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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 07.01.2021

+ **W.P.(C) 121/2021**

**RCI INDUSTRIES AND TECHNOLOGIES LTD
THROUGH ITS DIRECTOR RAJEEV GUPTAPetitioner**

Through: Mr. Ashok K. Babbar, Mr. Bharat
Kumar Tripathi and Mr. Surendra
Kumar, Advocate.

versus

COMMISSIONER DGST DELHI & ORS. Respondents

Through: Mr. Ramesh Singh, Standing Counsel
with Mr. Gautam Narayan, Additional
Standing Counsel for GNCTD, Ms.
Bhawna Kataria and Mr. Adithya
Nair, Advocates for R-1.
Mr. Harpreet Singh, Senior Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

CM APPL. 375/2021

1. Exemption allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 121/2021

3. The present writ petition under Article 226 of the Constitution of India, 1950 impugns the action of search carried out at the Petitioner's business premises on 30th September, 2020, under Section 67 of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as 'DGST Act') read with Rule 139 of the DGST Rules, 2017.

4. The factual matrix giving rise to the present writ petition is as follows: The Petitioner company, duly registered under the CGST/ DGST Act, functions from its unit at Pitampura, North-West Delhi and has its godown/warehouse at Shahbad, Daulatpur, Delhi. It also has units in other states for which separate registration under the CGST Act exists at Rajasthan and Himachal Pradesh. On 30th September, 2020 at 3:30 PM, the Respondent No. 2 (Assistant Commissioner/VATO, Delhi) entered the Petitioner's place of business and godown, for the purpose of conducting a search. Petitioner was handed over a notice by Respondent No. 2 under Rule 56(18) of DGST Rules, 2017, *inter-alia* asking to produce books of accounts for the period 2017-18, 2018-19, 2019-20, and 2020-2021. Besides, Respondent No. 2 also provided: (i) a copy of authorisation in Form GST INS-01 dated 30th September, 2020, (ii) Deployment Order No. 119 dated 30th September, 2020 under Section 60 of the Delhi Value Added Tax Act, 2004, as well as (ii) Grant of Authority dated 30.09.2020 in Form DVAT-50 under Rule 65 of DVAT Rules, 2004. It is contended that at the end of search, forced statement of the Managing Director was recorded and Petitioner was pressurized to make payment of tax and interest under Form DRC-03.

5. Mr. A. K. Babbar, learned counsel for the Petitioner complains that Petitioner has been subjected to harassment at the hands of CGST Authorities i.e. DGGI Gurugram who have searched them numerous times.

He submits that in fact Petitioner has responded to the summons issued in this regard, pursuant where to statement of Petitioner company's director was also recorded. The last search was conducted by the CGST authorities on 7th March, 2020 at the director's residence. This search action was challenged by the petitioner in W.P.(C) No. 7145/2020 before the Punjab and Haryana High Court. The said challenge was successful and consequently the search action and the *panchnama* dated 7th March, 2020 were quashed. The Petitioner's grievance is that now the State GST Authority i.e DGST has subjected the Petitioner to yet another search action in relation to the same period, despite the Petitioner being earlier subjected to search action at the hands of the Central Authorities, which was impugned before the Punjab and Haryana High Court. It is argued that the action of the State authorities under the DGST Act is illegal and unlawful and contrary to the provisions of the CGST/DGST Act.

6. Mr Babbar urges that no parallel enquiries on the same issues by the two authorities (i.e. R-1 & R-2 under the State GST, and R-4 & R-5 under the Central GST) can take place under Sections 5 and 6 of DGST Act, 2017. In support of this submission, he refers to the foresaid provisions which read as under:

“Section 5: Powers of Officers –

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of State tax.

Section 6: Authorisation of officers of central tax as proper officer in certain circumstances –

(1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) 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 Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) 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 Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017)”

7. Mr. Babbar further impugns the search carried by the State Authorities on several other grounds. He submits that the search was conducted in the absence of two independent witnesses and their signatures had not been recorded, as mandated under Section 67(10) of the DGST Act, 2017 read with Section 165(4) and 100(4) of the Code of Criminal Procedure, 1973. In absence of the signatures, the search action is liable to be declared null and void. Mr. Babbar also argues that the statement recorded during the search was not voluntary and should not be given effect to. He further argues that the Value Added Tax has since been repealed by the GST laws and accordingly the reference thereto on the search documents, also, vitiates the

action. Next, Mr. Babbar argues that the reasons to believe for carrying out the search and action do not meet the test as required under Section 67(2) of the Act. Lastly, it is argued that the Form GST INS-01, which is the authorisation for inspection for search, is in variance with the form prescribed under Rule 139(1) of the DGST Rules, 2017 inasmuch as the signatures of the inspecting officers has not been appended.

