



WP.No.34792 of 2019 and etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.09.2023
Pronounced On	. .2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.34792, 29878, 30607, 30613, 30615 of 2019 & W.P.Nos.3011, 3013, 3026, 3028, 4922, 8495, 8496, 11319 of 2020 & W.P.Nos. 2723, 2861, 2863, 2865, 11004, 11006, 11008, 12795, 12797, 16324 of 2021 and W.P.Nos.4490, 18575, 22552, 26586, 31013 of 2022 and W.P.No.12014 of 2023

and

W.M.P.Nos.35553, 30673, 30680, 30682 of 2019 & W.M.P.Nos. 3513, 3516, 3534, 3538, 5831, 10258, 10259, 13797, 13799 of 2020 & W.M.P.Nos.3055, 3200, 3201, 3199, 11649, 11652, 11654, 13594, 13596, 17292, 17289 of 2021 & W.M.P.Nos.4608, 17910, 21580, 25646, 30418 of 2022 and W.M.P.No.11864 of 2023.

W.P.No.34792 of 2019:-

Tvl.Vardhan Infraastructre,
No.3/2, Narasimmapuram,
Mylapore,
Chennai – 600 004,
Represented by its Partner, S.Manikandan

... Petitioner

Vs.

1. The Special Secretary,
Head of the GST Council Secretariat,
Office of the GST Council Secretariat,
5th Floor, Tower-II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi – 110 001.



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2. The Chairman,
Central Board of Indirect Taxes,
North Block,
New Delhi – 110 001.
 3. The Additional Chief Secretary & Commissioner of State Taxes,
Chepauk,
Chennai – 600 005.
 4. The Director General of GST Intelligence, South,
C-3, C-Wing, II Floor,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
 5. The Senior Intelligence Officer,
Directorate General of GST Intelligence,
Chennai Zonal Unit,
Chennai.
 6. The Assistant Commissioner (ST),
Arumbakkam Assessment Circle.
- ... Respondents

Prayer in W.P.No.34792 of 2019:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the Respondents 4 & 5 to refrain from cross-empowerment of tax authorities under the provisions of Chapter XIV (inspection, search, seizure and arrest) of Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017 till relevant notifications are issued in this regard pursuant to the recommendations of the first respondent, and until such time, to transfer all the proceedings initiated by the 5th respondent to the 6th respondent, who is the jurisdictional assessing officer, for taking further action.



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For Petitioner in W.P.Nos.34792 & 29878 of 2019	:	Mr.Derric Sam for Mr.S.Durai Raj
For Petitioner in W.P.Nos.30607, 30613, 30615 of 2019, 4922, 8495, 8496 of 2020, 12795, 12797 & 16324 of 2021	:	Mr.T.Ramesh
For Petitioner in W.P.Nos.3011, 3013, 3026, 3028 of 2020, 2861, 2863, 2865, 11004, 11006, 11008 of 2021, 4490 & 26586 of 2022	:	Mr.T.Ramesh for Mr.J.Shankaraman
For Petitioner in W.P.No.11319 of 2020	:	Mr.Adithya Reddy
For Petitioner in W.P.No.2723 of 2021	:	Mr.S.Nirmal Aditya
For Petitioner in W.P.Nos.18575 of 2022 & 12014 of 2023	:	Mr.S.Raveekumar
For Petitioner in W.P.No.22552 of 2022	:	Mr.R.N.Amarnath
For Petitioner in W.P.No.31013 of 2022	:	Mr.K.Vaitheeswaran
.....		
For respondents in	:	Mr.Venkatasamy Babu



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W.P.No.34792 of 2019		Senior Panel Counsel
For R3 & R6 in W.P.No.34792 of 2019 For R8 in W.P.No.29878 of 2019 For Respondent in W.P.Nos.30607, 30613, 30615 of 2019, 3011, 3013, 3026, 3028, 4922, 8495, 8496 of 2020, 2861, 2863, 2865, 11004, 11006, 11008, 12795, 12797 & 16324 of 2021 For R3 in W.P.No.2723 of 2021 For R3 & R4 in W.P.No.18575 of 2022 For R3 in W.P.No.22552 of 2022 For R3 in W.P.No.26586 of 2022 For R1 in W.P.No.31013 of 2022 For R3 & R4 in W.P.No.12014 of 2023.	:	Mr.Haja Nazirudden Additional Advocate General I for Mr.M.Venkateswaran, Special Government Pleader (Taxes) Assisted by Mr.P.Haribabu, Government Advocate
For R2, R4 & R5 in W.P.No.34792 of 2019 For R7 in W.P.No.29878 of 2019 For R1 & R2 in W.P.No.2723 of 2021 For R2 in W.P.No.26586 of 2022 For R2 & R3 in W.P.No.31013 of 2022	:	Mr.V.Sundareswaran Senior Standing Counsel



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For R1 to R5 W.P.No.11319 of 2020	in : Mr.S.R.Sundar Standing Counsel
For R1 & R2 W.P.No.18575 of 2022	in : Mr.S.Gurumoorthy for Mrs.Hema Murali Krishnan Senior Standing Counsel
For R1 & R2 W.P.No.22552 of 2022 For R1 in W.P.No.26586 of 2022	in : Mr.Rajnish Pathiyil Senior Panel Counsel
For R3 & R4 W.P.No.12014 of 2023	in : Mr.K.Mohana Murali Senior Panel Counsel

COMMON ORDER

By this common order all these writ petitions are being disposed of.

2. In these Writ Petitions, a common issue arises for consideration as to whether the petitioners who are assigned to either the Central Tax Authorities or the State Tax Authorities under respective Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and/or Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as TNGST Act, 2017) can be subjected to investigation and further proceeding by the counterparts under the respective GST Enactments.

