

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2668 of 2023

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M/S Baibhaw Construction Private Limited Through its Director namely
Ranjan Kumar, aged about 41 years, Gender- Male, Son of Braj Kishor Singh,
Resident of Kali Sthan Ward No.- 13, P.S.- Town, District- Gopalganj.

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner, Central GST (Goods and Service Tax) and central excise, Patna- 1.
2. The Commissioner, Central GST (Goods and Service Tax) and Central Excise, Patna- 1.
3. The Additional Director General, Directorate General of GST Intelligence, Patna Zonal Unit.
4. The Senior Intelligence Officer, Directorate General of GST Intelligence, Patna Zonal Unit.
5. The Superintendent (Adjudication), Central GST and Central Excise Tax, Zonal Unit, Patna-1.
6. The Assistant Commissioner of State Tax, Gopalganj Circle, Gopalganj, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7)
		Ms. Supraya, AC to GP-7
		Ms. Roona, AC to GP-7
		Mr. Sanjay Kumar, AC to GP-7
		Ms. Manisha Singh, AC to GP-7
For the UOI	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX
		Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-10-2023

The petitioner herein an assessee under the Bihar
Goods and Services Tax Act, 2017 (for brevity 'BGST Act') is
aggrieved with the notices issued by two different Tax
Authorities, which has resulted in simultaneous proceedings for



the identical assessment years. The petitioner's contention is only that the first of such inquiry be directed to be proceeded with and summons issued by the other, directed to be stayed till the conclusion of the first of such initiated proceedings, especially since the inquiry is conducted by a 'Proper Officer' as authorized under the Act, who is entitled to proceed under both the State and Central Goods and Services Tax enactments. The petitioner specifically refers to Section 6 of the BGST Act.

2. The learned Government Advocate and learned ASG seeks for continuation of the proceedings initiated by the various authorities.

3. A 'Proper Officer' is defined under Section 2(91) of the GST enactments, who is the Commissioner or the Officer of the Central, State or Union Territory Tax assigned to perform functions under the respective enactments. Sections 3 and 4 of the respective enactments provide for class of Officers appointed by the appropriate Government to exercise the powers and discharge the duties conferred upon them under that Act. By a notification under the CGST Act, an Officer under the Directorate General of Goods and Services Tax or under the Intelligence and Audit Directorates can be appointed as 'Proper Officer' having territorial jurisdiction, either limited or over



various areas and even across the country. Likewise the SGST Act also empowers the State Government to issue notifications empowering the State Tax Officers to have limited jurisdiction in certain areas of the State and overall jurisdiction throughout the territory of the particular State. Hence, there could be instances where a Central and State Tax Authority has simultaneous jurisdiction over a particular area. The assesseees are also assigned to either the Central or the State Tax Authority randomly, for administrative purposes, which assignment does not interdict either of the said Officers from initiating an inquiry against the particular assessee *inter alia* in intelligence based enforcement actions.

4. Section 6 of the Central and State GST enactments achieves the goal of harmonizing the cross enforcement of the Central Tax Officers and State Tax Officers. Section 6 of the CGST Act provides for the Officers under the State GST and Union Territory GST enactments to be authorized as the 'Proper Officer' for the purpose of the CGST Act. Likewise, the State and Union Territory GST enactments also provide for the officers appointed under the Central GST Act to be authorized to function as 'Proper Officer' under the State & Union Territory GST enactment. Section 6(2)(a) provides that a



'Proper Officer' authorized, either under the State or the Central GST enactments will be authorized to issue orders under both the enactments. If either of the Officers initiates such proceeding, then the jurisdictional officer under the other enactment shall not initiate a proceeding on the same subject matter, is the mandate of clause (b) of Section 6(2). Meaning thereby that if a State GST Officer commences a proceeding under the State or Central GST Act against any of the assesses within its jurisdiction, who have been, for administrative purposes assigned to the 'Proper Officer' under the Central GST Act, he shall be entitled to continue such proceedings and the 'Proper Officer' under the CGST Act shall not proceed on the same subject matter and *vice versa*. A proceeding initiated by the 'Proper Officer' under one of the enactments shall be intimated to the 'Proper Officer' under the other enactment. This applies equally to the Union Territories also.

5. At this point of time, the circular of the CBEC is relevant which is extracted below:-

"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 16-1-2017 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 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)*

The clarification issued by the CBEC is that when one of such Officers authorized to be the 'Proper Officer' has initiated intelligence based enforcement action, then the said Officer is entitled to complete the entire process of investigation, without



any obligation to transfer it to the 'Proper Officer' authorized under the other enactment, even if the particular assessee is assigned, for administrative purposes, to the other Officer.