8. Per contra, Mr. Ramesh Singh, learned Senior Standing Counsel appearing on behalf of Respondent Nos. 1 & 2 defends the actions and submits that the search action is lawful and within the confines of the law. He submits that the officers who have visited the business premises of the Petitioner are duly authorised and competent to carry out the search. He further submits that the recorded reasons to believe in terms of Section 67 justify the action. The same have been shared with us by Mr. Singh through email and are extracted hereinbelow:

Subject: Analysis in respect of M/S RCI Industries & Technologies, Delhi

May kindly see the detail as under:

Name of the dealer/firm	RCI Industries & Technologies, Delhi
GST No.	07AAAACR5727Q2Z15
Date of Regn. in GST	01-07-2017
Name of Managing Director/Director	Rajeev Gupta (Managing Director), RAJ SINGH JAMWAL (Director), ANIL KUMAR JAIN (Director).
Registered Mobile NO./ Email of Firm	7290074406/pankajkalra@rciind.com
Principal place of business premise	421, 4 th Floor Pearl Omaze, Netaji Subhash Place, Pitampura, Delhi-110034.
Additional place of business premise	KH NO- 44/4/2, VILLAGE AND POST OFFICE, SHAHBAD DAULATPUR , DELHI, 110042
Items dealt in GST	Metal and Metal Scrap, COPPER BARS, RODS, Copper Scrap, UNWROUGHT TIN, Copper wire, Brass and Zinc.
ITC credit available as on 10/09/2019 in Electronic Credit Ledger	1,55,34,435/- (Which has been blocked)

A reference has been received vide letter No. DGG/CGZ/GR-e/RCU/04/2019-20/1977 dated 19-08-2020 from the Deputy Director, Directorate General of GST Intelligence, Gurugram Zonal Unit, Gurugram received through GSTO(BIU) Department of Trade and Taxes vide letter 132 date 10.09.2020 (Flag 'A') regarding investigation conducted by them against the firm revealed prima facie that the firm has wrongly availed Input Tax Credit for Rs. 183,69,07,544/- on the basis of fake invoices without circumstantial supply of goods. Further, it has been requested by Deputy Director DGGI, GZU, to take necessary action under Rule 86A of CGST Rule 2017 to safeguard government revenue as the dealer is under State Jurisdiction.

Consequent upon receiving of the above mentioned letter, the undersigned has blocked the ITC available in Electronic Credit Ledger of the dealer amounting to Rs. 11,51,374 (CGST) and Rs. 3,43,81,061 under SGST as per provision of the Rule 86A of CGST act/rule 2017. GSTI Ward 201 was directed to check the business activities and functioning of the company whose report has been received on 14.09.2020. As per report of GSTI of Ward 201 the firm found functioning at principal place of business/additional place of business.

The detail of Turnover (Taxable), ITC available and tax deposited by the dealer during VAT and CST regime is as under:

The detail of GTO and tax paid through cash is as under :

Tax Period	GTO	Tax liability as per GSTR-1 and as per GSTR-3B		Difference	ITC claimed in GSTR-3B and accrued as per GSTR-2A		Difference	Tax Paid in Cash	% of Tax payment to GTO through cash
		As per GSTR-1	As per GSTR-3B		ITC Claimed in GSTR-3B	ITC as per GSTR-2A			
2017-18	939.44,70514	112,71,52222	112,65,54011	297571	100,95,07418	110,97,50741	1,02,43323		
2018-19	863.35,76094	105,59,03079	105,40,58254	184024	132,12,78268	132,25,57913	-12,87642		
2019-20	219.24,45816	36,40,37412	39,40,37598	-110466	38,31,09136	36,71,37007	1,62,72129		

***Remarks:** As per electronic Cash Ledger/Return of the Dealer has made tax paid in cash of Rs. 603597/- (2017-18), Rs. 773067 /- (2018-19) and Rs. 645474/- (2019-20) on account of reverse charge. Rest of the tax liability has been adjusted through ITC.

Observations: From the GST database as analysis above it has been observed as under:

1. "High GTO- Rs. 939.44 crore in 2017-18, Rs. 863.35 crore in 2018-19, Rs. 219.24 crore in 2019-20.