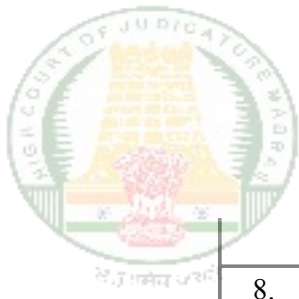
3. Following Writ Petitions have been filed by the petitioners who



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have been assigned to the State Authorities. Proceedings have been initiated by the Central Authorities. Details of the respective Writ Petitions are as under:-

Sl.No.	W.P.No.	Petitioner's name	Challenge of the notice/ summons or assessment order	Date of the notice/ summons or assessment order
1.	34792 of 2019	Tvl.Vardha Infrastructure	Summons issued by the 5 th respondent u/S.70 of the CGST	26.11.2019
2.	29878 of 2019	Tvl.KCP Engineers Pvt. Ltd.	Mandamus to direct respondents 6 & 7 to avoid cross-empowerment	24.06.2019 (Scrutiny notice issued by the State Authority) + 10.09.2019 (Summon issued by the DGGI)
3.	11319 of 2020	TVI Power Tech	Assessment Order under Section 73 of CGST Act, 2017	20.05.2020
4.	2723 of 2021	M/s. KPN Travels India Ltd.,	Summons issued under Section 70 of CGST Act,2017	27.01.2021
5.	18575 of 2022	M/s. Sunrise Enterprises	Show Cause Notice issued under Section 74 of CGST Act,2017 r/w Section 20 of IGST Act,2017	31.03.2022
6.	22552 of 2022	K. Sridhar	Summons issued under Section 70 of CGST Act,2017	
7.	26586 of 2022	M/s.New Pandian Travels Pvt.Ltd	Show Cause Notice issued under Rule 142(1) of the CGST	05.08.2022



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			Rules,201	
8.	4490 of 2022	M/s.S.S.M. Processing Mills Limited	Assessment Order under Section 73 of the CGST Act, 2017	07.10.2021
9.	12014 of 2023	M/s. Sunrise Enterprises	Assesment Order demanding ITC fraudulently availed under Section 74(1) of respective GST Acts and Demand of Interest under Section 50 of GST Acts	17.02.2023

4. In the above mentioned writ petitions, the petitioners have challenged the impugned proceedings of the respondents namely the Central Authorities. Therefore, the petitioners have challenged the impugned proceedings of the respondents namely the Central Authorities on the ground they are without Jurisdiction.

5. Following Writ Petitions have been filed by the petitioners who have been assigned to the Central Authorities. Proceedings have been initiated by the State Authorities. Details of the respective Writ Petitions are as under:-

Sl.No.	W.P.No.	Petitioner's name	Challenge of the	Date of the
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			notice/ summons or assessment order	notice/ summons or assessment order
1.	30607 of 2019	M/s.Sri Varahiamman Steels Private Limited	Notice issued u/S.62 of TNGST	04.09.2019
2.	30613 of 2019	M/s.Sri Varahiamman Steels Private Limited	Notice issued u/S.67 of TNGST for three cases	14.10.2019
3.	30615 of 2019	M/s.Sri Varahiamman Steels Private Limited		
4.	3011 of 2020	M/s.Indoshell	Assessment Order u/S.	25.10.2019
5.	3013 of 2020	Automotive Systems India Private Limited	62 of TNGST	
6.	3026 of 2020	M/S. Indoshell Mould Limited	Assessment Order u/S.	25.10.2019
7.	3028 of 2020		62 of TNGST	
			Assessment Order u/S.	25.10.2019
			62 of TNGST	
8.	4922 of 2020	M/S.Rosvar Steels Private Limited	Assessment Order u/S.	25.10.2019
			62 of TNGST	
9.	8495 of 2020	M/S.Rosvar Steels Private Limited	Assessment Order u/S.	25.10.2019
			62 of TNGST	
10.	8496 of 2020	M/S.Rosvar Steels Private Limited	Assessment Order u/S.	25.10.2019
			62 of TNGST	
11.	2861 of 2021	M/s.Season Motors	Assessment Order u/S.	13.01.2020
			62 of TNGST	
12.	2863 of 2021	M/s.Season Motors	Assessment Order u/S.	13.01.2020
			62 of TNGST	
13.	2865 of 2021	M/s.Season Motors	Assessment Order u/S.	13.01.2020
			62 of TNGST	
14.	12795 of 2021	M/S. Vetrivel Traders	Assessment Order under Section 74 of TNGST Act, 2017	29.01.2021
15.	12797 of 2021	M/S. Vetrivel Traders	Assessment Order under Section 74 of TNGST Act, 2017	29.01.2021
16.	16324 of 2021	M/s.Sree Amman Traders	Summon of Show Cause Notice under Section 74(1) of of the TNGST Act, 2017 Form DRC-07	19.02.2021 22.02.2021
17.	11004 of 2021	M/s.Cheran Steel Pvt. Ltd	Assessment Order for the year 2017-2018	29.01.2021
18.	11006 of 2021	M/s.Cheran Steel Pvt. Ltd	Assessment Order for the year 2018-2019	29.01.2021
19.	11008 of 2021	M/s.Cheran Steel Pvt. Ltd	Assessment Order for the year 2019-2020	29.01.2021



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20.	31013 of 2022	M/S.Khazana Jewellery Limited	Private	Inspection proceedings/ Summons issued under Section 70(1) of the TNGST Act,2017 and CGST Act,2017	08.11.2022
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6. In the above Writ Petitions, the petitioners are assessed by the Central Authorities under the CGST Act, 2017 and have thus challenged the notices issued under Sections 62 & 67 of the TNGST Act, 2017 and orders passed under Section 73 and 74 of the TNGST Act, 2017 by the respondents therein namely the State Authorities. Therefore, in the above mentioned writ petitions, the petitioners have challenged the impugned proceedings of the respondents namely the State Authorities.

7. The dispute in these Writ Petitions have arisen on account of the fact that the respective petitioners who have been assigned either to the State Authorities or to the Central Authorities for administrative purposes under the provisions of the respective GST Enactments namely, the CGST Act, 2017, TNGST Act, 2017 and IGST Act, 2017 are/were being subjected proceedings by their counterpart.

8. Submissions of the petitioners are that in the absence of a proper



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Notification under Section 6 of the respective GST Enactments for cross-empowerment, the impugned proceedings by the respective counterparts were without jurisdiction.

9. The CGST Act, 2017, GST Act, 2017 of the respective States, Integrated GST Act, 2017, UTGST Act, 2017, GST (Composition to States) Act, 2017 came into force on 01.07.2017.

10. The Integrated Goods and Services Tax Act, (Extension to Jammu & Kashmir) Act (Act 27 of 2017) was passed on 23.08.2017 with retrospective effect from 08.07.2017.

