

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7599 of 2023

Neeraj Jain Son of Nirmal Kumar Jain Resident of Flat - 1A, Lotus Apartment, 45 A, Buro Shibtala Main Road, New Alipur Residency, P.S. Sahapur, District - Kolkata, West Bengal.

... .. Petitioner/s

Versus

1. The Union of India, Ministry of Finance, Department of Revenue New Delhi.
2. The State of Maharashtra Ministry of Finance, Department of Goods and Service Tax, Maharashtra.
3. The Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi.
4. The Directorate General of GST Intelligence, Patna Zone Unit, Cybotech Tower, Near Pani Tanki More, Boring - Patliputra Road, Patliputra, Patna, Bihar.
5. The Assistant Commissioner of State Tax (INV) D- 005, Raigad Division, Room No. 711, 7th Floor, Konkan Bhavan, Belapur, Navi Mumbai, Maharashtra.
6. The Commissioner of State Tax, Konkan Bhavan, Belapur, Navi Mumbai, Maharashtra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Agrawal, Advocate
For the UOI	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr.SC, CGST & CX
		Mr. Ranvir Kumar, Sr. SC
For the State	:	Mr. Vivek Prasad, GP-7
		Ms. Supragya AC to GP-7
		Ms. Roona AC to GP-7
		Mr. Sanjay Kumar, AC to GP-7
		Ms. Manisha Singh, AC to GP-7

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, a resident of West Bengal is aggrieved with the notices issued by the 4th respondent, an



officer authorized under the Central Goods and Services Tax Act and the notices issued by the 5th respondent, an officer under the State Goods and Services Tax Act produced respectively as Annexures 6 and 5; both of which are summons issued under Section 70 of the State and Central Goods and Services Tax Act, for procuring the presence of the noticee as a witness in the proceedings initiated.

2. The learned counsel for the petitioner specifically placed reliance on Section 6 of the Goods and Services Tax Act before us, to contend that there can be no proceedings initiated and continued simultaneously by the State and Central authorities. A Circular of the CBEC dated 05.10.2018, is also relied upon to further contend that, if a proceeding is initiated by one of the authorities; then the other authority though competent to proceed on investigation should stay its hands, till the first authority, who initiated the proceedings complete that. Reliance is placed on a Division Bench judgment of the High Court of Gujarat dated 04.03.2020, in **Ms. Bhawani Textiles Vs. Additional Director General in R/Special Civil Application No. 5273 of 2020** and another Division Bench of the High Court of Delhi in **Indo International Tobacco Ltd. vs. Vivek Prasad, Additional**



Director General, DGGI; 2022(67) G.S.T.L. 403 (Del.)

3. The learned Additional Solicitor General, Dr. K.N. Singh appearing for the Central Tax Authority points out that the proceedings for investigation are with respect to two different entities, assesseees registered respectively in Maharashtra and Patna and the notice issued under Section 70 cannot be termed *stricto sensu* a proceeding for investigation. It is the contention of the learned Additional Solicitor General that the reference to M/s. Vedam Enterprprise an assessee under the Maharashtra Goods and Services Tax Act, 2017, specifically indicates that the proceedings for investigation is against that assessee and the petitioner has been summoned only as a witness. One M/s. Arti Plastics, an assessee under the Bihar State Goods and Services Tax Act is said to have purchased goods from M/s. Vedam Enterprises. M/s. Vedam Enterprises was revealed to be a fictitious entity, when the person whose credentials were produced for registration, had distanced himself from the said firm, alleging fraudulent registration in his name. The petitioner herein was found to be the go between in the transactions between the two entities, one registered in Maharashtra, M/s. Vedam Enterprises and the other in Bihar, M/s. Arti Plastics. The investigation proceedings



initiated by the State Taxes Authority in Maharashtra is against M/s. Vedam Enterprises registered in Maharashtra. The investigation initiated by the Central Tax Authority within Bihar is against M/s. Arti Plastics, the assessee registered in Bihar.

4. Shri Vivek Prasad, learned Government Advocate appearing for the State fully supports the contention raised by the learned Additional Solicitor General.

