

Tracing the Judicial Approach to Cross-Empowerment of Officers

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Advocate Anuj Bansal

Partner, V.P. Gupta & Co.

It has been observed that despite of the fact that the Assesseees are divided between the Central or with the State GST department for administrative purpose, sometimes they receive notices from the department other than to which they are assigned. In other words, suppose an Assessee is assigned to Central department but the notice is received from State GST department or vice-versa. Generally, in such situation, simply a reply is prepared and submitted without giving a thought whether the notice issuing department is empowered to issue such notice or not. Hence, purpose of this article is to understand the jurisdiction of Central & State GST departments and the cross-empowerment by both under GST Laws.

In 2017, before roll out of GST Law, at 9th GST council meeting dated 16.01.2017, after elaborate deliberations, guidelines for division of taxpayer base between the Centre and States to ensure single interface under GST were issued. In alignment with such guidelines, Circular No.1/2017, F.No.166/Cross Empowerment/GSTC/2017 dt. 20/09/2017, was issued by the GST Council. Following were the main guidelines / criteria, in the above circular, for division of taxpayers:

1. There shall be a division of taxpayers between the Central and the State tax administrations for all administrative purposes;
2. Of the total number of taxpayers below ₹ 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;
3. In respect of the total number of taxpayers above ₹ 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;
4. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;
5. Both the Central and the State tax administration shall have the power to take intelligence-based enforcement action in respect of the entire value chain.

In this regard, clarification **No. CBEC/20/43/01/2017-GST (Pt.) dated 05.10.2018** was also issued by CBEC, wherein it has been clarified that officer of the Central tax and State tax are authorized to initiate 'Intelligence based enforcement' action on entire taxpayer's base irrespective of administrative assignment of 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. In other words, if an officer of the Central Tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State Tax authority, the officers of the Central Tax authority would not transfer the said case to its State Tax counterpart and would themselves take the case to its logical conclusions. Same applies to Intelligence based enforcement action initiated by officers of State Tax authorities against a taxpayer administratively assigned to Central Tax authority.

Notification No. 2/2017-Central Tax dt 19.07.2017 was issued by CBEC in regard to territorial jurisdiction of GST officers. Although, Assesseees are jurisdictionally divided for administrative purposes between

Centre and State, but at the same time, power of cross empowerment exist in GST Laws. Under CGST Act, SGST Act of various states & UTGST Act, **Section 6** deals with **Cross-Empowerment** which empowers the officers of State or Union Territory to act as 'Proper Officer' under CGST Act and vice-versa. The intention of this Section is that there should be harmony in the way an Assessee is assessed. The authorization is necessary to ensure that taxes are assessed by one person i.e. Centre or State officer. The above Section 6 of GST Law is discussed as follows:

1. Officers of State and UT to act as 'Proper Officer' under CGST and vice- versa:

Section 6(1) of CGST Laws deals with authorization of officers under State tax or Union territory as proper officers under CGST Act. Similar provisions exist in SGST Act / UT GST also. It is essential, in order to have ease of business, the Assessee should be assessed by one tax officer. Therefore, officers of CGST shall have power to make assessment of tax under SGST Act and vice-versa.

Clarification No. CBEC-20/10/07/2019-GST Dt. 22/06/2020 on 'Cross Empowerment under GST', was issued by CBIC in order to mitigate the confusion that cross-empowerment of Central and State officers is absolute and not conditional. Notification would be required only if any conditions are to be imposed. If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts.

2. Intimation for order by the Assessing Officer shall be given to the Jurisdictional Officer:

As per Section 6(2)(a) of CGST Act, where officers under CGST Act issues order of assessment under CGST Act, he shall issue an order under the SGST or UTGST also and intimate the same to the jurisdictional officer of that State or UT. Similarly, vice-versa applies.

3. No Parallel proceedings by Central and State officers:

As per Section 6(2)(b) CGST Act, where a Proper Officer under the SGST Act has initiated any proceedings on a subject-matter, no proceedings shall be initiated by the Proper Officer under CGST Act on the same subject-matter and vice-versa.