11. These enactments were enacted in the light of Constitution [101 Amendments (Act 2016)] which introduced a slew of amendments to the Constitution of India Constitution [101 Amendments (Act 2016)] amending the Constitution of India came into force with effect from 12.09.2016. Constitution [101 Amendments (Act 2016) also inserted Article 279 A to the constitution. Article 279 A to the constitution created the Goods and Services Tax Council (GST Council). Article 279A of the



- (e) the rates including floor rates with bands of goods and services tax ;*
- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;*
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and*
- (h) any other matter relating to the goods and services tax, as the Council may decide.*

- 5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.*
- 6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.*
- 7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.*
- 8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.*
- 9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—*

- (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and*
- (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.*

- 10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of:-*



- (a) any vacancy in, or any defect in, the constitution of the Council; or*
- (b) any defect in the appointment of a person as a Member of the Council; or*
- (c) any procedural irregularity of the Council not affecting the merits of the case*

11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—

- a) between the Government of India and one or more States; or*
- b) between the Government of India and any State or States on one side and one or more other States on the other side; or*
- c) between two or more States, arising out of the recommendations of the Council or implementation thereof.*

12. These respective GST Enactments were enacted based on the model GST Law structured by the GST Council in its deliberations.

13. The GST Council had a difficult task to balance the concerns of the Trade and interest of the different States. To avoid multiple assessments and to avoid confusion, the GST Council had to arrive at a consensus with State and Central Government.



WEB COPY 14. Even prior to the enactment of the respective GST Enactments with effect from 01.07.2017, in the 9th GST Council meeting held on 16.01.2017, a decision was taken regarding cross-empowerment to ensure a single interface with authorities for the future GST Laws.

15. Para.No.28 of the Minutes of the 9th GST Council Meeting held on 16.01.2017 discussed the issue regarding cross-empowerment. Para.No.28 of the Minutes of the 9th GST Council Meeting held on 16.01.2017 is extracted as under:-

“28. After further discussion, the Council agreed to the decisions as recorded below in respect of cross-empowerment to ensure single interface under GST.

- i. There shall be a division of taxpayers between the Central and the State tax administrations for all administrative purposes;*
- ii. Of the total number of taxpayers below Rs. 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;*



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- iii. *In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;*
- iv. *The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;*
- v. *The new registrants shall be initially divided one each between the Central and the State tax administration and at the end of the year, once the turnover of such new registrants was ascertained, those units with turnover below Rs. 1.5 crore shall be divided in the ratio of 90% for the State tax administration and 10% for the Central tax administration and those units above the turnover of Rs.1.5 crore shall be divided in the ratio of 50% each for the State and the Central tax administration;*
- vi. *The division of the taxpayers may be switched between the Centre and the States at such interval as may be decided by the Council;*
- vii. *The above arrangement shall be reviewed by the Council from time to time;*
- viii. Both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain;**
- ix. *Powers under the IGST Act shall be cross-*



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empowered to the State tax administration on the same basis as under the CGST and the SGST Acts either under law or under Article 258 of the Constitution but with the exception that the Central tax administration shall alone have the power to adjudicate a case where the disputed issue relates to place of supply, or when an affected State requests that the case be adjudicated by the CGST authority and for such issues of export and import as may be discussed in the Law Committee of officers and brought back to the Council for decision;

- x. The territorial water within the twelve nautical miles shall be treated as the territory of the Union of India unless the Hon'ble Supreme Court decides otherwise in the ongoing litigation on the issue but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the States.”*

16. At that stage, only the Model GST Laws were in circulation. It was not even in the form of Bills. It was in the form of a Model IGST Law, Model Central GST Law and Model State GST Law and Model State and Central GST Rules. At that time, the GST Council was yet to approve the Draft Model GST Acts, Draft Model IGST Act and Draft Model GST Rules for these future laws to enacted and passed.



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17. After the Model GST law was approved by the GST Council, pursuant to the decisions taken in the 9th GST Council Meeting held on 16.01.2017, first impetus for cross-empowerment was given after GST Bills were passed and enacted as respective GST Enactments with effect from 01.07.2018 vide Circular No.1/2017-GST (Council) dated 20.09.2017. Circular No.1/2017-GST (Council) dated 20.09.2017 was issued for a division of taxpayer base between the Centre and States to ensure a Single Interface under GST Enactments between Tax Officers and Central Tax Officers under CGST/IGST and SGST Acts of 2017 respectively.

18. Text of Circular No.1/2017-GST (Council) dated 20.09.2017 bearing reference F.No.166/Cross Empowerment/GSTC/2017 containing the guide lines for Division of Tax payers between the Centre and State Authorities to ensure single interface for the purpose of tax administration under the respective GST Enactment reads as below:-



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Subject: Guidelines for division of taxpayer base between the Centre and States to ensure Single Interface under GST-Regarding

Based on the decisions taken in the 9th Meeting of the GST Council held on 16 January, 2017 and 21st Meeting of the GST Council held on 9 September, 2017, the following criteria should be followed for the division of taxpayer base between the Centre and the States to ensure single interface:

- i. Of the total number of taxpayers below Rs. 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;*
- ii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;*
- iii. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;*

2. Further, the broad guidelines for the purposes of computation of "Turnover as approved by the GST Implementation Committee in its meeting held on 31 August and 1 September, 2017 and subsequently by the GST Council in its 21st Meeting held on 9 September 2017 are as follows:-



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- i. *For taxpayers registered only under VAT, the total annual State turnover under VAT (including inter-State sales, exports and exempt goods) shall be taken as the basis for division;*
- ii. *For taxpayers registered under both VAT and Central Excise, the annual State turnover under VAT shall be taken as the basis for division as State-level Central Excise turnover is already included in it;*
- iii. *For taxpayers registered only under Central Excise (and not under VAT), the total annual turnover declared in Central Excise returns shall be taken as the basis for division;*
- iv. *For taxpayers registered only under Service Tax in a State on a stand-alone basis, the annual turnover of the Services declared in the Service Tax returns shall be taken as the basis for division;*
- v. *For taxpayers registered only under Service Tax having centralized registration, the annual all-india turnover of the Services declared in the Service Tax returns shall be taken as the basis for division;*
- vi. *For taxpayers registered under both VAT and Service Tax, the total non-overlapping turnover (total of VAT and Service Tax, excluding any turnover which is included in both) shall be calculated and used as the basis for division. The Service Tax turnover shall be on the basis of clauses (iv) and (v) as the case may be.*

3. The State Level Committees comprising Chief



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Commissioner/ Commissioner Commercial Taxes of respective States and jurisdictional Central Tax Chief Commissioners/Commissioners are already in place for effective coordination between the Centre and the States. The said Committees may now take necessary steps for division of taxpayers in each State keeping in view the principles stated above. Supplementary decisions, if any, may be taken by the said Committees to implement the decision of the GST Council, keeping in view the broad principles stated hereinabove.

4. Suitable notifications regarding cross-empowerment of State and Central Tax officers under CGST/IGST and SGST Acts respectively are being issued separately.

