

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04.09.2023

W.P.(C) 8625/2022 & CM APPL. 25934/2022

AMIT GUPTA

.... Petitioner

Through: Mrs. Anjali Jha Manish,

Mr. Priyadarshi Manish, Ms. Divya Rastogi &

Mr. Anmol Arya, Advs.

Versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Dev P Bhardwaj, Ms. Chaahat Khanna

& Ms. Ritika Malhotra, Advs. for UOI.

Mr. Ajit Kumar Kalia & Mr. Abhinav Kalia, Advs. for R3.

Mr. Aditya Singla, SSC with Mr. Mahesh Agarwal & Ms. A Sahitya Veena, Advs. for R4&5.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition being aggrieved by multiple investigations being conducted by the different authorities in respect of the supply of goods received and made by the petitioner during the period of July, 2017 to March, 2022.

2. The petitioner states that the investigations for the relevant periods were commenced by respondent no.3, CGST, Delhi North (the Jurisdictional Commissionerate) and summons dated 03.03.2022 was issued to the petitioner. The petitioner states that his statement was recorded on 16.03.2022 and that he had submitted all the relevant documents in his possession. The petitioner also claims that the officers of the Jurisdictional Commissionerate collected an amount of ₹50,12,000/-, purportedly under Section 74 of the Central Goods & Services Tax Act, 2017 (hereafter '**the Act**'), without issuing any show cause notice to him.

3. The petitioner claims that thereafter on 18.04.2022, the officers of respondents no.4 and 5 (Directorate General of GST Intelligence, Gurugram – hereafter '**the DGGI**') conducted a search in the petitioner's principal places of business, his residence, and the godown. The petitioner's business premises and the godown were sealed by the said officers after conducting a search. Thereafter, the concerned officer of the DGGI issued a summon to the petitioner seeking certain documents. The petitioner claims that he made representations informing the concerned officers of the DGGI regarding the proceedings commenced by respondent no.3 and calling upon them to de-seal the premises and refrain from any further proceedings, as parallel proceedings were impermissible.

4. It is the petitioner's grievance that despite the same, respondents no.5 has repeatedly issued summons and has not refrained from continuing with the investigation.

5. During the course of the proceedings the learned counsel appearing for the petitioner and the DGGI requested the Court to fix a date and time when the petitioner would be present both in the business premises as well as the godown for de-sealing the said premises and conducting the search. Accordingly, this Court directed the petitioner to be present at his business premises situated at 2105-B, Ground Floor, Bawana Road, Narela, North-Delhi, Delhi-110040 on 06.06.2022 at 11:00 AM and to be present at the godown located at Ground Floor, Plot No.72/20, 21, Bawana Road, Gali No.2, Prem Colony, Narela, Delhi-110040 on 07.06.2022 at 11:00 AM. The

petitioner's advocate was also permitted to be present at the aforementioned premises.

6. Pursuant to the said order, the officers of the DGGI de-sealed the premises in question and conducted a search. It is stated on behalf of the DGGI that stocks were recovered from the petitioner's business premises as well as the godown of M/s Balaji Trading Company, a proprietary concern of the petitioner's brother.

7. It is submitted on behalf of the DGGI that neither the petitioner nor his brother could provide any documents regarding the payment of taxes in respect of the goods found during the search conducted in the aforementioned premises. Thus, the same were considered as unaccounted goods and were seized under Section 67(2) of the Act.

8. It is contended on behalf of respondent no.3 as well as respondent nos. 4 & 5 that the investigations being conducted by the two Commissionerate (the Jurisdictional Commissionerate and the DGGI) are separate investigations pursuant to the intelligence developed by them. It is contended that there is no bar for them to conduct the said investigations as the substratum of their respective investigations is not identical.

9. Without going into the issue whether the subject of the investigations carried on by the Jurisdictional Commissionerate and the DGGI are in respect of identical issues, it was suggested by this Court that the investigations be clubbed as it is apparent that there would be overlapping issues.

10. Mr. Singla, learned counsel appearing for respondent no.3 as well as the DGGI sought time to obtain instructions whether the issue regarding parallel investigations could be resolved by transferring the investigation to one agency. This was recorded in the order dated 24.03.2023 and the hearing of the present petition was deferred to 04.05.2023. It is relevant to note that at that stage no objection was raised by Ms Manish, the learned counsel for the petitioner, regarding the consolidation of the investigations and conducting the investigations by one agency.

11. This petition was listed on 04.05.2023 but on that date the learned counsel appearing for the respondents had sought further time to obtain instructions in terms of the order dated 24.03.2023.

