

# Is arrest under GST laws valid? Industry raises many concerns

**INDIVJAL DHASMANA**

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Companies have argued against the constitutional validity of arrest provisions under the goods and services tax (GST) laws in the Supreme Court.

The court took up the matter of arrest provisions and the applicability of the Criminal Procedure Code (CrPC) to the Customs Act, GST and the Prevention of Money Laundering Act and other allied laws on Tuesday, with arguments continuing till Thursday.

Appearing for industry, Abhishek Rastogi said the sheer magnitude of GST arrests raises various concerns.

There are concerns regarding revenue leakage which is understandable, but there are also concerns around whether well accepted, judicially tested, fair and proper procedures are being followed during such arrests, said Rastogi, partner at Khaitan & Co.

"It is, therefore, imperative for the judiciary to intervene and ensure that fundamental, constitutional rights of citizens are not trampled on, during such arrests. In the absence of specific oversight of CrPC provisions governing GST arrests, courts must lay down guidelines for officers to follow, in breach of which citizens can approach jurisdictional



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courts for appropriate relief," he said.

Assessees have questioned whether they can be branded as "accused" even before investigation and whether an offence can be classified as "non-bailable" without following due process of quantification for determining duty alleged to be evaded. Arrests therefore cannot precede the process of determination of liability during adjudication process, they said.

Section 69 of the Central GST Act empowers GST commissioners to arrest someone if they have "reasons

to believe" that the person has claimed fraudulent Input tax credit (ITC). Commissioners can order up to five years of sentence for a person if they have reasons to believe he/she is engaged in fraudulent claims.

"Arrest can only follow post-quantification of offence under due process. Provisions were argued especially in light of the phrase 'reasons to believe' used in Section 69, which in the cases before the SC were conspicuously absent in the Summons Notices or Arrest Warrants issued," Rastogi said.

The court heard arguments on the concept of 'supply' and 'deemed supply' in respect of such offences which is the basic assumption behind the arrests made.

Section 16 of the CGST Act, which deals with ITC, said movement of goods is not necessary for the supply of goods. This is mentioned in the explanation to section 16 (2) of the CGST Act, Rastogi said.

For instance, if the goods are in Kolkata and a company in Mumbai asks a dealer in Delhi to supply them, the goods may not leave Kolkata but the supply would happen if the person gives money to the dealer and gets invoices. If that is not the case, one should not charge even GST on output, but that is not happening, Rastogi said.