19. After the above decision was taken for allocating 90% of those assesseees whose turnover were below Rs.1.5 crores with the State Authorities and balance 10% with the Central Authorities and 50% each of those tax payers whose turn overs was above Rs.1.5 crores equally between the State Authorities and the Central Authorities under the respective GST Enactments, the GST Council in its 22nd Meeting held on 06.10.2017 addressed the concern arising out of the gap between the issuance of Notifications under various GST Enactments of 2017 and IGST Act, 2017. Agenda No.9 of the 22nd Meeting held on 06.10.2017 captures the deliberations. It is extracted below:-



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“Agenda item 9: Proposal for issuing notifications on cross-empowerment for ensuring single interface under GST”

35. The Commissioner (GST Policy), CBEC stated that it was proposed to issue notification on cross-empowerment prepared in accordance with the decisions of the Council taken during its 9th Meeting (held on 16 January 2017) and 21st Meeting (held on 9 September 2017). **He stated that while there was a broad agreement for cross-empowerment under the CGST and SGST Acts, there was disagreement on the issue of cross-empowerment under the IGST Act in relation to the Place of Supply Rules.** The Secretary stated that notification of cross-empowerment was urgently required to enable refund to the taxpayers and this notification could be issued. **He added that due to persistent differences on cross-empowerment for the Place of Supply Rules issues under IGST, notification regarding cross-empowerment in respect of other matters could be deferred.** He stated that by cross empowering States and Central tax officers for giving refund, it would be ensured that only one officer issued an order of refund for both CGST and SGST. The Council approved the proposal to issue a notification by the Central Government and the State Governments cross empowering officers of the Central and State Government to sanction refund and that an order of refund passed by an officer of the Central or State Government shall cover both the central tax and the state tax and a similar notification to be issued under the IGST Act.

35.1. The CCT, Karnataka stated that the Council



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could also take a decision that till the division of taxpayers was effected between the Central administration and the State administrations, an officer of the Central and the State Government was authorised to process any refund claim filed by an applicant under his jurisdiction. The Secretary stated that division of taxpayers was likely to be done soon. The CCT, Karnataka stated that a lot of ground work was still required to be done and data such as turnover details of migrated taxpayers, removing from it the data of turnover of taxpayers with centralised registration, etc, would take time and for such period, a taxpayer should be given the freedom to approach any tax administration for claiming refund. The Secretary stated that this could be permitted subject to a declaration being given by the applicant that the same refund claim has not been claimed from the other administration having jurisdiction over the applicant. The Council agreed to this suggestion.

36. For agenda item 9, the Council approved the following:-

i. To issue notifications by the Central Government and the State Governments, cross empowering officers of the Central and State Governments to sanction refund and that an order of refund passed by an officer of the Central or State Government shall cover both the Central tax and the State tax. Similar notification to be issued under the IGST Act by the Central Government;

ii. Until the division of taxpayers is effected between the Central and State administration, an officer of the Central and the State Government was authorised to process any refund claim filed by an applicant under his jurisdiction subject to a



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declaration being given by the applicant that the same refund claim has not been claimed from the other administration having jurisdiction over the applicant.”

20. The provisions of the respective GST Enactments contemplates power of the Central Government and the State Government to issue notifications on the recommendations of the GST Councils to empower the Officers of the State Tax Officer or Union Territory Officer to issue Notifications under Section 6 of the CGST Act, 2017 the Central Tax Officers to be the “proper officer” under the respective GST Enactments.

21. Thus, the Central Government issued Notification No.39/2017-Central Tax on 13.10.2017. This Notification was later modified by Notification No.10/2018-CT dated 23.01.2018.

22. By this amending Notification No.10/2018-CT dated



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23.01.2018, the words “**except rule 96**” was substituted with **except sub rules (1) to (8) and sub rule (10) of rule 96**”.

23. Text of Notification No.39/2017-Central Tax dated 13.10.2017 and amending Notification No.10/2018 dated 23.01.2018 are reproduced below:-



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Notification No.39/2017-Central Tax	Notification No.10/2018-Central Tax
<u>Notification No. 39/2017 – Central Tax</u> New Delhi, the 13th October, 2017 G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the “CGST Act”), on the recommendations of the Council, the Central Government hereby specifies that the officers appointed under the respective State Goods and Services Tax Act, 2017 or the Union Territory Goods and Service Tax Act, 2017 (14 of 2017) (hereafter in this notification referred to as “the said Acts”) who are authorized to be the proper officers for the purposes of section 54 or section 55 of the said Acts (hereafter in this notification referred to as “the said officers”) by the Commissioner of the said Acts, shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act read with the rules made thereunder <u>except rule 96*</u> of the Central Goods and Services Tax Rules, 2017, in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers.	<u>Notification No. 10/2018 – Central Tax</u> Delhi, the 23rd January, 2018 G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the “CGST Act”), on the recommendations of the Council, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 39/2017 - Central Tax dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 1253 (E) dated the 13th October, 2017, namely:- In the said notification, for the words and figures <u>“except rule 96”</u>, the words, figures, brackets and letter <u>“except sub rules (1) to (8) and sub rule (10) of rule 96”</u> shall be substituted.

Note: * substituted with ‘**except sub rules (1) to (8) and sub rule (10) of rule 96**’ vide amendment in Notification No.10/2018-Central Tax dated 23.01.2018.



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24. A similar Notification has also been issued by the State of Tamil Nadu in G.O.(MS).No.126, Commercial Taxes And Registration (B1) Department, dated 13.10.2017.

25. In line with the decision of the 22nd GST Council Meeting held on 06.10.2017, a separate Model Notification was also circulated for the purpose of Section 6 of the respective GST Enactments for other purpose which would have entitled cross-empowerment for other purpose. However, Model Notifications which was circulated during September, 2017 immediately after the GST Enactments came into force with effect from 01.07.2017 have not been notified either under the CGST Act, 2017 or under the SGST Act, 2017.