5. **Bhawani Textiles** (supra) was a case in which, based on search under Section 67 of the Central Goods and Services Tax Act, the Directorate General of Gujarat Services Tax Intelligence, Ahmedabad issued a summons under Section 70(1) of the Central Goods and Services Tax Act to the writ applicant. The search was conducted in the office premises of the writ applicant itself. The writ applicant replied that the entire books of accounts were seized by the DGGI, Ahmedabad Zonal Unit (AZU). The petitioner was aggrieved by the subsequent summons issued by the Deputy Collector of State Tax and another by the DGGI, Surat when actually the DGGI, AZU, had conducted the search operation and issued summons first. The Division Bench directed the DGGI, AZU, to look into the matter and ensure that no harassment is caused to the writ



applicant. The Division Bench of the High Court of Delhi in **Indo International Tobacco Ltd.** (supra) found that the High Court of Gujarat had not expressed any opinion on the merits of the case and had not considered the ambit and scope of the circular dated 05.10.2018. We are in respectful agreement of the observation made by the Division Bench of the High Court of Delhi; that there is no dictum coming out of the decision of the High Court of Gujarat.

6. **Indo International Tobacco Ltd.** (supra) though relied on the very same circular issued by the CBEC, the High Court of Delhi categorically found that it is not applicable to the facts arising in that case. Especially since, though parallel investigations were initiated, the one initiated by the State Tax Authority was transferred to the Central Tax Authority. Since there was no prohibition for such transfer under the Central Goods and Services Tax Act, Section 62(2) (b) and the Circular having limited application was found irrelevant to the facts of this case, thus the writ petition filed against the parallel proceedings being rejected. However, we notice that the provisions of the Goods and Services Tax enactment's including Section 6 and the Circular of the CBEC were elaborately dealt with by the High Court of Delhi.



7. After referring to the Constitutional provisions by which the Goods and Services Tax regime was brought into force, it was found that power was conferred for inspection, search, seizure (under Section 67) investigation and determination of non-payment or short-payment of tax and erroneous claims of input tax credit, by reason of fraud, willful misstatement or suppression of facts (under Section 74) and even otherwise under Section 73. The power was conferred on the 'Proper Officer' by the State and Central Goods and Services Tax enactments. The Proper Officer is defined under Section 2(91) of the Central and State Goods and Services Tax Act as the officer respectively of the Central Tax and the State Tax. Section 3 and 4 of the CGST Act respectively deal with the class of officers that may be appointed by the Government and/or by the Central Board of Indirect Taxes and Customs. Section 5 of the Central Goods and Services Tax Act empowers the officers of the Central Tax to exercise the powers and discharge the duties conferred on them under the Central Goods and Services Tax Act. In exercise of the power conferred under Sections 3 and 5 of the Central Goods and Services Tax Act, notifications have been issued empowering the Central Tax Authorities with limited territorial jurisdiction over various



areas of the country and also the officers of the Directorate General of Goods and Services Tax, its Intelligence and Audit Wing, as Central Tax Officers conferring on them powers extended throughout the territory of India. Hence, there are Central Tax Officers, who are empowered to exercise all India jurisdiction and those who enjoy limited territorial jurisdiction. The State Government also issues notifications under the State Goods and Services Tax Act, Section 3 and 4 of the SGST Act, empowering the State Tax Officers to exercise powers over limited territorial jurisdiction within the State and some who exercise powers throughout the territory of the State.

8. For administrative purposes a tax payer in a particular area can be assigned to the Central Tax Officer or State Tax Officer, which assignment is done randomly. Under Section 6(1), cross-empowerment of officers appointed under the State and Central Goods and Services Tax Act is enabled. Under Section 6(1) & (2)(a) of the CGST Act a 'Proper Officer' exercising control over the territory under the State or Union Territory Goods and Services Tax Act (for brevity 'SGST or UGST Act') is also empowered to issue an order under the Central Goods and Services Tax Act (CGST Act). Correspondingly Section 6(1) and (2)(a) of SGST Act and



UTGST Act empowers a 'Proper Officer' under the CGST Act to initiate any order under the SGST or UGST Act. Sub-clause(b) of Section 6(2) of the respective enactments prohibit the 'Proper Officer' under that Act from initiating a proceeding on the same subject matter, if the 'Proper Officer' under the other Act has initiated a proceeding.

9. The Circular dated 05.10.2018 gives effect to the mandate of Section 6 of the Central, State and UT Goods and Services Tax enactments. It makes the mandate of Section 6 applicable to intelligence based enforcement action, clarifying that both the Central, State or Union Territory Tax Officers are authorized to initiate such proceedings irrespective of the assignment of the tax payer to a particular authority. The Circular clarifies that when one of such Officer either under the Central or State enactment, initiate proceedings, though administratively the tax payer is assigned to the other, there is no need to transfer the proceedings to the other authority and it also clarifies that the 'Proper Officer', who issued the proceedings first in time, shall continue with it and the second proceedings initiated by the other officer shall not be continued until there is logical culmination of the first inquiry initiated.

