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‘Mere Suspicion’ Not Enough to Arrest under Customs and GST Act

By



MOHIT KALRA

Advocate

Introduction

Arrest is an important part of the Justice System as it serves as a crucial tool for law enforcement agencies to restrict individuals suspected of committing offences. It is an act of taking an individual into custody or control or legal protection because he/she is suspected of an offence. Section [41](#) of the Code of Criminal Procedure, 1973 (Cr. Pc) outlines the conditions under which a police officer can arrest a person without a warrant or an order from a Magistrate. Except Police officers, other authorities like Customs and GST officers also have power to arrest someone in cases related to evasion of duty, smuggling of restricted/prohibited items, fraudulently availing of ITC and etc. under Section [104](#) of the Customs Act, 1962 and Section [69](#) of the CGST Act, 2017 respectively. Although the Customs/GST officers have power to arrest but these powers are limited when compared with power to arrest of a Police officer under Section [41](#) of the Code of Criminal Procedure.

Power to Arrest under the Customs Act

2. Section 104 of the Customs Act empowers an officer of Customs on behalf of order of the Principal/Commissioner of Customs, has **reason to believe** that any person has committed an offence punishable under section [132](#), [133](#), [135](#), [135A](#) or [136](#) of the Customs Act, he may arrest such person and shall inform him of the grounds for such arrest.

3. Recently the Hon'ble Apex Court in the case of *Radhika Agarwal v. Union of India* Writ Petition (Criminal) Nos. 261, 263, 266 of 2019 and Others dated 27-02-2025 [[2025 \(95\) G.S.T.L. 225 \(S.C.\)](#)] = (2025) 27 Centax 425 (S.C.) held that although the Customs and GST officer have power to arrest someone under section 104 of Customs Act and Section [69](#) of CGST/GST Act respectively but still both the aforesaid acts sets a higher threshold, stipulating that the officers may only arrest a person if they have "**reasons to believe**" that a person has committed an offence.

4. The Hon'ble Bench in the aforesaid matter held that the threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the CrPc. Section 41 of CrPc allows the police officer to arrest a person without a warrant, if a "reasonable complaint has been made", or "credible information has been received", or "a reasonable suspicion exists" that the person has committed a cognizable offence. In contrast, Section 104(1) of Customs Act sets a higher threshold, stipulating that customs officers may only arrest a person if they have "**reasons**

to believe" that a person has committed an offence. **A person is said to have a "reason to believe" a thing, if they have sufficient cause to believe that thing but not otherwise.** The "reasons to believe" must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can be drawn. **This represents a more stringent standard than the "mere suspicion" threshold provided under Section 41 of CrPc. Hence, the Customs officer cannot arrest someone under Section 104(1) of Customs Act merely on the instinct that an offence has been committed out of thin air or mere suspicion.**

Arrest under the GST Act

5. Section [69](#) of the CGST Act outlines where the Commissioner has **reasons to believe** that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section [132](#) which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

6. The Hon'ble Bench in the supra case in view of power to arrest of central tax officers under the GST Act discussed that to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, *vide* the **reasons to believe recorded by him**, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of sub-section (5) to Section 132 of the CGST Act are satisfied, and **not on suspicion alone**. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing - to the satisfaction of the Commissioner. Failure to do so would result in an illegal arrest.

7. Also, the Hon'ble Bench relied on Instruction No. 02/2022-23 [GST - Investigation] dated 17-8-2022 [[2022 (64) G.S.T.L. C3] which instructs that apart from fulfilment of the legal requirements, 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 sub-section (1) of Section [132](#) 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.

Conclusion

8. The safeguards provided in the Special Acts against the arrest of a person, are provided keeping in view the fundamental rights of life and personal Liberty of a person enshrined in the Constitution of India. The safeguards are the requirement to have **"material" in possession** of the authorized officer, to form an opinion and record in writing the **"reasons to believe"** that the person arrested is guilty of an offence or has committed an offence as the case may be, under the provisions of the concerned Act, and the requirement to inform the person arrested, as soon as may be, of the grounds of arrest, and on the other hand must also take due care to ensure individual freedom and liberty, by making sure that the power of arrest is not abused or misused by the authorities. Hence, **the Customs officer are not police officer and the threshold for arrest under Section 104(1) of the Customs Act is higher than that of arrest conducted by a police officer under Section 41 of the Cr. Pc.**

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