26. These Notifications remain as draft Notifications till date. They have not been notified. Text of the Draft Notifications that fell for deliberation during the 22nd GST Council Meeting held on 06.10.2017 are reproduced below:-



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“Notification No..... /2017 –State Tax

....., the September, 2017

G.S.R....(E).-In exercise of the powers conferred by sub-section (1) of section 6 of the Goods and Services Tax Act, 2017 (--- of 2017) (hereinafter referred to as “GST Act”), and on the recommendations of the Council, the Government ofhereby specifies that the officers appointed under the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the “CGST Act”)who are authorized to be the proper officers for the purposes of the CGST Act (hereinafter referred to as “the said officers”)by the Commissioner in the Board, shall perform all or any of the duties and functions assigned to them, from time to time, as detailed in column (B) of the Schedule below, subject to the conditions specified in the corresponding entry in column (C) of the said Schedule;-

SCHEDULE

<i>Sl.No.</i>	<i>Duty or function or authority or scope of authority or power</i>	<i>Conditions</i>
<i>(A)</i>	<i>(B)</i>	<i>(C)</i>
<i>1</i>	<i>All proceedings with respect to a registered person, excluding those referred in Sl. No 2, 3, 4 and 5 of this Schedule.</i>	<i>Jurisdiction in respect of the said registered person has been assigned to the said officers for the specified period in accordance with the recommendations of the Council. (ii) all consequential proceedings including appeals arising from such proceedings</i>
<i>2.</i>	<i>Inspection, search, seizure or any other proceeding under section 67 of the GST Act or intelligence-based enforcement action against any person including all consequential</i>	<i>Such proceedings have not been initiated by the proper officer of the GST Act within one year from the date on which the said proceedings are initiated by the</i>



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	<i>or incidental proceedings including appeals arising from such proceedings.</i>	<i>said officers. Explanation. -For the purposes of this clause, the period of one year shall be counted from the date of initiation of the said proceedings as specified in the format for intimation of -such proceedings</i>
3.	<i>Detention, seizure and release of goods and conveyances in transit under section 129 of the GST Act or confiscation of goods or conveyances and levy of penalty under section 130 of the GST Act against any person and all consequential or incidental proceedings including appeals arising from such proceedings.</i>	<i>No such proceedings have been initiated in respect of the said goods by the proper officer of GST Act.</i>
4.	<i>All proceedings against a supplier or recipient of goods or services or both, who has remained unregistered although liable to be registered.</i>	<i>No such proceeding has been initiated in respect of such person by the proper officer of GST Act.</i>
5.	<i>Any proceedings arising out of Chapter XX of the GST Act.</i>	<i>Except the issues related to or arising out of transitional provisions of the GST Act.</i>

Explanation 1: Assignment of registered persons refers to the distribution of registered persons between the central and state tax administrations, for exercising all administrative controls regarding enforcement of the provisions of the SGST Act, in such proportions and following such methods, as the Council may decide from time to time.

Explanation 2: With respect to Sl. No. 2,3 & 4 of the said Schedule, information regarding intimation of proceedings in the format specified below should be furnished by the Commissioner to the jurisdictional Commissioner of the Central Goods and Services Tax Act on the common portal or manually with due acknowledgment till such time the facility for



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uploading the said information is not available on the common portal.

Format for intimation of proceedings

<i>Serial No.</i>	<i>GSTIN No.</i>	<i>Date of initiation of proceedings</i>	<i>Subject matter under investigation</i>	<i>Period under investigation</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>

2.This notification shall come in force with effect from

***[To be published in the Gazette of India,
Extraordinary, Part II, Section 3, Sub-section (i)]
Government of India
Ministry of Finance
Department of Revenue Central
Board of Excise and Customs
Notification No..... /2017 –Integrated Tax***

New Delhi, the September, 2017

G.S.R....(E).-In exercise of the powers conferred by section 4 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereinafter referred to as the “IGST Act”), on the recommendations of the Council, the Central Government hereby specifies that the officers appointed under the respective State Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act (14 of 2017), (hereinafter collectively referred to as “the said Acts”), and who are authorized to be the proper officers for the purposes of the said Acts(hereinafter referred to as “the said officers”) by the Commissioner of the said Acts, shall exercise their powers except in respect of the following



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purposes, namely:-

- a) any disputed issues requiring determination of place of supply under Chapter V of the IGST Act;*
- b) where one of the states involved in an Inter-State transaction requests that the case be adjudicated by the officer appointed under section 3 of the IGST Act;*
- c) refund of IGST paid on export of goods other than the supply of goods to SEZ unit or SEZ supplier;*
- d) any other purpose that is recommended by the Council from time to time:*

2. The said officers shall perform the duties and functions assigned to them, from time to time, as detailed in column (B) of the Schedule below, subject to the conditions specified in the corresponding entry in column (C) of the said Schedule; -

SCHEDULE

Sl.No.	Duty or function or authority or scope of authority or power	Conditions
(A)	(B)	(C)
1.	All proceedings with respect to registered persons, excluding those referred at Sl. No. 2, 3, 4 and 5 of this Schedule.	Jurisdiction in respect of the said registered person has been assigned to the said officers for the specified period in accordance with the



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		<i>recommendations of the Council. (ii) all consequential proceedings including appeals arising from such proceedings.</i>
2.	<i>Inspection, search, seizure or any other proceedings under section 67 of the Central Goods and Services Tax Act, 2017 as made applicable to the Integrated Tax vide section 20 of the IGST Act or intelligence-based enforcement action against any person including all consequential or incidental proceedings including appeals arising from such proceedings.</i>	<i>Such proceedings have not been initiated by the proper officer of central tax within one year from the date on which said proceedings are initiated by the said officers. Explanation. -For the purposes of this clause, the period of one year shall be counted from the date of initiation of the said proceedings as specified in the format for intimation of such proceedings.</i>
3.	<i>Detention, seizure and release of goods and conveyances in transit under section 129 of the Central Goods and Services Tax Act, 2017 or of confiscation of goods or conveyances and levy of penalty under section 130 of the Central Goods and Services Tax Act, 2017 made applicable to the integrated tax vide section 20 of the IGST Act, against any person and all consequential or incidental proceedings including appeal arising from such proceedings.</i>	<i>No such proceedings have been initiated in respect of the said goods by the proper officer of the central tax.</i>
4.	<i>All proceedings against a supplier or recipient of goods or services or both, who has remained unregistered, although liable to be registered.</i>	<i>No such proceedings have been initiated in respect of such person by the proper officer of the central tax.</i>
5.	<i>Any proceedings arising out of Chapter XX of the Central Goods and Services Tax Act, 2017 made applicable to the integrated tax vide section 20 of the IGST Act.</i>	<i>Except the issues related to or arising out of transitional provisions of the Central Goods and Services Tax Act, 2017.</i>



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Explanation 1: Assignment of registered persons refers to the distribution of registered persons between the central and state tax administrations, for exercising all administrative controls regarding enforcement of the provisions of the IGST Act, in such proportions and following such methods, as the Council may decide from time to time.