2. The dealer is dealing in High Risk Commodities, taxable at 18 % GST.
3. The payment of tax in cash is negligible (and i.e. on account of Reverse Charge) in comparison of GTO.
4. There is high difference in ITC claimed in GSTR-3B and accrued as per GSTR-2A.
5. As per GST database the dealer is under the Overall Risk Score "04".
6. As per GST Database return filed upto April 2020, thus the Dealer is Return Defaulter also.
7. The Deputy Director, Directorate General of GST Intelligence, Gurugram Zonal Unit Gurugram vide letter dated 19/08/2020 which was received through GSTO (131U) Department of Trade and Taxes vide letter 132 date 10.09.2020 (flag 'A') regarding investigation conducted by them against the firm revealed prima facie that the firm has wrongly availed Input Tax Credit for Rs. 183,69,07544/- on the basis of fake invoices without concomitant supply of goods. The Credit available in ECL of the dealer on 10.09.2020 amounting to Rs. 11,53,374 (CGST) and Rs. 1,43,81,061 under SGST has been blocked by AC (Ward 201)."

(Emphasis supplied)

Keeping in view of above detail, High GTO, Low payment of tax in Cash and overall risk score of the dealer, letter from GST Intelligence, Gurugram Zonal, file is submitted for further decision regarding Enforcement action upon the dealer or any other order.

BK
25/9/2020
AC(KCS-201)
(BHUPENDRA KUMAR)

Addl. Commr. (KCS)

Based on the analysis as above there is prima facie likelihood of the taxpayer indulging in activities which may lead to evasion/suppression of tax due. We may consider to scrutinise the taxpayer through a search operation.
Submitted please.

R.W.
25/9/2020

~~Commr. (Ward 201)~~

Examine on priority & put up.

Gans

9. Mr. Ramesh Singh further argues that during the search action, no independent witnesses were available but notwithstanding this fact, the search action is still valid. In support of his submission, Mr. Singh relies upon three judgments being *State Of Punjab v. Wassan Singh And Ors*, (1981) 2 SCC 1; *Sahib Singh v. State Of Punjab*, (1996) 11 SCC 685; and *Kalp Nath Rai v. State (Through CBI)*, (1997) 8 SCC 732.

10. Mr. Singh clarifies that there is no parallel investigation being carried out by the DGST authorities, as is portrayed by the Petitioner. To elucidate his contention, he submits that although the earlier notice issued under Rule 56(18) of the DGST Rules, 2017 requisitioned the documents for the period from 2017-18 to 2020-2021, but now the fresh notice is confined to 2020-21. As regards the contention of mentioning of the provisions of the Delhi Value Added Tax Act, 2004, he submits that the said provisions are saved in terms of Section 174(2)(c) of the CGST Act, 2017 and therefore, the rules framed thereunder and the DVAT Act can be resorted to for the purpose of adjudication, insofar as the dues pertain to the period prior to the promulgation of the CGST Laws. Lastly Mr. Ramesh Singh further states that the ground of coercion in respect of the statement recorded during search, is clearly an afterthought. He points out that Petitioner has never taken any steps to retract the said statement, and that the Petitioner, availing the benefit of Section 74(5), has agreed to pay the amount which is in fact a reduced amount and is instead paying only 15% of the entire penalty amount.

11. Having perused the record and duly considered the rival contentions of the learned counsel for the parties, we do not find any force in the grounds urged by the Petitioner. The case set-up is not premised on any substantial cause of action. Firstly and notably, there is no recovery during search. Thus

the bone of contention is the statement of Mr. Rajeev Gupta (director of Petitioner company) recorded on 30th September, 2020 during search action. The proponent of the said statement categorically admitted his tax liability and stated that he would deposit the admitted tax/penalty amounting to Rs. 17,34,314/- (CGST Rs.7,54,049.5 @9% + Penalty Rs. 1,13,107.5 @15%) and (SGST Rs. 7,54,049.5/- @9% + Penalty Rs. 113107.5 @15%). This statement, as correctly pointed out by Mr. Singh, has not been retracted till date. No convincing explanation is forthcoming from the learned counsel for the Petitioner for not doing so, when concededly the alleged coercion disappeared soon after the search action was complete. In our opinion, if indeed the statement was coerced by the Respondents, it was expected that the Petitioner would immediately, after the coercion ceased, take steps to retract the same. Thus, it is palpably clear that the present petition put forward to challenge the search action, is in an attempt to wriggle out of the commitment made in the statement during the search action. Be that as it may, we can also say that this statement, can only be an aid for the Revenue to ultimately adjudicate the tax demand. In case the statement was not recorded voluntarily, it would have to be established during adjudication of demand, for which we believe the action would follow the completion of investigation. The admissibility of the statement cannot be securitized at this stage. Therefore, we cannot permit the Petitioner to take recourse to challenging the search proceedings in an endeavour to withdraw the apparent admissions made in the said statement.