10. On the working of the Circular, the Division



Bench in **Indo International Tobacco Ltd.** (supra) has so stated, succinctly, in Paragraphs 66 which is extracted herein:-

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 5-10-2018 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.

11. As has been held by the Division Bench of the High Court of Delhi, Section 6 or the Circular does not reckon all situations, which would arise in the course of an



investigation. As has been rightly pointed out by the learned ASG and the learned Government Advocate in the present case, the investigation is not against the petitioner herein. The investigation by the State Tax Authority in Maharashtra is against one M/s. Vedam Enterprises, who is an assessee within the State of Maharashtra, whose registration has been found to be fictitious. The investigation initiated by the State Tax Authority within Bihar, at Patna is with respect to an assessee M/s. Arti Plastics, who is registered within the State of Bihar. The investigation reveals that both the said assessees, one registered in Maharashtra and the other in Bihar had dealings between themselves, based on which input tax credit was claimed by the assessee in Bihar. M/s. Vedam Enterprises is said to be the supplier and M/s. Arti Plastics, the purchaser and the petitioner herein, the go between. The petitioner has been directed to appear as a witness for which summons had been issued under Section 70 of the respective enactments, by both the authorities.

12. As of now, there is no investigation pending against the petitioner. He is called upon to produce his books of accounts to ascertain his complicity in the transactions between M/s. Vedam Enterprises and M/s. Arti Plastics. The notice



issued against the petitioner is not a notice under Section 67, 73 or 74.

13. We respectfully quote the finding of a Division Bench of the Allahabad High Court in **M/S G.K. Trading Company vs. Union of India and Anr.** in **Writ Tax No. 666 of 2020**. Paragraph nos. 16, 17 and 18 of the aforesaid judgment reads as under:-

16. Section 70 of the U.P.G.S.T. Act or C.G.S.T. Act is part of Chapter XIV which contains provisions for inspection, search, seizure and arrest. Section 70 of both the Acts are pari materia which empowers the proper officer under the Act **to summon any person** whose attendance he considers necessary **either to give evidence or to produce a document or any other thing in any inquiry.**

17. Thus, Section 6(2)(b) of the C.G.S.T. Act prohibits separate initiation of proceedings **on the same subject-matter** by the proper officer under the C.G.S.T. Act when proceeding on the same subject-matter by the proper officer under the State Act has been initiated, whereas Section 70 of the U.P.G.S.T./ C.G.S.T. Act merely empowers the proper officer to summon any person in any inquiry. The word "proceedings" used in Section 6(2)(b) is qualified



by the words "subject-matter" which indicates an adjudication process/proceedings on the same cause of action and for the same dispute which may be proceedings relating to assessment, audit, demands and recovery, and offences and penalties etc. These proceedings are subsequent to inquiry under Section 70 of the Act. The words "in any inquiry" used in Section 70 of the Act is referable to the provisions of Chapter XIV, i.e. Section 67 (power of inspection, search and seizure), Section 68 (inspection of goods in movement), Section 69 (power to arrest), Section 71 (access to business premises) and Section 72 (officers to assist proper officers). Therefore, proper officer under the U.P.G.S.T. Act or the C.G.S.T. Act may invoke power under Section 70 in any inquiry. Prohibition of Section 6(2)(b) of the C.G.S.T. Act shall come into play only when any proceeding on the same subject-matter has already been initiated by a proper officer under the U.P.G.S.T. Act.

18. Thus, the words **"any proceeding"** on the same **"subject-matter"** used in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings



for penalties etc., proceedings for demands and recovery under Sections 73 and 74 etc.

14. We find absolutely no application of the Section 6(2)(b) or the Circular and the petitioner should appear before the respective tax authorities, pursuant to the summons issued under Section 70 of the respective enactments.

14. The petitioner has expressed inability insofar as the illness of his wife, which cannot be a reason, not to appear before the statutory authority, for all times.

15. However, we reckon the apprehension expressed by the learned counsel for the petitioner that in producing documents before both the authorities, if requisitioned, there would be difficulties. Considering the totality of the circumstances we direct the State Tax authority within the State of Maharashtra to issue a notice for appearance some time in the month of December, 2023 and the State Tax Authority in Patna to issue a notice some time in the month of November, 2023. If any documents are requisitioned, the petitioner would be entitled to produce it before the authority, who first requisitions it and such authority shall enable authenticated copies to be issued, at the expense of the petitioner, for production before the other authority, if so



required.

16. With the above observations, the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17.10.2023.
Transmission Date	