Explanation 2: With respect to Sl. No. 2, 3& 4 of the said Schedule, information regarding intimation of proceedings in the format specified below should be furnished by the Commissioner to the jurisdictional Commissioner of the respective State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act on the common portal or manually with due acknowledgment till such time the facility for uploading the said information is not available on the common portal:

Format for intimation of proceedings

<i>Serial No.</i>	<i>GSTIN No.</i>	<i>Date of initiation of proceedings</i>	<i>Subject matter of under investigation</i>	<i>Period under investigation</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>

2.This notification shall come in force with effect from ---”

27. During the aforesaid Meeting, it was highlighted that there was disagreement of issue under IGST Act in relation to place of supply rules. While the Secretary stated that investigation of cross-empowerment was urgently required to enable the tax payer and therefore, the notification



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can be issued. It highlighted that there was a persistent difference regarding the cross-empowerment for the Place of supply rules regarding IGST, Notification regarding the cross-empowerment in respect of other matters were to be deferred in 22nd GST Council Meeting held on 06.10.2017.

28. Thus, there is no cross-empowerment.

29. The learned counsel for the petitioners relied on the following decisions:-

- i. ***Pahwa Chemicals Pvt. Ltd., Vs. Commissioner of Central Excise, Delhi, 2005 (181) E.L.T. 339 (S.C.);***
- ii. ***Duncan Agro Industries Ltd., Vs. Union of India, 1989 (39) E.L.T. 211 (Del.);***
- iii. ***M/s.Muthu Metals represented by K.Bhommal, Proprietor, Madras – 3 Vs. State of Tamil Nadu represented by the Commissioner and Secretary to Govt., C.T. & R.E. Dept., Madras – 9 and others in W.P.Nos.4949 of 1986, etc., batch;***
- iv. ***Raghunath International Ltd., Vs. Union of India, 2012 (280) E.L.T. 321 (All.);***
- v. ***National Building Construction Co. Ltd., Vs. Union of India, 2019 (20) G.S.T.L. 515 (Del.);***
- vi. ***Yasho Industries Ltd., Vs. Union of India,***



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Manu/GJ/1470/2021;

- vii. **Kuppan Gounder P.G.Natarajan Vs. Directorate General of GST Intelligence, New Delhi**, 2022 (58) G.S.T.L. 292 (Mad.);
- viii. **Ambika Food Industries Pvt. Ltd., Vs. Union of India Rep. by its Secretary, Ministry of Finance Department of Revenue**, 2021 SCC Online TS 3390;
- ix. **Ajay Verma Vs. Union of India and Ors.**, *Manu/UP/1822/2022;*

- x. **M/s.VGN Projects Estates Private Limited Vs. Assistant Commissioner (State Taxes) and another in W.P.No.2391 of 2023** and
- xi. **Tyl Metal Trade Incorporation Vs. The Special Secretary and others in W.P.No.3033 of 2023.**

30. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

31. The Model Law which were in circulation before the respective Central GST Bill and the State GST Bill and Union Territory GST Bill were introduced in the Parliament and in the respective State Legislatures of the country are in slight variance.

32. The scheme of enactments as mentioned above makes it clear that the assessee whether assigned to the Central Tax Authorities or the State Tax Authorities as the case may be are required to file only one set



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of Return under Chapter-IX of the respective GST Enactments of 2017
r/w Chapter-VIII of the respective GST Rules. The returns that are
contemplated under Chapter-IX of the respective GST Enactments and
Chapter-VIII of the respective GST Rules are *parimateria* with each other.

33. The returns to be filed by the Assessee's under the respective
GST Enactments are same. They capture all the details under the
respective GST Enactments applicable to an assessee.

34. The returns are to be filed in the common portal as defined in
Section 2(26) of the respective GST Enactments . As per Section 2(26) of the
respective GST Enactments “Common portal” means the common goods and
services tax electronic portal referred to in Section146. Section 2(26) and
Section146 of the respective GST Enactments reads as under :-

Section 2(26) of the respective GST Enactments-

Definition -Common portal means the
common goods and services tax electronic
portal referred to in section146;

Section 146 of the respective GST Enactments –

Common Portal- The Government may, on the



recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

35. The returns that are contemplated under these Rules are composite returns which will not only capture the tax liability under the CGST Act, 2017 but also TNGST Act, 2017 and IGST Act, 2017. The returns also capture the Input Tax Credit that are availed by an assessee under the respective GST Enactments.

36. That apart, the payment of tax whether under the CGST Act, 2017 or under TNGST Act, 2017 are at the same rate. The only difference that may arise at the time of payment of tax due to utilization of the Input Tax Credit (ITC) availed on the inward supplies and their cross utilization for discharging the tax liability in terms of Chapter-X of the respective GST Enactments r/w Chapter-IX of the respective GST Rules, 2017.

37. The utilization of Input Tax Credit under the respective GST



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Enactments are in terms of Sub-Section (4) to Section 49 of the respective Central and TNGST Enactments. They read as under:-

“49. Payment of tax, interest, penalty and other amounts-

(1)

(2)

(3)

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.”

38. Thus, the Input Tax Credit availed under the provisions of the Central GST Act, 2017 can be used for payment of Output Tax under the said Act or under the IGST Act, in such manner as may be and subject to such conditions as may be prescribed.

39. Similarly, the Input Tax Credit availed under the provisions of TNGST Act, 2017 can be utilised only for payment of Output Tax under the provisions of said IGST Act, 2017 in such manner and subject to such conditions and within such time as may be prescribed under the Rules.

40. However, powers of assessment has been vested with the proper officers to whom the assessee have assigned by virtue of Circular

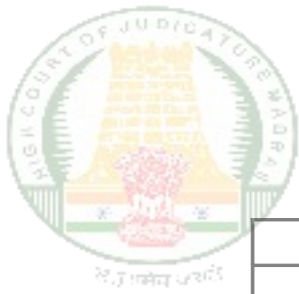


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No.01/2017-GST (council) dated 20.09.2017 bearing reference: F.No.199/
Cross-Empowerment/GSTC/2017.

41. As per Section 49A of the CGST Act, 2017, Input Tax Credit availed on account of Central Tax, State Tax or Union Territory Tax can be utilized towards payment of Integrated Tax, Central Tax, State Tax or the Union Territory Tax as the case may be, only after the Input Tax Credit available on account of Integrated Tax Credit has been first available on such cases. Section 49A of the CGST Act, which was inserted with effect from 01.02.2019 and notified vide Notification No.2/2019-CT 29/1-2019 as amended by GST (Amendment) Act 2018 (31 of 2018) has to be read in conjunction with **Rules 88 A** of the CGST Rules, 2017 as inserted by Notification No.16/2019-CT dated 29.03.2019 with effect from 29.03.2019.