12. Thereafter on 25.05.2023, Mr. Singla submitted that the issue of parallel investigations was resolved and that he had instructions to state that the investigation conducted by respondents no.3 would be transferred to the DGGI and its officers would continue the investigations from the same stage as obtaining before the Jurisdictional Commissionerate (respondent no.3). However, the learned counsel appearing for the petitioner objected to the same. According to the petitioner, the DGGI has no jurisdiction to carry out any investigation in terms of Section 6(2)(b) of the Act as respondent no.3 had already initiated the proceedings first by issuing summons on 03.03.2022.

13. Thus, the limited question to be addressed in the present petition is whether the DGGI is precluded from conducting any investigations on account of summons issued by respondent no.3 on 03.03.2022 and proceedings pursuant to the said summons.

14. It is material to note that the petitioner carries on business in trading of urea in the name of his sole proprietorship concerns, namely, M/s Shyam Trading Company and M/s Garg Trading Company. Both the sole proprietorship concerns are registered as separate tax entities under the Act. The petitioner claims that trading of commercial urea is carried on under the name of M/s Shaym Trading Company and the trading of agricultural urea, pesticides and seeds is carried on under the name of M/s Garg Trading Company.

15. In the Counter affidavit filed on behalf of the DGGI (respondent nos.4&5) it is affirmed that intelligence was developed by the officers of the DGGI which indicated that the petitioner's proprietorship concerns were engaged in diversion of agricultural grade urea for industrial use. It is stated that the diversion of agricultural grade urea for other purposes is prohibited under the Essential Commodities Act, 1955. The DGGI alleges that the petitioner had illegally procured agricultural grade urea without paying any GST as the same as available to registered dealers for distribution to farmers. The petitioner allegedly repacked and sold the same as technical grade urea. It is alleged that in the process the petitioner collected 18% GST and to show the legitimate procurement of agricultural grade urea, the petitioner

obtained fake invoices from various entities and sold urea on the basis of the said fake invoices.

16. Thus, the investigation conducted by the officers of the DGGI, essentially, related to diversion of agricultural grade urea and its sale as technical grade urea and reflecting the purchases by way of fake invoices.

17. Respondent no.3 (the Jurisdictional Commissionerate) had commenced investigation regarding the availment of ineligible Input Tax Credit (hereafter '**ITC**'). It is contended on behalf of respondent no.3 that the investigation was conducted to ascertain whether the petitioner had wrongfully availed the ITC from non-existent firms.

18. It is apparent from the above that the focus of the DGGI's investigation is somewhat different from the focus of the investigation being commenced by the Jurisdictional Commissionerate. The Jurisdictional Commissionerate is not investigating the diversion of agricultural grade urea. However, it cannot be disputed that the investigation regarding the availment of the ITC is common to the investigations conducted by both the authorities.

19. Ms. Anjali Jha Manish, learned counsel appearing for the petitioner contended that the DGGI could not proceed with the investigation in view of Section 6(2)(b) of the Act. She also relied on the Circular dated 05.10.2018 (D.O. F.No. CBEC/20/43/01 /2017-GST (Pt.)) issued by the Ministry of Finance in support of her contention that it was not permissible to transfer the investigation by one authority to other. She submitted that there is no express provision under the Act for affecting any such transfer.

20. Mr. Singla has handed over a communication dated 23.08.2023, which indicates that the DGGI is willing for consolidation of the investigation being conducted in respect of M/s Shyam Trading Co. (the sole proprietorship concern of the petitioner). The said letter also indicates that the DGGI, Ghaziabad Zonal Unit is also investigating the diversion of agriculture grade urea for commercial use on an all-India basis in respect of various entities including M/s Shyam Trading Co. In response to the said letter, respondent no.3 had forwarded the copies of the relevant documents pertaining to M/s Shyam Trading Co.'s, report regarding allegedly non-existing firm (M/s Yadav Industries), statement of the petitioner dated 04.03.2022 along with certain other documents for further action. Clearly, respondent no.3 is agreeable for the investigations to be continued by the DGGI.

21. Thus, insofar as the respondents are concerned, there is now no dispute that the investigations would be conducted by a singular agency.

22. It is also relevant to note that there is no dispute that both the officers of the DGGI as well as the Jurisdictional Commissionerate possess the necessary jurisdiction to conduct the investigations.

23. Section 6 of the Act, on the basis of which the petitioner's case is founded, reads as under:

"6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.— (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1)-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

24. It is clear from Section 6(1) of the Act that it contains a non-obstante clause and also empowers officers appointed under the State Goods and Service Tax Act, 2017 (hereafter '**the SGST Act**') or the Union Territory Goods and Services Tax Act, 2017 (hereafter '**the UGST Act**') to be appointed as proper officers for the purposes of the Act.

25. Clause (a) of Sub-section (2) of Section 6 of the Act expressly provides that if a proper officer issues an order under Act, he shall also issue an order under the SGST or the UGST Act as authorized by the said enactments under intimation of the Jurisdictional Officer.

