

EY Tax Alert

HC rules DGGI officers can issue summons under GST

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes a recent ruling^[1] of the Gujarat High Court (HC). The issue relates to powers of officers of Directorate General of GST Intelligence (DGGI) to issue summons under Goods and Services Tax (GST).

The key observations of the HC are:

- ▶ Senior Intelligence Officer of DGGI was appointed as Central tax officer and vested with all the powers exercisable by Superintendent under Central Goods and Services Tax Act, 2017 (CGST Act) vide Notification dated 1 July 2017.
- ▶ Further, central tax officers were assigned powers of proper officer by the Central Board of Indirect taxes and Customs (CBIC) vide Circular dated 5 July 2017.
- ▶ Thus, DGGI officer is a proper officer and is entitled to issue summons under section 70 of CGST Act.
- ▶ There being no delegation of powers by Commissioner, the provisions of section 167 of CGST Act were not attracted and hence, there was no necessity to issue any notification.
- ▶ Parallel proceedings by Directorate of Revenue Intelligence (DRI) and DGGI can sustain as they relate to different matters.

Thus, the Court held that DGGI officer has the power to issue summons under GST.

^[1] 2021-VIL-483-GUJ

Background

- ▶ Petitioner is engaged in manufacturing and exporting specialized chemicals.
- ▶ *Vide* communication dated 11 November 2020, Directorate of Revenue Intelligence (DRI) intimated the petitioner that an inquiry was initiated for incorrect availment of EOU scheme benefits along with refund of tax paid on export.
- ▶ Aggrieved, petitioner had filed a writ petition before the Bombay HC.
- ▶ Further, on 9 February 2021, officers of Directorate General of GST Intelligence (DGGI) visited the manufacturing unit of petitioner at Vapi, in connection with the said inquiry.
- ▶ Alleging that incorrect refunds were claimed by the petitioner, INR 3 crores were recovered. The same was paid, under duress, through Form DRC-03 mentioning in the column of 'reasons' that payment was made under protest.
- ▶ Subsequently, Senior Intelligence Officer of DGGI issued summons under section 70 of Central Goods and Services Tax Act, 2017 (CGST Act).
- ▶ Aggrieved, petitioner filed a writ petition before the Gujarat HC,
 - ▶ challenging summons issued under section 70 of CGST Act,
 - ▶ seeking directions for refund or re-credit of INR 3 crores paid *vide* Form DRC-03,
 - ▶ seeking direction to quash and set aside Circular No.3/3/2017-GST dated 5 July 2017 which relates to the assignment of functions of proper officer.
- ▶ As per section 70 of CGST Act, the proper officer shall have power to summon any person whose attendance he considers necessary. Such inquiry shall be deemed to be "judicial proceedings".
- ▶ As per section 2(91) of CGST Act, proper officer, in relation to any function to be performed under CGST Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.
- ▶ Further, section 167, which relates to the delegation of powers, provides that the Commissioner is empowered to direct, by

notification, that any power exercisable by any authority or officer under CGST Act may also be exercisable by another authority or officer as may be specified in such notification.

Petitioner's contentions

- ▶ Since DGGI officer does not hold the designation of Commissioner, the specific function under section 70 had to be assigned to him by Commissioner as contemplated under section 2(91).

Further, such assignment has to be done by way of a notification, in light of section 167 of the CGST Act.

- ▶ Reliance was placed on Supreme Court (SC) ruling in case of Canon India Pvt. Ltd.², to submit that the entrustment of functions is a vital ingredient in the proper exercise of the powers by an authority.
- ▶ DGGI officer had wrongly assumed the jurisdiction to issue summons by virtue of Circular dated 5 July 2017.
- ▶ The Circular is issued in exercise of powers conferred by section 2(91) read with section 20 of Integrated Goods and Services Tax, 2017 (IGST Act).

Section 2(91) is merely a definition clause, which does not confer any powers to assign the functions.

