Venkata Satya Dharmavathar Bollina v. Union of India

Whether a High Court can restrain arrest under Section 69 CGST in a writ petition, and the protection of Sections 41 and 41-A CrPC in GST arrests.

Date of Order: April 18, 2019
Case Law No: GIB-TELHC-2019-04
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Directors of several companies challenged summonses under Section 70 and authorisations for their arrest under Section 69 of the CGST Act, in an alleged case of circular trading with paper turnover of about Rs 1,289 crore and ITC benefit of about Rs 225 crore. They agreed to appear and cooperate but feared arrest. They argued that “reasons to believe” could arise only after adjudication, that the offences are bailable in part and that Section 69 and Section 132 contain incongruities.

Final Verdict

The Court held that persons summoned under Section 70 or arrested under Section 69 are not accused until prosecution is launched, and that the officer is not a police officer. It held that the writ petitions are maintainable, since the Section 70 inquiry is a judicial proceeding but not a criminal one, and anticipatory bail under Section 438 CrPC is not available before an FIR. The Court also found that **the protection of Sections 41 and 41-A CrPC is available to persons accused of cognizable and non-bailable offences under the GST Act**, and noted incongruities between Sections 69 and 132. The object of arrest is not only to further investigation but also to prevent tampering and further offences.

However, considering the alleged circular trading and the huge ITC claimed in the nascent stage of GST, the Court refused to grant relief against arrest, since the writ power should be used sparingly. The writ petitions were dismissed.

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