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IMPORTANT GST CASE LAW

JUDGEMENT

Prosecution against Director not maintainable when Company itself is not made an Accused

In Case Of	Issued By	Order Date
Manoj Bansal	High Court of Punjab & Haryana	1st August 2026

Order No

CRM-M-45265-2025 (O&M)

OBSERVATIONS

- The GST Department alleged that M/s NIPL had wrongfully availed and utilised Input Tax Credit of approximately ₹15.44 crore on the basis of invoices issued by alleged dummy/non-existent firms without actual supply of goods. **Proceedings under Section 74 of the CGST Act were initiated against M/s NIPL** and the adjudication order was also passed against the Company.

- However, **for criminal prosecution under Section 132 of the CGST Act, the complaint was filed against the petitioner, Manoj Bansal, in his individual capacity as Director, without arraigning M/s NIPL as an accused.**

- The Department contended that the **petitioner was actively involved in the management, operations and GST affairs of the Company and was the beneficiary/mastermind** of the alleged fraudulent transactions.

- The **petitioner challenged the prosecution on the ground that where the alleged GST offence was committed by the Company, prosecution against the Director alone could not be sustained** without making the Company an accused.

JUDGEMENT

- The Hon'ble Punjab & Haryana High Court held that **Sections 132 and 137 of the CGST Act must be read together**, with Section 137 governing liability of persons responsible for offences committed by a company. **Where a Director's liability is vicarious, the Company itself must be arraigned as an accused**. Prosecution of the Director alone is not sustainable.

- Relying on Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. [(2012) 5 SCC 661], the Court reiterated that **commission of the offence by the Company is a prerequisite for fastening liability on its officers.**

- Since the Department itself treated M/s NIPL as the principal taxable person in proceedings under Sections 74 and 107, **its omission from the criminal complaint was a substantive defect.**

- Accordingly, **the complaint and consequential proceedings against the Director were quashed**, with liberty to the Department to initiate fresh proceedings in accordance with law.

TAKEAWAYS

- Where the alleged GST offence is committed by a Company and the Director's liability is sought to be invoked under Section 137, **prosecution cannot ordinarily proceed against the Director alone without arraigning the Company as an accused.**

- Mere allegations that the **Director was actively involved in, controlled, or benefited from the transactions cannot cure the foundational defect of not making the Company an accused** where the prosecution is based on vicarious liability.

- The judgment does not decide the merits of the alleged wrongful ITC availment of ₹15.44 crore. **The complaint was quashed because of the defect in the manner in which prosecution was instituted**, and the Department remains free to initiate prosecution in accordance with law.

- For offences attributed to a Company under the CGST Act, Section 137 is not merely procedural - the Company's offence forms the foundation for fastening vicarious criminal liability upon its Directors/officers.

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