

CBIC issues guidelines for arrest and bail in relation to offences punishable under the CGST Act

19 August 2022



Summary

The Central Board of Indirect Taxes & Customs (CBIC) has issued detailed guidelines¹ for arrest and bail in relation to offences punishable under the Central Goods & Services Tax Act, 2017 (CGST Act). The CBIC has prescribed the conditions to be fulfilled before placing a person under arrest, procedure to be followed for arrest and pursuant to arrest. It has emphasised that the legal requirements must be fulfilled before placing a person under arrest. It has outlined the procedure to be followed in case when arrest of person has made due to cognisable and non- cognisable offences. The CBIC also suggested to maintain an all-India record of arrests made in CGST and accordingly, the authorities shall submit reports with the concerned authorities in prescribed manner.

The CBIC has examined the judgement² passed by the Apex Court in criminal appeal³ wherein it was held that a distinction must be made between the existence of the power to arrest and the justification to exercise it. In view of the above judgement, the CBIC has issued guidelines as below:

Particulars	Guidelines
Conditions precedent to arrest	<ul style="list-style-type: none">• Before arrest of a person, the legal requirements⁴ must be fulfilled. The reasons to believe must be explicit and clear and must be based on credible material.• The fulfilment of the legal conditions⁵ precedent to arrest does not necessitate to make an arrest. The Commissioner or the competent authority also needs to determine if there is affirmative response of the specified questions.• The approval to arrest should be granted only where the intent to do act⁶ is evident and element of criminal intent is palpable.• It is necessary to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.• Arrest should not be done in cases of technical nature⁷. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to

¹ vide Instruction No. 02/2022-23 (GST-Investigation) dated 17 August 2022

² dated 16 August 2021

³ Appeal No. 838 of 2021, arising out of SLP (Criminal) No. 5442/2021

⁴ Sub-section (1) of Section 132 of CGST Act, 2017 dealing with the punishment for offences and Sub-section (1) of Section 69 giving the power to the Commissioner to arrest a person

⁵ mentioned in Section 132 of the CGST Act, 2017

⁶ evade tax or commit acts leading to availment or utilization of wrong ITC or fraudulent refund of tax or failure to pay amount collected as tax

⁷ i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law

	summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax, etc.
Procedure for arrest	<ul style="list-style-type: none"> • After considering the nature of offence, the role of person involved and evidence available, the Principal Commissioner/Commissioner shall record on file that he has reason to believe and may authorise an officer of central tax to arrest the concerned person(s). • The provisions of the Code of Criminal Procedure⁸ relating to arrest and the procedure thereof, must be followed. Thus, it is the duty of the Principal Commissioner/Commissioner to ensure that all officers are fully familiar with the provisions⁹. • The arrest memo must comply the directions of Apex Court in the case of D.K Basu¹⁰ and the format of arrest memo should be as prescribed in circular¹¹. Additionally, following points must be adhered to and must be noted in the arrest memo: <ul style="list-style-type: none"> ▪ explanation of the grounds of arrest to the arrested person ▪ immediate information to a nominated or authorised person of the arrested person ▪ the date and time of arrest shall be mentioned in the arrest memo • As mandated vide circular¹², Document Identification Number (DIN) needs to be mentioned. • Certain modalities should be complied including the following: <ul style="list-style-type: none"> ▪ A woman should be arrested only by a woman officer¹³ ▪ The arrested person shall be examined medically by designated officer¹⁴/registered medical practitioner¹⁵. The person having the custody of an arrested person shall take reasonable care of the health and safety of the arrested person.

Post arrest formalities

a. Post arrest, the below procedure shall be followed for different categories of offences:

⁸ Code of Criminal Procedure, 1973 (2 of 1974) read with section 69(3) of CGST Act

⁹ of the Code of Criminal Procedure, 1973 (2 of 1974).

¹⁰ in the case of D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 (see paragraph 35)

¹¹ under Board's Circular No. 128/47/2019-GST dated 23 December 2019

¹² Circular No. 122/41/2019-GST dated 5 November 2019

¹³ in accordance with section 46 of Code of Criminal Procedure, 1973

¹⁴ by a medical officer in the service of Central or State Government

¹⁵ in case the medical officer is not available

Type of offence	Procedure
Arrest of person due to non-cognisable and bailable offence	<ul style="list-style-type: none"> • The Assistant Commissioner (AC) or Deputy Commissioner (DC) is bound to release a person on bail against a bail bond. • The bail conditions should be informed in writing to the arrested person and also to the nominated person on telephone. • The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case and should be commensurate with the financial status of the arrested person. • Upon fulfilment of the bail conditions by the arrested person, he shall be released by the concerned officer on bail immediately. However, in case of non- fulfilment of the conditions, he shall be produced before the appropriate Magistrate.
Arrest of person due to cognisable and non-bailable offence	<ul style="list-style-type: none"> • The authorised officer shall inform the grounds of arrest to the person and produce him before a Magistrate within twenty-four hours. However, in case he could not be produced before a Magistrate, then he may be handed over to nearest police station and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. • The arrested person must be produced before the appropriate Magistrate within twenty-four hours of arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate's Court.

- b. The formats of the bail bond and the challan for handing over to the police should be followed.
- c. After arrest, prosecution complaint¹⁶ should be filed, before the competent court, preferably within sixty days of arrest, where no bail is granted. In all other cases, it should be filed within a definite time frame.
- d. A Bail Register¹⁷ should be maintained by every Commissionerate/Directorate.
- e. The money/ instruments/documents received as surety should be kept in safe custody of a single nominated officer.

Reports

- a. A report shall be sent¹⁸ to Member (Compliance Management) as well as to the Zonal Member within twenty-four hours of the arrest, in specified annexure.

¹⁶ under Section 132 of the CGST Act, 2017

¹⁷ containing the details of the case, arrested person, bail amount, surety amount etc.

¹⁸ by the Principal Director-General (DGGI)/ Principal Chief Commissioner(s)/Chief Commissioner(s)

- b. An all-India record of arrests made in CGST shall be maintained. Thus, from September 2022 onwards, the Principal Chief Commissioner(s)/Chief Commissioner(s) shall send a monthly report of all persons arrested in the Zone to the Directorate General of GST Intelligence¹⁹ in the prescribed format, by 5th of the succeeding month.
- c. The monthly reports shall be compiled by the DGGI, and a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 10th of every month.
- d. All reports shall be sent only by e-mail.

Our comments

Earlier, the Supreme Court, in case of Dilip K. Basu, had issued the guidelines required to be followed in case of arrest and detention. Further, in case of Siddharth, the Apex Court had held that there should be a proper justification of exercising the power of arrest to avoid incalculable harm to the reputation and self-esteem of a person. The guidelines issued by the GST investigation wing of the CBIC are in line with the above decision of the Supreme Court.

These guidelines may safeguard the interest of bonafide taxpayers and reduce the unwarranted hardships faced by the taxpayers. The GST authorities should also follow these instructions to ensure no misuse of arrest provisions.

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