From the above, it is clear that CGST & SGST Laws have provisions for cross empowerment, subject to Section 6(2)(b) of GST Act. However, it has been observed that Section 6(2)(b) is very often challenged by Assesseees in many Writ Petitions. Hereunder, certain High Court's decisions are discussed, relating to 'Jurisdiction' and 'Cross-empowerment':

1. An assessee can be adjudicated by State authority where registration has been assigned to Centre under certain circumstances:

In this recent case of **Ajay Verma Vs UOI & 5 others**, [\[TS-121-HC\(ALL\)-2022-GST\]](#), Allahabad High Court has differentiated between '**Inherent lack of jurisdiction and Error of Jurisdiction**'. Assessee was assigned to Centre but his assessment and adjudication was done by State authority. The Assessee got its adjudication completed by the State authorities and there after the Assessee challenged their Jurisdiction in Court.

Hon'ble High Court made the following observation, "It is evident that the respondent no. 4 being proper officer under the Act having territorial jurisdiction over the petitioner Assessee is competent to exercise the powers conferred under the Act in respect of Assessee, falling under his territorial jurisdiction. But as per minutes of the meeting of the G.S.T. Council and the circular issued in this regard, the distribution of work for administrative convenience was made and as per which the case of the petitioner was assigned to a central officer. Thus, it is not a case that the state officer i.e. the respondent no. 4 lacks inherent jurisdiction but it is a case where the jurisdiction has been exercised by the respondent no. 4 **in the absence of any objection or pointing out by the petitioner that the case has been assigned to a central officer.** The jurisdiction upon a proper officer has been conferred by Section 6 of the Act. Thus, a proper officer has jurisdiction over the Assesseees for assessment falling under his territorial jurisdiction but in terms of the aforesaid work allotment order No. 04/2021 dated 12.9.2018 he was to take up those cases which have been allotted to him."

2. No two parallel investigations by Central and State officers on same subject matter can be initiated:

In the case of **Sureshbhai Gadhecha Proprietor of Ms Anmol Traders vs. State of Gujarat**, [[TS\(DB\)-GST-HC\(GUJ\)-2019-829](#)] Dt. 27/12/2019, CGST officers have initiated investigation against the Assessee, State officers were aware of the same and still issued summon upon Assessee. Court gave interim relief and directed State authorities not to take any coercive action pursuant to the impugned inquiry proceedings.

In the case of **Jai Prakash Associates Ltd. Vs. UIO & Ors.** [[TS-41-HC\(MP\)-2021-GST](#)] Madhya Pradesh High Court, MP SGST officer, initiated proceedings for recovery of interest U/s 50 against which assessee went in the appeal. In the meanwhile, CGST officers also issued Show Cause Notice and initiated parallel proceeding for recovery of such interest. The petitioner filed reply to such Show Cause Notice that such proceeding cannot be initiated as per Section 6(2)(b) of CGST Act. High Court made observation that, "We direct that the respondent No.2, before proceeding further on the impugned show cause notice, shall first deal with and decide the aforesaid objection of the petitioner in accordance with law."

3. If registration is taken in two States, CGST Officers of both the States may initiate inquiry simultaneously on same subject.

In the case of **Shafi Khan Khokhar vs. State of Maharashtra**, [[TS-861-HC-2018\(BOM\)-NT](#)], Bombay High Court held that if the Assessee is registered under GST Laws two different states, CGST officers of both the states may start inquiry on same subject matter.

4. Central authority can initiate intelligence based enforcement action against Assessee who is administratively assigned to State:

In the case of **Kuppan Gounder P.G Natrajan, Managing Director, M/s KPN Travels India Ltd. Vs. Directorate General of GST Intelligence**, [[TS-400-HC\(MAD\)-2021-GST](#)] Madras, it was held that if an intelligence based enforcement action is taken against a taxpayer by the Central authority, which is assigned to State tax authority, the Central tax authority is entitled to proceed with the matter and take it to the logical conclusions and the same principle is applicable vice-versa.

In case the of **Dhruv Krishan Maggu and K.P and Sons & Ors. Vs. UOI**, [[TS-8-HC-2021\(DEL\)-NT](#)] Court made the observation in Para 50 that, "Central Tax officers are empowered to conduct intelligence-based enforcement action against taxpayers assigned to State Tax administration under Section 6 of the CGST Act."