12. In this backdrop, we now come to the other grounds urged by the Petitioner. The primary ground concerns the assumption of jurisdiction by the DGST authorities based on the plea of parallel investigation, the contention is borne out of the notice dated 30th September, 2020 shown to us, whereby the documents for the period of 2017-18 to 2020-21 are being

requisitioned. Mr. Babbar states that since DGGI has issued a show-cause notice under Section 74 of the CGST Act, for the years 2017-18 and 2018-19, then by virtue of Section 6 of CGST Act, the DGST authorities cannot carry out the investigation for the said period. To our mind, the request in the notice dated 30th September, 2020 cannot *ipso facto* lead to the conclusion that there is a parallel investigation for the same period by both the Central and State Authorities.

13. To counter the claim of the Petitioner, Mr. Singh has, during the course of the hearing, screen-shared the recent notice issued by the State Authorities dated 16th November, 2020, which was not brought to our notice by the Petitioner. This notice is evidently making a requisition for documents pertaining to 2020-21. The said letter reads as under:-

*“OFFICE OF THE ASSISTANT COMMISSIONER, (KCS WARD-201)
GOVT OF NCT OF DELHI: DEPTT. OF TRADE & TAXES: 13TH FLOOR
VYAPAR BHAWAN I.P. ESTATE : NEW DELHI-110002.*

F.NO. AC/KCS/WARD-201/2020-21/67

Dated: 16-11-2020

To,

*M/s. RCI Industries & Technologies Ltd.
GSTN: 07AAACI45727Q2ZT
421, 4th Floor Pearl Omaxe,
Netaji Subhash Place, Pitampura, Delhi-110034.*

Subject:- Notice for personal hearing and submitting of record reg.

Sir,

Kindly refer to this office communication no AC/KCS/WARD-201/2020-21/62 dated 05/11/2020 send to the official email ID [...]@rciind.com of the taxpayer M/s RCI Industries & Technologies Ltd on 05/11/2020 in connection with Enforcement Survey of M/s RCI Industries & Technologies Ltd. GSTN: 07AAACR5727Q2ZT held on 30-09-2020 conducted by the Enforcement Team of AE-1 of the Department of Trade & Taxes. The Enforcement team has submitted its report to assess the case further. Vide the notice dated 05/11/2020, the taxpayer was directed to appear before the undersigned on 12/11/2020 at 11 AM and produce all the relevant record/clarifications/documents point-wise in support of the above discrepancies as pointed out by the Enforcement Survey team in its report and the Taxpayer was also directed to produce

all the relevant record/books of account as prescribed in Rule 56 of CGST/DGST Rules 2017 for the Tax period 2020-21 for the period 01.04.2020 to 30.09.2020 i.e. till date of survey (Copy enclosed)

But no response/appearance/communication has been received till date from the taxpayer

Therefore, the taxpayer is provided one more opportunity to produce the documents/details/submissions as mentioned below and the details is once again re-iterated

The Enforcement Team has raised the following discrepancies in its report which are as under:-

