

HC: Proceedings by counterpart GST Department 'without jurisdiction' sans proper cross-empowerment Notification

Mar 27, 2024

Tvl. Vardhan Infrastructure vs. The Special Secretary and Ors. [TS-162-HC(MAD)-2024-GST]

Conclusion

Madras HC, in a batch of writ petitions rules on cross-empowerment and the design of the related provisions as well as scope of powers of assessment, scheme of GST enactment and 'linear' flow of delegation; Juxtaposing section 4 of the CGST Act and TNGST Act and corresponding provisions from the Model GST Law, holds the proceedings initiated as 'without jurisdiction' especially when 'except for the purpose of refund' no notification has been issued for cross-empowerment; The substantive issue in these writ petitions is with respect to jurisdiction i.e. wherein proceedings have been initiated by Central Authorities even though assessee are assigned to the State Authorities and vice versa, more particularly, whether assessee who are assigned to either the Central Tax Authorities or the State Tax Authorities under respective Central Goods and Services Tax Act, 2017 (CGST Act) and/or Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act) can be subjected to investigation and further proceeding by the counterparts under the respective GST Enactments; Vide Circular No.01/2017-GST (council) dated September 20, 2017, ref: F.No.199/Cross-Empowerment/GSTC/2017 powers of assessment has been vested with the 'Proper Officer' to whom the assessee have assigned; Tracing through the provisions relating to 'Utilization of ITC' and text of the Circular containing the guidelines for Division of Tax payers between the Centre and State Authorities to ensure single interface for the purpose of tax administration under the respective GST Enactment, From section 3 of the Central and State GST Enactments HC derives that both the Central Government and the State Government have appointed a 'class of officers' who have been appointed under section 4 (1); In turn, CBIC By virtue of a 'linear delegation' under section 4 (2) " *may....authorize any officer referred to in clauses (a) to (h) of section 3 to appoint any officers of the Central Tax below the rank of Assistant Commissioner of Central Tax to be the Central Tax Officer for the administration of the CGST Act, 2017*"; Further, HC observes that even under the TNGST Act, 2017 " *the Commissioner has jurisdiction over the whole of State*" and where the State Government so directs, the Additional Commissioner (having jurisdiction in respect of functions assigned to them) shall have jurisdiction, over any local area thereof; HC conclusively rules on 'power to delegate' while categorically noting that " *neither the Board under Section 4(1) and (2) of CGST Act, 2017 nor the Government and/or the Commissioner under Section 4(1) and (2) of SGST Act, 2017 can appoint such officers in addition to the officer notified under Section 3 of the respective Act. Thus, the Board can appoint and delegate only to Central Tax Officers appointed under the CGST Act, 2017 for CGST Act, 2017 and the Government and/or the Commissioner can appoint and delegate only to State Tax Officers appointed under the TNGST Act, 2017 for TNGST Act, 2017.*"; Therefore, observes that design of the provisions " *are to ensure that there is no cross interference by the counterparts*"; Lastly, holds that in the absence of a proper Notification under Section 6 of the respective GST Enactments for cross-empowerment " *Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them.*"; Accordingly, directs the Central Authority/State Authority assigned for administrative purpose to initiate appropriate proceedings afresh:HC MAD

Decision Summary

The judgment was delivered by a Single Judge Bench of Madras HC presided by Justice C. Saravanan.

Advocates K.Vaitheeswaran, Derric Sam, S. Durai Raj, T. Ramesh, J. Shankaraman, Adithya Reddy, S.Nirmal Aditya, S. Raveekumar and R.N.Amarnath appeared on behalf of the Assessee, whereas Revenue was represented by Senior Panel Counsel Venkatasamy Babu, Rajnish Pathiyil and K.Mohana Murali with Senior Standing Counsel V. Sundareswaran and Hema Murali Krishnan along with a Battery of Advocates.

GSTsutra Note

Few Authorities for cross-empowerment under GST are [\[TS-13-HC\(DEL\)-2021-GST\]](#), [\[TS-121-HC\(ALL\)-2022-GST\]](#) [\[TS\(DB\)-GST-HC\(GUJ\)-2019-829\]](#), [\[TS-41-HC\(MP\)-2021-GST\]](#), [\[\[TS-861-HC-2018\(BOM\)-NT\]](#), [\[TS-400-HC\(MAD\)-2021-GST\]](#), [\[TS-8-HC-2021\(DEL\)-NT\]](#) [\[TS-13-HC\(DEL\)-2021-GST\]](#)).

Case Law Information**Appellant/Applicant/Complainant Name**

- Tvl. Vardhan Infraastructre

Respondent Name

- The Special Secretary& Ors.

Counsel of Appellant/Applicant/Petitioner

- Derric Sam

Respondent Counsel

- Venkatasamy Babu

Authority Level & Location

- High Court Madras

Appeal Number

- W.P.Nos.34792, 29878, 30607 of 2023

Date of Pronouncement

- 2024-03-26

Ruling in favour of

- Petitioner

Judges

- Justice C. Saravanan