42. Section 49A of CGST Act, 2017 and Rule 88A of the CGST Rules, 2017 reads as under:-



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CGST Act, 2017	CGST Rules, 2017
49A. Utilisation of input tax credit subject to certain conditions:- (1) Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.	88A. Order of utilization of input tax credit:- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order: Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

43. A similar provision is absent under the TNGST Act, 2017 and TNGST Rules 2017.

44. As per Rule 86(2) of the CGST Rules, 2017, the electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 [or section 49A or section 49B].

45. As per Rule 86(2) of the TNGST Rules, 2017, the electronic credit ledger shall be debited to the extent of discharge of any liability in



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accordance with the provisions of Section 49.

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46. As per Section 88A of the TNGST Rules, 2017, Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order. Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

47. As per Rule 49A of the TNGST Rules, 2017, a bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details, namely:-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;*
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;*
- (c) date of its issue;*



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- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) Harmonised System of Nomenclature Code for goods or services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorised representative: Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule: Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

48. Under Section 3 of the respective Central and State GST Enactments of 2017, both the Central Government and the State Government have appointed a “class of officers” for the purpose of enforcement of the respective GST Enactments of 2017. Section 3 of the CGST Act, 2017 and the TNGST Act, 2017 read as under:-

CGST Act, 2017	TNGST Act, 2017
3. Officers under this Act.— The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:— (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax;	3. Officers under this Act.- The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:- (a) Commissioner of State tax; (b) Additional Commissioners of State tax; (c) Joint Commissioners of State tax;



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- (b) *Chief Commissioners of Central Tax or Directors General of Central Tax;*
- (c) *Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax;*
- (d) *Commissioners of Central Tax or Additional Directors General of Central Tax;*
- (e) *Additional Commissioners of Central Tax or Additional Directors of Central Tax;*
- (f) *Joint Commissioners of Central Tax or Joint Directors of Central Tax;*
- (g) *Deputy Commissioners of Central Tax or Deputy Directors of Central Tax;*
- (h) *Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and ;*
- (i) *any other class of officers as it may deem fit:*

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

- (d) *Deputy Commissioners of State tax;*
- (e) *Assistant Commissioners of State tax, and*
- (f) *any other class of officers as it may deem fit:*

Provided that, the officers appointed under the Tamil Nadu Value Added Tax Act, 2006 shall be deemed to be the officers appointed under the provisions of this Act.

49. Apart from the officers mentioned above under Section 4(1) of the respective Central GST Act, 2017 and TNGST Act, 2017, the **Board** (the Central Board of Indirect Taxes and Customs [CBIC]) as defined in Section 2(16) of the CGST Act, 2017 and the **Government** as defined in Section 2(53) of TNGST Act, 2017, can appoint such officers as they may



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deem fit to be the officers under these GST Enactments.

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50. Without prejudice to the provisions of sub-section (1) to Section 4, the **Board** under Section 4(2) of the CGST Act, 2017 may, by an order, authorize any officer referred to in clauses (a) to (h) of section 3 to appoint any officers of the Central Tax below the rank of Assistant Commissioner of Central Tax to be the Central Tax Officer for the administration of the CGST Act, 2017.

51. Thus, the Board can authorize any officer referred to in clauses (a) to (h) of Section 3 of CGST Act, 2017 to appoint any officers of the Central Tax below the rank of Assistant Commissioner of Central Tax to be the Central Tax Officer for the administration of the CGST Act, 2017 alone. Thus, under Section 4(2) of the CGST Act, 2017, these can be only a linear delegation.

52. Similarly, under Section 4(2) of the TNGST Act, 2017, the **Commissioner** has jurisdiction over the whole of State. The **Additional Commissioner** shall have jurisdiction over the whole of the State in respect of all or any of the functions assigned to them. Where the **State**



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Government so directs, the **Additional Commissioner** shall have jurisdiction, over any local area thereof. Again Such delegation is only to officers appointed under TNGST Act, 2017. Here also the delegation is linear.

53. Under Section 4(2) of the TNGST Act, 2017, all other officers shall have jurisdiction over the whole of the State or over such local areas as the **Commissioner** may, by an order, specify, in respect of all or any of the functions assigned to them, subject to such conditions as may be specified. Thus, the Commissioner has power to delegate powers under the Act to other Officer specified in Sub-clause (c) to (f) to Section 3 of the TNGST Act, 2017. There is no cross-empowerment under Section 4(2) of the TNGST Act, 2017.

54. Thus, neither the Board under Section 4(1) and (2) of CGST Act, 2017 nor the Government and/or the Commissioner under Section 4(1) and (2) of SGST Act, 2017 can appoint such officers in addition to the officer notified under Section 3 of the respective Act. Thus, the Board can appoint and delegate only to Central Tax Officers appointed under the CGST Act, 2017 for CGST Act, 2017 and the Government and/or the



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Commissioner can appoint and delegate only to State Tax Officers appointed under the TNGST Act, 2017 for TNGST Act, 2017.

55. These provisions are *pari materia* with Section 4 of the Customs Act, 1962 and Section 12(E) of the Central Excise Act, 1944.

56. Section 4 of the respective GST Enactments namely CGST Act, 2017 and TNGST Act, 2017 and the corresponding Sections from the Model Law are reproduced below:-



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Section 4 of the Central Goods and Services Tax Act, 2017	Section 5 of the Model Central Goods and Services Tax, 2017
<u>4.Appointment of officers:-</u> 1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act. 2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of Central Tax for the administration of this Act.	<u>5.Appointment of officers under the Central Goods and Services Tax Act</u> 1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act 2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner /Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.
Section 4 of the Tamil Nadu Goods and Services Tax Act, 2017	Section 5 of the Model State Goods and Services Tax, 2017
<u>4. Appointment of officers:-</u> 1) The Government may, in addition to the officers as may be notified under section 3, appoint such persons as it may think fit to be the officers under this Act. 2) The Commissioner shall have jurisdiction over the whole of the State, <u>the Additional Commissioner</u>, in respect of all or any of the functions assigned to them, shall have jurisdiction over the whole of the State or where the	<u>5.Appointment of officers under the State Goods and Services Tax Act.</u> 1) The Government may appoint such persons at it may think fit to be officers under the State Goods and Services Tax Act. 2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where



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State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the Commissioner may, by order, specify.

the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government may specify.