- 1. The Enforcement Team has intimated in its report that the stock difference of Rs. 11,29,555/- as value of stock as per stock summary was Rs. 45184.49/- whereas as per physical verification the stock found, for Rs. 11,74,739/-.*
- 2. The Enforcement Team has intimated in its report that the cash as per Cash Book was for Rs. 2227878/- whereas cash found at the time of inspection was Rs. 0 therefore the short cash was reported by the enforcement team was Rs. 2227878/-. It has also been reported by the Enforcement Team that of late, on arrival, the director has disclosed possession of Rs. 6 lakhs.*
- 3. The Enforcement Team has intimated in its report that as per the list provided by the firm/company on the date of visit an amount of Rs. 55,90,897/- was pending for payments in contravention of Section 37 of GST Rules which attract ITC reversal along with penal Interest.*
- 4. The Enforcement Team has intimated in its report that as per the stock submission receipt dated 14/11/2017 available on DVAT portal for the stock details as on 30/06/2017, the stock declared was amounting to Rs. 21,40,99,505/- whereas the stock details furnished in form TRAN-I is Rs. 16,95,31,736/-. Hence, the difference in stock of Rs. 4,45,67,769/- .*
- 5. The Enforcement team has intimated in its report that there is a difference between tax liability declared in GSTR 3b and ITC available in GSTR 2A and the same was not discharged by payment of tax. An explanation was called for in this regard but no reply/explanation has been received till the date of submission of report.*
- 6. The Enforcement Team has intimated in its report that the dealer has undertaken in writing to submit the following information/documents with its clarification in the office but the same has not been submitted by the dealer till finalization of this report.*
 - i. Write up on the TRAN-1 credit availed.*
 - ii. Documents regarding search and seizure by DGGI Gurugram and Anti Evasion CGST Delhi.*
 - iii. Difference between ITC credit in GSTR 3B and tax liability in GSTR 313.*
 - iv. Details of inward and outward ITC.*
- 7. It has also been intimated by the Enforcement Team in its report that Sh. Rajiv Gupta, Director in his statement dated 30/09/2020 has undertaken to deposit admitted tax/penalty amounting to Rs. 1734314/-*

arisen on account of variation of cash/stock and payment made beyond 180 days to Sundry creditors, through DRC-03, which has not been submitted, till date.

*The taxpayer is hereby once again directed to appear before the undersigned and produce all the relevant record/clarifications/documents point-wise in support of the above discrepancies as pointed out by the Enforcement Survey team in its report. In addition to above, **The Taxpayer is also directed to produce all the relevant record/books of account as prescribed in Rule 56 of CGST/DGST Rules 2017 for the Tax period 2020-21 for the period 01.04.2020 to 30.09.2020 i.e. till date of survey.***

Therefore the taxpayer is hereby provided one more opportunity to appear before the undersigned/Proper Officer (State GST) in KCS Ward-201, 13th Floor, Deptt. of Trade & Taxes, GNCT of Delhi on 23-11-2020 at 11:00 AM alongwith all the relevant records. Failing which, it will be presumed that you have nothing to submit in respect of the discrepancies pointed out by the Enforcement Survey Team regarding business activities of your above Firm/Company and Ex-Parte assessment/determination of Tax, penalty and interest liability will be made without affording any further opportunity.

*Yours faithfully,
Assistant Commissioner/ Proper Jurisdictional Officer
Ward-201/KCS*

Encl: Copy of notice dated 05/11/2020”

(emphasis supplied)

14. On the strength of the aforesaid notice, Mr. Singh firmly states that there is no overlap regarding the period under investigation between the State and Central Authorities. Mr. Singh is however unable to state with conviction the precise period for which the State Authorities will ultimately launch action for recovery. However, as rightly contended by Mr. Singh, a mere request for documents for a period which may be preceding the period under investigation, cannot also lead to the conclusion that period to which the documents pertain is already under investigation. Further, we may note that, since the investigation is presently underway, so we need not delve deeper on this issue. We can also observe that in the event the notice issued by the DGST authorities pertains to a period which is covered by the investigation

carried out by the Central GST authorities, the Petitioner can take recourse to the appropriate remedies in that regard.

15. Since contentions have been raised with respect to the cross-empowerment of the Central and the State authorities, and it is asserted that there are no guidelines prescribed under the Act or the Rules, it would be profitable to throw some light on the issue. In this context, the letter issued by the Central Board of Indirect Taxes and Customs dated 5th October, 2018 which also finds mentions in the order of the Gujarat High Court in R/Special Civil Application No. 23279 of 2019 dated 27th December, 2019 titled ***Sureshbhai Gadhecha v. State of Gujarat***, relied upon by the Petitioner, reads as under:

“LETTER D.O.F. NO. CBEC/20/43/01/2017-GST(FT.)

CLARIFICATIONS ON AMBIGUITY REGARDING INITIATION OF ENFORCEMENT ACTION BY CENTRAL TAX OFFICERS IN CASE OF TAXPAYERS ASSIGNED TO STATE TAX AUTHORITY AND VICE VERSA

LETTER D.O.F. NO. CBEC/20/43/01/2017-GST(PT), DATED 5-10-2018

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 16-1-2017 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 administrative assigned to the Central tax authority.

