

EY Tax Alert

HC holds State-tax authority cannot transfer GST proceedings once initiated on a particular issue to DGGI

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Executive summary

This Tax Alert summarizes a recent ruling of the Punjab and Haryana High Court (HC)¹ on validity of transfer of proceedings under the Goods and Services Tax (GST) law.

The key observations of the HC are:

- ▶ As per Section 6(2)(b) of the Haryana Goods and Services Tax Act, 2017 (HGST Act) and the Central Goods and Services Tax Act, 2017 (CGST Act), once a proper officer has initiated any proceedings on a subject matter, no proceedings can be initiated by another officer on the same matter.
- ▶ Unlike other taxation laws, the scheme of the GST law nowhere provides for transferring the proceedings from one proper officer to another.
- ▶ Merely because DGGI has information relating to fraudulent availment of input tax credit by other firms, who may be related to the assessee, would not be a sufficient ground to presume that the State GST authority would not be able to conduct the proceedings or examine the culpability of the assessee.
- ▶ The term "subject matter" refers to the nature of the proceedings. If the State has already initiated proceedings, DGGI cannot be allowed to initiate proceedings on the same subject matter even for subsequent periods.

Basis above, HC quashed the transfer of proceedings by State tax officer to DGGI and directed him to proceed and conclude the same.

¹ 2024-VIL-920-P&H

Background

- ▶ The assessee is a manufacturer of lead alloys and related products in the State of Haryana.
- ▶ An enquiry was initiated for wrongful availment of input tax credit (ITC) by the State tax department as well as multiple zonal units of Directorate General of Goods and Services Tax Intelligence (DGGI).
- ▶ Aggrieved by such multiple enquiries, assessee filed a writ petition² before the Punjab and Haryana High Court (HC). The HC directed that only the State Goods and Services Tax department would take up the enquiry proceedings for period up to 31 December 2018.
- ▶ A notice under Section 74(1) of the Haryana Goods and Services Tax Act, 2017 (HGST Act) was issued for the tax period from 1 July 2017 to 21 July 2019.
- ▶ Subsequently, DGGI conducted search and seizure operations at the assessee's premises and initiated its own proceedings. Pursuant to this action of DGGI, State-tax officer transferred the matter to DGGI for the period after 2019.
- ▶ Consequently, assessee filed another writ petition before the HC challenging such transfer of proceeding by the State tax officer in light of Section 6(2)(b) of the HGST Act.
- ▶ As per the said Section, where the proper officer under the State GST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the officer under the Central Goods and Services Tax Act, 2017 (CGST Act).

Assessee's Contentions

- ▶ The transfer of proceedings is violative of Section 6(2)(b) of the HGST Act since the proper officer in terms of the said provision is the officer who had initiated the proceedings *i.e.*, State tax officer in the present case.
- ▶ Once the proceedings have commenced at the State level and notice have also been issued under Section 74(1), it would be only legal for the State authorities to conduct proceedings and there was no power available to transfer the proceedings to DGGI.
- ▶ Unlike enabling provisions under the Income Tax Act and various other taxation laws, there is no power to transfer proceedings between State and Centre under the GST law.

Revenue's Contentions

- ▶ The State tax authorities have not taken any steps for conducting investigation for the period post 2019. Only the period up to 31 December 2018 was covered by the earlier writ petition and all the proceedings relating to such period is conducted by the tax officer under the HGST Act.
- ▶ The transfer was justified for a comprehensive investigation given the DGGI's pan India jurisdiction.
- ▶ Searches conducted at the registered offices of several suppliers revealed them to be non-existent or non-operational, and these firms had shown supply of goods to the assessee, indicating a larger network of fraudulent activities that warranted investigation by DGGI.
- ▶ The nature of investigation, involving multiple firms and complex fraudulent activities, required the expertise and broader jurisdiction of DGGI to ensure a thorough examination of the case.

High Court's Ruling

- ▶ Enquiry conducted by the State tax officer is deemed to be a judicial proceeding as per Section 70(2) of such Act. Further, issuance of show cause notice is the point of commencement of any legal proceedings. Thus, once a proper officer has initiated any proceedings on a subject matter, no proceedings can be initiated by another officer on the same matter.
- ▶ The scheme of the GST law nowhere provides for transferring the proceedings from one proper officer to another.
- ▶ Merely because DGGI has information relating to fraudulent availment of ITC by other firms, who may be related to the assessee, would not be a sufficient ground to presume that the State GST authority would not be able to conduct the proceedings or examine the culpability of the assessee.
- ▶ Circular³ dated 5 October 2018 issued by the Central Government has also acknowledged that once the officer of the State tax Authority has initiated action, it would be the proper officer who would conduct further proceedings.
- ▶ Additionally, internal communication of GST Wing⁴ issued on 22 June 2020 addresses the scope of Section 6 of the CGST Act in relation to intelligence-based enforcement actions by Central officers on taxpayers assigned to State tax administration.

Basis such communication, both State and Central Governments have the same powers under the respective Acts. Once an officer initiates proceedings, they cannot transfer it to another

² CWP No. 21658 of 2019

³ CBEC/20/43/01/2017

⁴ CBEC-20/10/07/2019-GST

officer, and no other officer should initiate proceedings on the same subject matter.

- ▶ Further, the term "subject matter" refers to the nature of the proceedings, which in this case is the wrongful availment of ITC by fraudulent means.
- ▶ Thus, if the State has already initiated proceedings by issuing notice under Section 74 for the period upto 22 July 2019, for the same subject matter, DGGI cannot be allowed to initiate proceedings for the period commencing after the said date. Such action, if allowed, would be contrary to the provisions contained in Section 6(2)(b).
- ▶ Accordingly, HC quashed the order for transfer of proceedings and directed the State tax officer to proceed and conclude the same.

Comments

- a. Jurisdiction to initiate proceedings under indirect tax laws have always been a subject matter of controversy, particularly concurrent proceedings. HC's interpretation of the provision of Section 6(2)(b), holding even transfer of proceedings as impermissible once initiated by State tax officer, is likely to put to rest the litigation arising on this count and provide relief to taxpayer from additional compliance burden.
- b. It is relevant to note that the term "subject matter" has been broadly interpreted by the HC and has not been restricted to a particular tax period.

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