26. In conformity with the scheme of statutes in respect of Goods and Services Tax Act (the Act, the SGST Act and the UGST Act) officers under any of the said statutes can be authorized as proper officers for the purposes of proceeding under the other GST statutes as well. Section 6(1) of the Act empowers the officers appointed under the SGST Act and the UGST Act to act as proper officers for the purposes of the Act. Section 6 of the SGST Act and the UGST Act mirrors Section 6 of the Act. Consequently, the officers under the said enactments are also authorized as proper officers under the Act.

27. In conformity with the scheme of cross empowering officers under the said enactments, Clause (a) of Section 6(2) of the Act also empowers a proper officer to issue orders under the SGST Act and the said Act. Similarly, officers under the SGST Act and the UGST Act are also empowered to issue orders under the Act. The only condition is that the issuance of such orders is required to be intimated to the Jurisdictional Officer of the central tax or the state tax, as the case may be.

28. To ensure that there are no multiple proceedings in regard of the central and the state officers being authorized as proper officers, Clause (b) of Section 6(2) of the Act provides that where a proper officer under the SGST Act and the UGST Act has initiated proceedings on a subject matter, the proper officer under the Act would not initiate proceedings "*on the same subject matter*". This provision of CGST is also mirrored by Clause (b) of Section 6(2) of the SGST Act and UGST Act as well. Thus, where a proper officer under the CGST Act had initiated proceedings on a subject matter, no proceedings would be initiated by proper officer authorized under the SGST Act or UGST Act on the same subject matter.

29. It is clear that the object of Section 6(2)(b) of the Act is to ensure that cross empowerment of officers of central tax and state tax do not result in the taxpayers being subjected to parallel proceedings.

30. We are unable to accept that the provisions of Section 6(2)(b) of the Act proscribe the transfer of investigations or proceedings as is contended on behalf of the petitioner. The object of Section 6(2)(b) of the Act is to avoid multiple proceedings by State Tax Officers and Central Tax Officers on the same subject matter and the rule of purposive interpretation requires Section 6(2)(b) of the Act to be read in the light of the aforesaid object.

31. The Circular dated 05.10.2018 relied upon by the petitioner reads as under:

"D.O.F. No. CBEC/20/43/01/2017-GST (Pt.)

Dated 5th October, 2018

Dear Colleague,

It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.

2. In this regard, **GST Council** in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:-

“viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain”

3. It is accordingly 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.

4. 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 Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.

5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

6. It is also informed that **GSTN** is already making changes in the IT system in this regard.

With best Wishes,

Your Sincerely,

(Mahender Singh)

32. The opening sentence of the said Circular issued by the Central Board of Excise and Customs expressly sets out the reason for issuing the Circular: it is to clarify the ambiguity regarding initiation of enforcement action by Central Tax Officers in case of taxpayers assigned to the State Tax Authorities and vice versa. The Circular clarifies that the officers of both Central Tax and State Tax are authorized to initiate intelligence-based enforcement action on the entire taxpayers base, notwithstanding the administrative assignment of such taxpayers to any authority. Thus, any officer, who commences any proceedings or action is empowered to see it through to its logical conclusion including completing the investigation, issuing of show cause notices, adjudication and recovery of tax as well as pursuing appeals before the Appellate Authorities.

33. The import of the aforementioned Circular is to clarify that the officers of the Central Tax Authority or the State Tax Authorities are not disabled from continuing the intelligence-based enforcement action initiated by them for completing the entire process. The said Circular also does not proscribe the transfer of investigations or proceedings *inter se* proper officers who otherwise have the jurisdiction to conduct those proceedings. The Circular cannot be read in the negative as proscribing transfer of investigations or consolidation of investigations with one authority merely because the authority that commences the investigations is also empowered to see it through various stages.

34. It is possible that the investigations in respect of a subject matter may require to be expanded as the investigation progresses. The investigating agencies are not constrained in any straight jacket formula, which would prevent them from completing their investigation. However, the same does not imply that if the course of investigations commenced separately by two authorities coincide at some stage; the authorities cannot consolidate the same.

35. In the present case, the focus of investigation by the DGGI was in respect of the diversion of agriculture urea for sale as technical grade urea. The issue regarding wrongful availment of the ITC is also inextricably linked with the subject matter of investigation by respondent no.3.

36. If the provisions of Section 6(2)(b) of the Act are read in a restrictive manner, the result would be that the DGGI could continue the investigation regarding the diversion of agriculture urea for sale as technical urea and respondent no.3 would continue the investigation regarding wrongful availment of the ITC on the basis of fake invoices. It is difficult to accept that the proper officers are constrained to not expand the scope of investigation. The scope of investigation of respondent no.3 cannot be confined to verify the invoices for determining whether the ITC claimed by the petitioner is genuine and disregard

the source of the urea sold by the petitioner. Similarly, the issue of fake invoices is integral to the investigation initiated by the DGGI. *Sensu stricto*, the subject matter of the two investigations conducted by the DGGI and respondent no.3 may be slightly different and the intelligence developed by them may be sourced on varying facts.