- ▶ Since delegation of powers by the Commissioner under section 167 of the CGST Act has to be effectuated through a Notification, such power cannot be exercised through a Circular. Reliance was placed on various rulings in this regard³.
- ▶ Coercive action of DGGI officer has culminated into the recovery of an amount of INR 3 crore from the petitioners without issuance of any show-cause notice or finalization of demand pursuant to the adjudication.

Unless there is an assessment and demand, the amount deposited by the petitioners cannot be appropriated. Reliance was placed on ruling of Punjab and Haryana HC in case of Century Metal Recycling.⁴

- ▶ Reliance was also placed on the interim order passed by Gujarat HC in case of Bhumi Associates⁵, where the Court had issued guidelines regarding recovery of amount at the time of search or inspection proceedings.

² 2021-VIL-34-SC-CU

³ Atlas Cycle Industries Ltd. Vs. State of Haryana [1971 (2) SCC 564] Food Corporation of India Vs. Commissioner

of Commercial Taxes [(1999) 116 STC 173 (Patna)] Suresh Kumar Bansal Vs. UOI [2016 (43) STR (Delhi)] etc.

⁴ 2009 (234) ELT 234 (P&H)

⁵ 2021-VIL-127-GUJ

- ▶ The action of DGGI officer is in violation of the principles of natural justice.
- ▶ Petitioner is facing two parallel investigation proceedings, one from DRI and other from DGGI. Such parallel proceedings, on the same issue, were not sustainable.

HC Ruling

- ▶ Senior Intelligence Officer of DGGI was appointed as Central tax officer and vested with all the powers exercisable by the rank of Superintendent under the CGST Act/ IGST Act by virtue of Notification dated 1 July 2017.
- ▶ Central tax officers were assigned the powers of proper officer by the CBIC *vide* Circular dated 5 July 2017 issued in exercise of powers conferred under section 2(91).
- ▶ Therefore, the DGGI officer is a proper officer in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such, was entitled to issue summons under Section 70 in connection with the inquiry initiated against the petitioner.
- ▶ Petitioner's contention that assignment of function has to be by way of notification and not through circular, in view of section 167 of CGST Act, is thoroughly misplaced.

Section 167 pertains to delegation of powers by Commissioner.

However, Circular dated 5 July 2017 is issued in exercise of the powers conferred by section 2(91).

Thus, there being no delegation of powers by the Commissioner, the provisions contained in section 167 were not attracted and hence, there was no necessity to issue notification.

- ▶ The Court did not find any force in the petitioner's contention that two parallel proceedings in connection with the same issue were not sustainable.
- DRI proceedings were in connection with incorrect availment of double benefits (i.e. IGST exemption on imports and refund of IGST paid on goods exported), whereas DGGI had issued summons in relation to refund of input tax credit under CGST Act.
- ▶ Summons issued under section 70 are in nature of judicial proceedings and petitioners are bound to respect the same.
 - ▶ No prejudice is going to be caused to the petitioners if the statement is tendered or the documents are produced as required by the DGGI officer.

- ▶ Payment of INR 3 crores made by petitioner, shall be dealt with or adjusted by DGGI officer in accordance with law, more particularly as per section 74 of CGST Act.
- ▶ Regarding petitioner's reliance on interim order passed in case of Bhumi Associates (supra), Court noted that the guidelines in the said order were in connection with the voluntary payment made during the course of search and seizure proceedings.

However, in the present case, no search and seizure proceedings had taken place.

- ▶ Thus, the Court held that DGGI officer has the power to issue summons under GST and accordingly, dismissed the petition.

Comments

- The ruling provides guidance in respect of the powers of officers of various Directorates under the GST law.
- While Circular no. 31/05/2018 - GST dated 9 February 2018 provides that DGGI officers can issue show case notice, the same needs to be analyzed in light of Supreme Court ruling in case of Canon India.
- It may be interesting to see the outcome of review petition filed against Supreme Court decision.

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