

IMPORTANT GST UPDATES



Issued in case of Makhijani Pushpak Harish by Hon Supreme Court of India
Order No: SLP (CRL) 2868/2023 | Date: 19-04-2023

Ruling

The Honourable Supreme Court of India sets aside Gujarat HC order on Pre-condition of Furnishing Bank Guarantee for Bail of GST Offence.

Observations & Findings

The appellant Makhijani Pushpak Harish was arrested on the basis of a complaint made by the Superintendent of CGST and Central Excise for violations punishable under Sections 69 and 132(1)(a) of the CGST Act, 2017. As per the Section 132(10)(a) of CGST Act, whoever commits, or causes to commit and retain the benefits arising out of offence of supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Against this arrest, the appellant made an application for seeking bail before the Court of Chief Judicial Magistrate (CJM), Vadodara. The CJM granted bail on the condition that the appellant furnishes a bank guarantee of Rs. 3 crores, along with other additional conditions. Disgruntled with the imposition of such a heavy bank guarantee clause for bail, the appellant escalated the matter to the Gujarat High Court.

The Gujarat High Court reduced the bank guarantee amount of Rs. 3 crore to Rs. 1.5 crore. The appellant then approached the Hon Supreme Court seeking relief. It cited similar cases in which there was no such imposition of bank guarantee for bail. The Additional Solicitor General appearing for the State also stated that such a condition cannot be imposed while granting bail.

The Supreme Court bench stated that pre-condition of deposit of an amount or furnishing a bank guarantee has been the subject matter of consideration by this Court in many other cases, where condition of pre-deposit has been held to be bad. Therefore the bench held that the order of the High Court is not liable to be sustained. However, the bench upheld the other conditions made by the CJM, Vadodara while granting the bail.