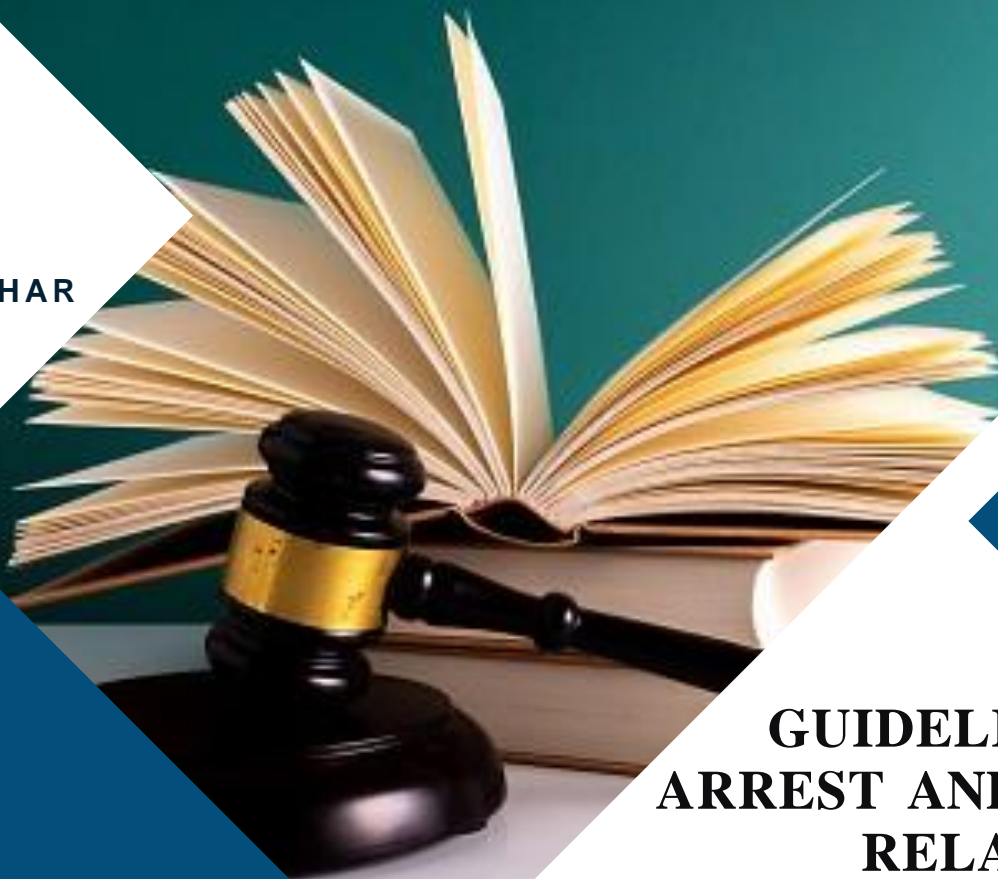




**MOHAN &
CHANDRASEKHAR**
CHARTERED
ACCOUNTANTS



GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017 – REG.

**Instruction No. 02/2022-23
(GST – Investigation) dated
17.08.2022**

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INTRODUCTION

Hon'ble Supreme Court of India in its Judgement dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

“We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

Conditions precedent to arrest:

Section 132(1) (Punishment for Certain Offences) of CGST Act, 2017 deals with the punishment for offences specified therein. Section 69(1) (Inspection, Search & Seizure) gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clauses (a) to (d) of Section 132(1) (Punishment for Certain Offences) which is punishable under Section 132(2) (Punishment for Certain Offences) of CGST Act, 2017. The following should be kept in mind before arresting a person:

- Before placing a person under arrest, the legal requirements must be fulfilled.
- The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and clear. The reasons to believe must be based on credible material.
- Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner.
- Even if all the legal conditions precedent to arrest mentioned in Section 132 (Punishment for Certain Offences) of the CGST Act, 2017 are fulfilled, that will not, *ipso facto*, mean that an arrest must be made.

Once the legal ingredients of the offence are fulfilled, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is affirmative:

- Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
- Whether arrest is necessary to ensure proper investigation of the offence?
- Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

- Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
- As unless such person is arrested, his presence before investigating officer cannot be ensured.

Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in Section 132(1) (Punishment for Certain Offences) of the CGST Act 2017, is evident and element of *mens rea / guilty mind* is palpable.

- Arrest should, however, not be resorted to in cases of technical nature i.e., where the demand of tax is based on a difference of opinion regarding interpretation of law.
- Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.



Procedure for Arrest

Pr. Commissioner / Commissioner shall authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminals Procedure,1973 (2of 1974) read with section 69(3) (Power to arrest in GST) of CGST Act relating to arrest and the procedure thereof, must be adhered to.

The arrest memo must be in compliance with the directions of Honorable supreme court in the case of D. K Basu vs State of West Bengal

The arrest memo should indicate relevant section (s) of the CGST Act,2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition,

- The grounds of arrests must be explained to the arrested person and this fact must be noted in the arrest memo;
- A nominated or authorized person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;
- The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement.
- A separate arrest memo has to be made and provided to each individual/arrested person.
- Generation and quoting of Documentation Identification Number (DIN) mandatory on communication issued by the officers of CBIC to taxpayers and other concerned person for the purpose of investigation.
- A women should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure,1973.
- Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made.
- It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.
- Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.

Post arrest formalities

In cases, where a person is arrested under section 69(1) (Inspection, Search & Seizure) of the CGST Act, 2017, for an offence specified under Section 132(4) (Punishment for Certain Offences) of the CGST Act,2017, the assistant commissioner or deputy commissioner is bound to release a person on bail bond.

- The bail conditions should be informed in writing to the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.
- The conditions will relate to, *inter alia*, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer.
- The amount to be indicated in the personal bail board and surety will depend upon the facts and circumstances of each case, *inter alia*, on the amount of tax involved.
- It has to be ensured that the amount of bail bond /surety should not be excessive and should be commensurate with the financial status of the arrested person.
- If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith.
- However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate magistrate without unnecessary delay and within twenty-four hours of arrest.
- If necessary, the arrested person may be handed over to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

In cases, where a person is arrested under Section 69(1) (Inspection, Search & Seizure) of the CGST Act, 2017, for an offence specified under section 132(5) (Punishment for Certain Offences) of the CGST Act,2017, the officer authorized to the arrest the person shall inform such inform person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

- However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly.
- In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty- four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to Magistrate's Courts.
- Formats of the relevant documentation i.e., Bail Bond in the Code of Criminal Procedure,1973 (2 of 1974) and the challan for handing over to the police should be followed.
- After arrest of the accused, efforts should be made to file prosecution complaint under section 132 (Punishment for Certain Offences) of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within definite time frame.
- Every Commissioner/Directorate should maintain a Bail Register containing the details of the cases, arrested person, bail amount, surety amount etc.
- The money/instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/documents received as surety are kept valid till the bail is discharged.

Reports to be sent

- Pr. Director-General (DGGI)/ Pr. Chief Commissioner(s)/Chief commissioner (s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in **Annexure-I**.
- To maintain an all-India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, hereby prescribed in **Annexure-II**, by the 5th of the succeeding month.
- The monthly reports received from the formations shall be compiled by DGGI, Hqrs. and a compiled Zone wise report shall be sent to Commissioner (GST- Investigation), CBIC by 10th of every month.

ANNEXURE — I

(To Board's Instruction No. 02/2022-23)

F. No.

Date:

From: The Principal Chief Commissioner/ Chief Commissioner,

CGST Zone _____ / Pr. Director General, DGGI

To,

The Member (Compliance Management)

CBIC

Intimation of Arrest

(In terms of Para 6 of Board's Instruction No. 02/2022-23 dated 17.08.2022)

1. Date of Arrest :
2. Time of arrest :
3. Place of arrest with address :
4. Name of the person :
5. Date of birth :
6. S/o, D/o, W/o :
7. Identification document type :
8. Identification document No. :
9. Nationality : Indian / Others (if others, specify)
10. Offence committed :
11. Details of offence :
(not more than 50 words)
12. Whether any seizure made : Yes / No
13. If yes, specify :

Signature

Copy to:

(Member(Incharge of the zone)

Name of the Pr. Director General /
Pr. Chief Commissioner / Chief Commissioner