6. The assessee herein, had been issued with a notice dated 04.02.2022 for conducting audit by the Assistant Commissioner of State Tax, Gopalganj Circle, Gopalganj. The notice which is produced as Annexure-1 refers to the financial year 2017-18 and directed the production of accounts, records and documents for the purpose of carrying on the audit. The petitioner submits that he had produced the entire details before the State Officer when he was issued with another notice dated 07.09.2022, Annexure-2, by the Senior Intelligence Officer, Directorate General of GST Intelligence, Patna Zonal Unit, Patna; which was dated 07.09.2022. This was a notice under Section 70 of the CGST Act which directed the attendance of the petitioner and production of documents as specified in Annexure-A of the notice, which refers to the financial years 2017-18 to 2021-22. The assessee was then confronted with yet another notice dated 30.09.2022 under Section 73/Section 74 of the CGST Act from the very same Officer of the Directorate, who issued Annexure-2. The petitioner's contention is that the first of such notices and the inquiry initiated has to reach its



logical conclusion and hence, the State Tax Authority has to proceed as per Annexure-1 and the Central Tax Authority has to stay its hands till the inquiry initiated by the State Tax Authority is over.

7. We have to first notice that the notice issued at Annexure-1 is for the financial year 2017-18 alone while the proceedings at Annexure-2 and 3 refers to the financial year 2017-18 to 2021-22. It is also pertinent that Annexure-3 notice indicates that a summons was issued under Section 70 of the CGST Act dated 07.07.2021 by the Directorate and in response to the same, the assessee had also appeared before the said Authority. Hence, the first of the notices issued is by the Central Tax Authority.

8. We can usefully refer to the decision of the Division Bench of the High Court of Delhi in ***Indo International Tobacco Ltd. v. Vivek Prasad, (2022) 1 Centax 142 (Del)***. Therein, a similar issue arose of proceedings having been initiated by both Central and State Tax Authorities. However, since a common thread was found, the jurisdictional authorities themselves had transferred the investigation to the Directorate General of GST Intelligence to bring the investigation under one umbrella. It was found that the GST Act



does not prohibit such transfer and in that context neither Section 6(2)(b) nor the circular dated 05.06.2018 has any application.

9. In the present case, there are, at present, proceedings initiated by the State Tax Authorities and the Central Tax Authorities and as we noticed, the first of such proceedings was initiated by the Central Tax Authority, having issued summons under Section 70 of the CGST Act. The proceeding issued by the Central Tax Authority is for the assessment years 2017-18 to 2021-22 while the State Tax Authority has initiated audit for the year 2017-18.

10. The learned Government Advocate had produced before us the judgment of a co-ordinate Bench of this Court (authored by myself) wherein the simultaneous proceedings were directed to be continued. Therein, the summons issued under Section 70 of the CGST Act, 2017 was a proceeding against another assessee at West Bengal with whom the noticee is said to have had transactions. The noticee was directed to produce the details of purchases made from the assessee, who was proceeded against under the CGST Act. As far as the State Tax Authority is concerned, it was a proceeding initiated against the noticee itself. Hence, the proceedings were



for assessment of different entities. It was found that there was nothing wrong in the proceedings being continued simultaneously.

11. In the present case, however, the proceedings are with respect to the same assessee and the proceedings initiated under the SGST Act is for a financial year for which proceedings have already been initiated by the 'Proper Officer' under the CGST Act. In such circumstances, going by Section 6, it is only proper that the State Tax Authority does not continue the proceeding and keep it in abeyance till the Central Tax Authority completes the proceedings, first initiated. We, hence, direct the proceedings to be continued as seen from Annexure-2 and 3, which was initiated by a summons under Section 70 of the CGST Act, 2017, as early as on 07.07.2021. Even if Section 70 is not considered to be an initiation of proceedings, Annexure-3 indicates that summons was issued under Section 70 on 07.07.2021 based on an intelligence input; which makes it an intelligence based enforcement action as covered by the Circular. The proceedings as initiated against Annexure-1 dated 04.02.2022 by the State Tax Authority, is at the notice stage and with respect to one of the years on which the Central Tax Authority has already initiated proceedings. Annexure-1, hence,



shall be kept in abeyance. We make it clear that any documents or materials produced before the State Tax Authority shall be transmitted to the Central Tax Authority. The petitioner shall appear before the Central Tax Authority in compliance of Annexure-3.

12. The writ petition is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

sharun/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.10.2023
Transmission Date	

