R. No.40/2018-19 for the offence punishable under Section 137 of GST Act, 2017 subject to the following conditions:

1. Each of the petitioners shall execute a personal bond for a sum of Rs.5,00,000/-(Rupees Five Lakh Only) with two sureties for the like sum to the satisfaction of the apprehending authority / authorized officer
2. They shall surrender before the Investigating Officer within 15 days from today.
3. They shall not tamper with the prosecution evidence or any documents whichever is required for the purpose of investigation.
4. They shall co-operate during the course of investigation and they shall not leave the country without prior permission of Special Court for Economical Offences.
5. They shall not indulge in similar type of criminal activities covered under the said Act.

In view of the disposal of the petitions, I.A.No.1/2019 filed in both petitions for interim bail does not survive for consideration and is disposed of accordingly.

■ ■