5. Power of Search & Seizure by the State Authorities when action of Centre to initiate search for the same period was quashed by the Court.:

In the case of **RCI Industries and Technologies Ltd. vs. Commissioner of DGST**, [[TS-13-HC\(DEL\)-2021-GST](#)], Centre has initiated search which was quashed by the High Court. Thereafter, the State authority has also initiated search for the same period. Assessee filed the Writ Petition. Hon'ble High Court made following observation, "At this stage, we are only concerned with the search action initiated and the ultimate logical conclusion would have to be gone into at the appropriate stage, when the Revenue proceeds for determination of tax. The Respondents would be bound by the aforementioned circulars and we reiterate that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to impugn the same in accordance with law."

6. In case of two parallel inquiry by Central Authorities (DGGI of two States), case can be transferred to Centralized agency for avoiding inconsistency:

In the case of **Union of India & Ors. Vs. Kaushik Shah & Ors., Whole Leaf Tobacco Vs. Private Limited & Ors.** DGGI Siliguri and DGGI Kolkata issued summons to Assessee for the inquiry on the same subject, case of Silliguri was allowed to be transferred to DGGI Kolkata.

7. Proceedings by CGST officer & DGGST are different and not hit by Section 6(2)(b) of CGST Act

In the case of **Dadhuchi Iron and Steel Pvt. Ltd.**, [[TS-158-HC-2020\(CHAT\)-NT](#)] - Chhattisgarh High Court, it was held as follows, "This Court does not find any substance in the arguments of the petitioner, when they say that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the CGST Act of 2017. What has also to be appreciated is the fact that there is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible."

8. Difference between Inquiry and Proceedings in reference to issuance of Summon u/s 70 of GST Law by Centre and State simultaneously:

In the case of **G.K. Trading Company Vs. UOI**, [[TS-1159-HC-2020\(ALL\)-NT](#)] it was clarified that summon can be issued u/s 70 in relation to any inquiry in Chapter XIV. Proceedings as envisaged u/s 6(2)(b) of the CGST Act is different from enquiry. CGST & SGST authorities can issue Summons u/s 70 on same subject matter of inquiry. 'Proceedings' start where inquiry stops. 'Proceedings' as referred u/s 6(2)(b) of CGST Act is qualified by the word 'subject matter' which indicates an adjudication process on the same cause of action and for the same dispute which may be proceedings relating to assessment, audit, demand, recovery, offences and penalties.

9. Investigations by various Jurisdictional authorities can be transferred to single Authority:

In the case of **Indo International Tobacco Ltd. M/s SSM Exports Vs. Shri Vivek Prasad**, Additional Director General, DGGI & Ors., [[TS-03-HC\(DEL\)-2022-GST](#)] Delhi High Court gave finding that, "In the course of investigating of a tax entity, a situation may arise where the investigation may have to be carried out from entities which are not within the territorial jurisdiction of the Officer appointed under the Notification dated 19.06.2017 and/or such State Notifications appointing an Officer with the limited territorial jurisdiction. It cannot be said that in every such case, the 'proper officer' having limited territorial jurisdiction must transfer the investigation to the 'proper officer' having pan India jurisdiction - it would depend on the facts of each case as to whether such transfer is warranted or not. To lay down the undefeatable rule in this regard may not be feasible or advisable, and certainly not acceptable."

To conclude the above discussion, it would have been understood that GST Laws has provision for cross-empowerment which empowers an officer to determine demand under both laws i.e. CGST & SGST. It is also categorically explained that there could not be any parallel proceedings on the same subject by the Central and State officers. However, the proceedings may be initiated in the different states on the same subject matter simultaneously. For each situation, where the department is invoking provisions relating to cross empowerment, an analysis is required to be done whether the department is acting as per the provisions of law or violating the principles laid down in the law. In case the department is violating the principles of the Law, same has to be challenged before the appropriate forum. Accordingly, an Assessee should be cautious and mindful upon receiving any notice about jurisdictional power of issuing authority.