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

Further clarity on the issue of cross-empowerment of State GST and Central GST officers is also visible in a recent letter issued by the Central Board of Indirect Taxes and Customs being No. CBEC-20/10/07/2019-GST dated 22th June, 2020 which reads as follows-

*"F. No. CBEC-20/10/07/2019-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes Customs
GST Policy Wing*

Dated: 22nd June, 2020

*The Principal Director General,
Directorate General of GST Intelligence,
2nd Floor. Wing- VI, West Block- VIII
R.K. Puram,
New Delhi- 110066*

Sir,

Subject: Reference form DGGI on Cross empowerment under GST. reg.

I am directed to refer to DGGI letter F.No.574/CE/66/2020/Inv./15308 dated 26.05.2020 on the issues related to cross empowerment of officers in terms of provisions of section 6 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

2. Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under

section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as notification No. 39/2017-CT dated 13.10.2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the COST Act.

3.1 The issue has been examined in the light of relevant legal provisions under the CGST Act, 2017. It is observed that Section 6 of the CGST Act provides for cross empowerment of State Tax officers and Central Tax officers and reads as:-

"6. (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."

3.2 Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3 The confusion seems to be arising from the fact that, the said sub-section provides for notification by the Government if such cross empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017-CT dated 13.10.2017 restricts powers of the State Tax officers for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports). 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."

4. Further, it may kindly be noted that a notification under section 6(1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross- empowerment under section 6(1) of the CGST Act is absolute and not conditional."

16. It is thus apparent that if an officer of the Central GST initiates intelligence- based enforcement action against a taxpayer administratively

assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion. 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.

17. As regards the absence of the two independent witnesses, we may first note that there is no *panchnama* on record. In essence, the main thrust of Petitioner's argument is that the statement of Mr. Rajeev Gupta does not record the presence of the two independent witnesses or signatures, making the search action illegal. We have already dealt with the contention of the Petitioner regarding the alleged involuntary/forced statement and in view of our observations made hereinabove, this issue, is rendered insignificant. Further, no specific provision is shown to us that deals with recording of statement in search action. The only relevant section is Section 70, which does not entail signatures of witnesses. Be that as it may, determination of tax liability, has to be in accordance within the confines of statutory provisions of the GST laws. We reiterate that the evidentiary value of the aforementioned statement, and the effect of payment of tax and interest made pursuant thereto, are issues which would have to be gone into at the stage of adjudication.

18. We also do not find merit in the contention of the Petitioner that absence of the signature of the authorised person on Form GST INS-01 would render the search action to be non-est. Mr. Babbar does not dispute that the persons

who carried out the search were indeed those whose names has been mentioned in the said authorisation, and they had displayed their identity cards at the time of search. It is also not the case of the Petitioner that the officers who carried out the search did not properly discharge their official duty or otherwise acted in furtherance of some extraneous purpose. The absence of signatures does not manifest an absence of delegation of power in favour of the team which conducted the search action. Further, the provisions of DVAT Act quoted in the documents also cannot render the proceedings as illegal. The erstwhile Act is saved by the repeal and saving provisions of the DGST Act, 2017 (See: ***Vianaar Homes Private Limited v. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II & Ors.***, 2020 [43] G.S.T.L. 479).

19. As regards the reasons to believe to inspect and search the premises of the Petitioner, we have been shown that such reasons exist with the Respondents. Under Section 67 of the CGST Act, when an authorized officer carries out an inspection, search and seizure, the same is on the basis of the satisfaction arrived at by the proper officer not below the rank of the Joint Commissioner that reasons to believe as specified under the said provision. Our scrutiny is limited because of the well settled principles of law relating to judicial review of search action. While exercising writ jurisdiction, we cannot adjudge or test the adequacy and sufficiency of the grounds. We can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked are met. The Courts can interfere and hold the exercise of power to be bad in law only if the grounds on which reason to believe is founded have no rational connection between the information or material recorded; or are non-existent; or are such on which no reasonable person can come to that belief. The reasons to believe shown to us demonstrate that the Appropriate

authority had the reasons, as per mandate of Section 67(2) of the DGST Act alongwith relevant Rules, for formation of belief to carry out the search. Applying the test of reasonable man, we cannot say that there is no application of mind while issuing search warrant. Thus, we would not like to countermand the action taken against the Petitioner. Accordingly, the present petition is disposed of in the above terms. We clarify that we have not expressed any opinion on the merits of the case.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

JANUARY 7, 2021

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