

EY Tax Alert

HC holds proceedings initiated by more than one tax authority ultra-vires in absence of notification providing for cross-empowerment

Executive summary

This Tax Alert summarizes a recent judgement¹ of the Madras High Court (HC). The issue involved was whether taxpayers who have been assigned either to the Central tax authorities or the State tax authorities under the respective Goods and Services Tax (GST) enactments can be subjected to investigation and proceedings by their counterparts.

The key observations of the HC are:

- ▶ Section 6(1) of the respective GST enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment.
- ▶ Since, no notifications have been issued for cross-empowerment with the advice of GST Council, except for the purpose of refund of tax, impugned proceedings are to be held without jurisdiction.
- ▶ Thus, if an assessee has been assigned administratively with the Central authorities basis the Circular, the State authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding notification.
- ▶ Similarly, if a taxpayer has been assigned to the State authorities, the officers of the Central tax cannot interfere although they may have such intelligence regarding the alleged violation by the taxpayer.

Basis above, HC quashed the proceedings by counterparts and directed the appropriate tax authority to initiate proceedings for purported loss of revenue.

EY 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.

¹ TS-162-HC(MAD)-2024-GST

Background

- ▶ The taxpayers in the present batch matter have been assigned either to the Central tax officers or to the State tax officers under the respective Goods and Services Tax (GST) enactments.
- ▶ The Central tax officers initiated proceedings against the taxpayers who have been assigned to the State authorities and vice versa.
- ▶ Petitioners challenged the proceedings initiated by the counterparts.

Taxpayer's contentions

- ▶ In the 9th GST Council meeting held on 16 January 2017, a decision was taken regarding cross-empowerment to ensure a single interface with authorities for the future GST Laws.

It was also decided that both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain.

- ▶ First impetus for cross-empowerment was given vide Circular No.1/2017-GST (Council) dated 20 September 2017. The Circular was issued for division of taxpayer base between the Centre and States to ensure a single interface under GST enactments.

The Circular mentioned that suitable notifications regarding cross-empowerment of State and Central tax officers are being issued separately.

- ▶ GST Council in its 22nd meeting held on 6 October 2017 addressed the concern arising out of the gap between the issuance of notifications.
- ▶ The Central Government issued Notification No. 39/2017- Central Tax on 13 October 2017 to empower state officers to be the proper officer for the purpose of refund of tax under GST.
- ▶ Separate draft notification was also circulated in GST Council meeting for the purpose of Section 6 which would have entitled cross-empowerment for other purposes.

However, these notifications continue to remain as draft notifications till date.

- ▶ During the 22nd meeting, it was highlighted that there was disagreement over the issue relating to place of supply rules under IGST Act. Due to persistent differences on cross-empowerment relating to the said issue, notification regarding cross-empowerment in respect of other matters were deferred.
- ▶ Thus, there is no cross-empowerment.

HC's ruling

- ▶ Powers of assessment has been vested with the proper officers to whom the assessee have been assigned by virtue of Circular No. 01/2017-GST.
- ▶ Under Section 3 of the respective Central and State GST enactments, both the Central Government and the State Government have appointed a "class of officers" for the purpose of enforcement of the respective enactments.
- ▶ Under Section 4(1) of the enactments, the Board² and the State Government, can appoint such officers as they may deem fit to be the officers.
- ▶ As per section 4(2) of CGST Act, the Board can authorize any officer referred to in Section 3 to appoint officers of the Central Tax below the rank of Assistant Commissioner to be the Central Tax Officer for the administration of the CGST Act alone. Thus, under Section 4(2), there can be only a linear delegation.

Similar provisions are there under SGST enactments.

- ▶ These provisions are pari materia with Section 4 of the Customs Act, 1962 and Section 12(E) of the Central Excise Act, 1944.
- ▶ Section 6 of the CGST Act and TNGST Act are relevant for cross-empowerment.
- ▶ It is slightly different from the respective Model GST laws which contemplated wide powers with the Board/Commissioner to delegate the powers to officers from their counterpart Department.
- ▶ Section 6(1) of the GST enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment.
- ▶ However, no notification has been issued under Section 6(1) except for the purpose of refund.
- ▶ Since, there is no notification issued for cross-empowerment with the advice of GST Council, except for the purpose of refund of tax, impugned proceedings are to be held without jurisdiction.
- ▶ Thus, if an assessee has been assigned administratively with the Central authorities basis the Circular, the State authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding notification.
- ▶ Similarly, if a taxpayer has been assigned to the State authorities, the officers of the Central tax cannot interfere although they may have such intelligence regarding the alleged violation by the taxpayer.

² Central Board of Indirect taxes and Customs

Comments

- a. The ruling is likely to benefit the industry and eliminate parallel proceedings by Central as well as State officers.
- b. There are divergent rulings of high courts on the issue of parallel proceedings, however, the ground of absence of relevant Notification regarding cross-empowerment under the law, has not been discussed in any of the earlier rulings.
- c. The matter is expected to be taken up by the GST Council, recommending the issuance of relevant notification once the difference between the Center and States is reconciled.
- d. Apart from cross-empowerment, conflicts have arisen regarding multiple proceedings being initiated by different wings of the same department, i.e., jurisdictional officer, audit wing, anti-evasion wing, DGGI etc.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing
Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

Ernst & Young LLP

EY | Building a better working world

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 9th Floor, Golf View Corporate Tower B, Sector 42, Golf Course Road, Gurugram, Haryana - 122 002.

© 2024 Ernst & Young LLP. Published in India.
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.



Download the EY India Tax Insights App

ey.com/en_in