37. In terms of Section 6(2)(b) of the Act, where a proper officer has initiated the proceedings in respect of the subject matter, no proceedings in respect of the same subject matter are required to be initiated by a proper officer under the said Act and the SGST Act and *vice versa*. Confining the proceedings to *silos* of a subject matter may in certain cases lead to parallel proceedings. Therefore, the device of transferring investigations or proceedings *inter se* proper officers to ensure that a taxpayer is not subjected to parallel proceedings, in effect, subserves the object of Section 6(2)(b) of the CGST/SGST/UGST Act. We are unable to accept that the provisions of Section 6(2)(b) of the Act can be interpreted to proscribe consolidation of investigation or proceedings in a single authority where warranted.

38. The issues canvassed on behalf of the petitioner is no longer *res integra*. In ***Indo International Tobacco Ltd. v. Vivek Prasad and Ors.: 2022 SCC OnLine Del 90***, a Co-ordinate Bench of this Court had considered a contention similar to that advanced on behalf of the petitioner and rejected the same. The relevant extract of the same is set out below:

“65. As noted hereinabove, it is on the basis of the above Circular that the learned senior counsel for the petitioner has vehemently submitted that as the ‘intelligence-based enforcement action’ has been initiated by the Officer of the State Tax Authorities, they are to complete the entire process of investigation and take it to its logical conclusion without transferring the same to the Central Tax Officer.

66. A bare reading of Section 6 of the CGST and the abovementioned Circular, on first blush, supports the interpretation put forth by the learned senior counsel for the petitioners. However, in our opinion, neither Section 6 of the CGST Act nor the Circular dated 05.10.2018 is intended to nor can be given an overarching effect to cover all the situations that may arise in the implementation of the CGST and the SGST Acts. The Circular cannot be extended to cover all and myriad situations that may arise in the administration and the functioning of the GST structure, now being governed by the CGST Act; the SGST Act; the UTGST Act; and the IGST Act. Section 6 of the CGST Act and the above said Circular clearly has a limited application, which is of ensuring that there is no overlapping exercise of jurisdiction by the Central and the State Tax Officers. It is to bring harmony between the Centre and the State in the implementation of the GST regime, with the two not jostling for jurisdiction over a taxpayer. It is, however, not intended to answer a situation where due to complexity or vastness of the inquiry or proceedings or involvement of number of taxpayers or otherwise, one authority willingly cedes jurisdiction to the other which also has jurisdiction over such inquiry/proceedings/taxpayers.

67. Neither Section 6 of the CGST Act nor the SGST Act nor the Circular dated 05.10.2018, therefore, apply to the fact situation presented by the two petitions before us as they do not operate and are not intended to operate in a situation where the ‘intelligence based enforcement action’ has repercussion or involvement of taxpayers beyond the territorial jurisdictional limit of the officer initiating such an action. It also does not address a situation where two or more Officers, may be Central or State or only Central or State, initiate separate ‘intelligence based enforcement action’ but having a common thread or involvement of multiple taxpayers, like a case of conspiracy. In the first case, the officer initiating the ‘intelligence based enforcement action’ cannot travel beyond his territorial jurisdiction. To strictly enforce Section 6 and the abovementioned Circular would therefore, lead to compelling such officer to restrict his investigation and findings and resultant action only to the taxpayer within his territorial jurisdiction, thereby leading to an incomplete and inconclusive investigation/action. In the abovementioned second scenario, as all officers who have initiated ‘intelligence based enforcement action’ are otherwise having jurisdiction over the taxpayer, strictly enforcing the mandate of Section 6 and the abovementioned Circular, will on the one hand subject the taxpayer to multiple action(s) (which is completely contrary to the intent of the Act as noted hereinabove), while on the other hand lead to multiple authorities expending their time, energy and resources investigating the same ‘intelligence’ input, maybe even reaching to conflicting findings. It is settled principle of interpretation of statute that the court must adopt construction which will ensure smooth and harmonious working of the statute and eschew the other which will lead

to absurdity or give rise to practical inconvenience or friction or confusion in the working of the system. (Refer : *State of Punjab v. Ajaib Singh*, (1952) 2 SCC 421 : AIR 1953 SC 10; *Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.*, AIR 1961 SC 1549)."

39. We are also of the view that the petitioner's insistence on the authority which should conduct the investigation is unjustified. As noted, at the outset, the petitioner's grievance was in respect of conduct of parallel proceedings. The said grievance perished with respondent no.3 agreeing to the DGGI continuing the investigation from the stage, as obtaining before it.

40. The petition is, accordingly, disposed of. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 4, 2023