

Menace of Dual Control Under Erstwhile Regime Back Under GST in Disguised Form?

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Under the pre-GST regime, the levy of Central Excise and Service Tax was administered by Central authorities, whereas, levy of VAT, entry tax, etc., was administered by State authorities. Accordingly, many assesseees were required to face both the authorities every time. After introduction of Goods and Services Tax (GST), assesseees were divided between Centre and State authorities for administrative purposes. Accordingly, jurisdiction of assesseees was assigned. However, under the GST regime also, the taxpayers are receiving notices from the Central tax officers even though they are administratively falling under the jurisdiction of State GST authority and vice versa. In this background, we will examine the powers of both Centre and State GST authorities for exercising the control and initiation of proceedings on the taxpayers.

Division of taxpayers between the Centre and States:

The GST council has laid down the guidelines for division of taxpayers between the Centre and States *vide* Circular No. 01/2017 dated 20th September 2017 to ensure single interface under GST. The said circular was issued based on the decisions taken in the 9th meeting held on 16th January 2017 and the 21st meeting of the GST council held on 09th September 2017. The council has provided the methodology for division of taxpayers on the basis of turnover which is executed through computer based stratified random sampling. Accordingly, the State governments have issued orders for division of taxpayers between the Centre and State.

Therefore, it is clear that division of taxpayers between the Centre and the States is to ensure that a taxpayer faces only one GST authority viz. either the Centre or the State for exercising the administrative

powers such as issue of notices, conducting regular assessments, passing orders, etc.

Cross-empowerment:

Subsequently, the Government has issued a letter No. *D.O.F.No. CBEC/20/43/01/2017-GST (Pt.)* dated 05th October 2018 providing clarification on ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa. The Government has referred the recommendations made by the GST council in its 9th meeting held on 16.01.2017 regarding administrative division of taxpayers and concomitant issues. Further, relying on the recommendation relating to cross-empowerment of both tax authorities for enforcement of intelligence-based action i.e. *'both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain'*, it was clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

Ideally, it can be said that the cross empowerment is limited to intelligence-based action only, accordingly, it may not extend to issues relating to regular assessment such as classification of goods/services adopted by assessee, GST rate at which tax is being paid by tax payer, etc. may not fall under intelligence-based action as the same are already disclosed by the assesses themselves.

At this juncture, it is worthwhile to refer the provisions^[1] of Section 6 of CGST Act which authorizes the officers of State tax or Union territory tax as proper officers. As per the said provisions,

- where any proper officer passes an order under the CGST Act, he can also pass an order under the SGST Act under intimation to the jurisdictional officer of the State tax;
- where a proper officer under the SGST Act has initiated any proceedings on a *subject matter*, no proceedings are to be initiated by the proper officer under CGST Act on the *same subject matter*.

Now, the State tax officers have started issuing notices for conducting inspections, search, etc., to various taxpayers who are administratively assigned to the Center tax authority and vice versa. It is observed that the notices were issued based on the letter dated 05th October 2018 *supra* issued by the Government. Though the authorities have the power to initiate intelligence-based enforcement action, however, a possibility of examining regular compliance of GST laws with respect to all the business transactions such as ITC mismatch between GSTR 2A and GSTR 3B, availability of ITC to the taxpayer, etc. could not be ruled out. In which case, it would be in the nature of another regular assessment which is otherwise supposed to be carried out by the jurisdictional tax authority (administrative authority) only. Further, as per Section 6 of the CGST Act, the bar on dual control appears to be limited to the same subject matter on which already any one of the authorities already initiated proceedings.

Recently, in the case of ***M/s. Bhawani Textiles vs. Additional Director General***^[2], the Hon'ble Gujarat High Court had dealt with the issue of simultaneous initiation of enforcement action by different authorities on the same subject matter. In this regard, the court has referred the clarification given by the Government vide letter dated 05th October 2018 *supra* and it was held that the Central Tax authority who has initiated proceedings is directed to look into the matter and ensure that no undue harassment is caused to the writ applicant by way of issuing summons by the State tax authority on the same subject matter.

In view of the above discussions, we conclude that it is imperative for the Government to examine the issue of the dual control by the Central and State tax authorities as it would cause undue hardship for the taxpayers to comply with the proceedings of both the authorities and moreover, it is directly against the flagship policy of the Government viz., ease of doing business. Accordingly, it would be necessary to make suitable modifications to avoid the undue hardship being faced by the taxpayers for complying with the notices issued and proceedings initiated by both the authorities.

^[1] Similar provisions are incorporated under State Goods and Services Tax (SGST) Acts.

^[2] 2020-VIL-125-GUJ