57. Section 5 of the Central GST Act, 2017 and TNGST Act, 2017 circumscribes the powers of the officers mentioned in Section 3 and 4 of the respective GST Enactments. Section 5 of the respective GST Enactments read slightly differently from Section 6 of the respective Model CGST Act and Model State GST Act. These provisions are reproduced below:-

<i>Section 5 of the Central Goods and Services Tax Act, 2017</i>	<i>Section 5 of the Tamil Nadu Goods and Services Tax Act, 2017.</i>
5. Powers of officers:- 1) <i>Subject to such conditions and limitations as the Board may impose, an officer of Central Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.</i> 2) <i>An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.</i>	5.Powers of Officers:- 1) <i>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.</i> 2) <i>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.</i> 3) <i>The Commissioner may, subject</i>



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3) <i>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.</i> 4) <i>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 central tax.</i>	<i>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</i> 4) <i>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.</i>
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58. For the sake of clarity Section 6 of the respective Model GST

Laws are reproduced below:-

<i>Section 6 of the Model Central Goods and Services Tax, 2017</i>	<i>Section 6 of the Model State Goods and Services Tax, 2017</i>
<i>6.Powers of officers under the Central Goods and Services Tax Act :-</i> 1) <i>Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.</i> 2) <i>An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.</i> 3) <i>The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by</i>	<i>6.Powers of officers under the State Goods and Services Tax Act:-</i> 1) <i>Subject to such conditions and limitations as the Commissioner may impose, an officer of the State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.</i> 2) <i>An officer of State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Goods and Services Tax who is subordinate to him.</i> 3) <i>The Commissioner may, subject to such conditions and limitations as</i>



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4) *Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in section 98 of this Act.*

may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

59. Thus, the delegation only is to the officers under the respective GST Enactments, unlike in Section 6 of the Model GST Laws which contemplated wide powers with the Board/Commissioner under the respective Model GST Laws to delegate the powers to officers from their counterpart Department.

60. Section 6 of the respective Central GST Act, 2017 and TNGST Act, 2017 are relevant for cross-empowerment. It read slightly differently from Section 7 of the respective Model Central and State GST laws which were in circulation in February, 2016. Section 6 of the respective GST Enactments and the corresponding provisions from the Model GST Law are reproduced below:-



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<u>Section 6 of the Central Goods and Services Tax Act, 2017</u>	<u>Section 6 of the Tamil Nadu Goods and Services Tax Act, 2017</u>
<i>6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.—</i> <i>(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.</i> <i>(2) Subject to the conditions specified in the notification issued under sub-section (1),—</i> <i>(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;</i> <i>(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</i>	<i>6. Authorisation of officers of Central tax as proper officer in certain circumstances.—</i> <i>(1) Without prejudice to the provisions of this Act, the officers appointed under the Central 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.</i> <i>(2) Subject to the conditions specified in the notification issued under sub-section (1),—</i> <i>(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, 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 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.</i> <i>(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer</i>



<i>Act on the same subject matter.</i> (3) <i>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.</i>	<i>appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.</i>
<u>Section 7 of the Model Central Goods and Services Tax, 2017</u> <u>7.Powers of SGST/CGST officers under the Act</u> (1) <i>Notwithstanding anything contained in this Act, the proper officers for the purposes of any one or more Sections (.....) of the {SGST/CGST Act}, shall be deemed to be the proper officers for the purposes of the corresponding section or sections, as the case may be, of this Act to such extent and subject to such conditions as may be prescribed in the rules made in this behalf.</i> (2) <i>Where any proper officer issues an order or acts under any one or more sections of this Act, he shall also issue an order or take action, as he may deem fit, under the corresponding section of the {SGST/CGST} Act as being the proper officer under sub-section Error! Reference source not found. of the SGST/CGST Act as a part of his order or action under this Act, under</i>	<u>Section 7 of the Model State Goods and Services Tax, 2017</u> <u>7.Powers of SGST/CGST officers under the Act</u> <i>The officers appointed under the SGST Act shall, to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (.....) of this Act.</i>



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intimation to the jurisdictional SGST/CGST officer.

(3) Any proceeding for rectification, appeal and revision, wherever applicable, of any order issued under sub-section (2) shall lie before the officer appointed under section 4 of this Act.

(4) Where a proper officer under the SGST/CGST Act has initiated a proceeding on a subject matter under any one or more sections (.....) of this Act, no action under the relevant section shall be initiated under this Act on the same subject matter.

61. Thus, Section 6(1) of the respective GST Enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment. However, no notification has been issued except under Section 6(1) of the respective GST Enactments for the purpose of refund although officers from the Central GST and State GST are proper officers under the respective GST Enactments.

62. Since, no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax under Chapter-XI of the respective GST Enactments r/w Chapter X of the



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respective GST Rules, impugned proceedings are to be held without jurisdiction. Consequently, the impugned proceedings are liable to be interfered in these writ petitions.

63. Thus, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments.

64. Similarly, if an assessee has been assigned to the State Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the officers of the Central GST cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules by an assessee.



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65. The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is under Section 6 of the respective GST enactment. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them.

66. Therefore, the proceedings initiated by the respondents so far against the respective petitioners by the Authorities other than the Authority to whom they have been assigned to are to be held as without jurisdiction. Therefore, the impugned proceedings warrants interference.

67. At the same time, it is noticed that there is possibly case made out against each of the petitioners and since same power ought to have been exercised by the respective counterparts of the respondents, namely the Central Authority/State Authority as the case may be, to whom the respective petitioners have been assigned, proceedings should be initiated against each of the petitioners by the Authority to whom they have been



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assigned for the purported loss of Revenue under the respective GST Enactments.

68. Therefore, while quashing the impugned proceedings, there shall be a direction to the Central Authority/State Authority as the case may be to whom the respective petitioners have been assigned for administrative purpose to initiate appropriate proceedings afresh against them strictly in accordance with the provisions of the respective GST Enactments and GST Enactments Rules and Circular issued thereunder. The time between the initiation of the proceedings impugned in these writ petitions and time during the pendency of the present writ petitions till the date of receipt of this order shall stand excluded for the purpose of computation of limitation.

69. These writ petitions are disposed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

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Neutral Citation : Yes/No



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To

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2. The Chairman,
Central Board of Indirect Taxes,
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3. The Additional Chief Secretary & Commissioner of State Taxes,
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4. The Director General of GST Intelligence, South,
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5. The Senior Intelligence Officer,
Directorate General of GST Intelligence,
Chennai Zonal Unit,
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6. The Assistant Commissioner (ST),
Arumbakkam Assessment Circle.



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C.SARAVANAN, J.

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