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Madras High Court Invalidates Proceedings by Multiple Tax Authorities in Absence of Cross-Empowerment Notification



Summary

This Tax Alert summarizes a recent judgment¹ by the Hon'ble Madras High Court ('HC') concerning the legality of investigations and proceedings initiated by either Central or State tax authorities under Goods and Services Tax ('GST') enactments. The HC's key observations include:

- Section 6(1) of respective GST enactments empowers the Government to issue notifications for cross-empowerment.
- Absence of such notifications renders proceedings jurisdictionally flawed.
- HC quashed proceedings by counterparts, directing the appropriate tax authority to initiate proceedings for alleged revenue loss.

Brief Background

1. The taxpayers in the present batch matter were assigned either to the Central tax officers or to the State tax officers under the respective Goods and Services Tax (GST) enactments.
2. Proceedings were initiated by Central tax officers against taxpayers designated to State authorities, and vice versa. Meaning thereby, the petitioners, whose administrative assignments were under the Central Goods and Services Tax (CGST) Act, 2017, Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, and Integrated Goods and Services Tax (IGST) Act, 2017, found themselves subjected to proceedings by their opposing counterparts.
3. Petitioners challenged the proceedings initiated by the counterparts. Challenges were raised on the grounds of the absence of proper notification under section 6 of respective GST enactments for cross-empowerment, thus disputing the jurisdiction of the counterparts.

4. Consequently, the central issue pertains to whether petitioners assigned to either Central or State tax authorities under the CGST Act and/or TNGST Act can be subjected to investigation and further proceedings by their counterparts.

Taxpayer's arguments

- The empowerment of the GST Council, as enshrined in Article 279A of the Indian Constitution, underscores its pivotal role in formulating and implementing GST laws, granting both Central and State tax administrations intelligence-based enforcement powers throughout the entire value chain.
- In the 9th GST Council meeting on January 16, 2017, a crucial decision was made to introduce cross-empowerment. This measure aimed to streamline interactions with tax authorities by establishing a unified interface. The initial impetus for cross-empowerment was provided through Circular No. 1/2017-GST (Council) issued on September 20, 2017. This circular delineated the division of the taxpayer base between the Centre and States, ensuring a cohesive interface under GST enactments. Notably, it mentioned the issuance of separate notifications regarding cross-empowerment for State and Central tax officers.
- In the 22nd GST Council meeting on October 6, 2017, concerns regarding the gap between the issuance of notifications were addressed. Further, the Central Government issued Notification No. 39/2017- Central Tax on 13 October 2017 to empower state officers to be the proper officer for the purpose of refund of tax under GST.
- Separate draft notification was also circulated in GST Council meeting for the purpose of Section 6 which would have entitled cross-empowerment for other purposes.
- In the 22nd GST Council meeting, separate model notification was circulated for deliberation which provided for the cross empowerment of various functions. However, due to persistent difference regarding cross- empowerment for the place of supply rules, it was decided that notification providing for cross- empowerment in respect of other matters was to be deferred.
- These notifications continue to remain as draft notifications till date.

Ruling

- The Hon'ble Madras High Court ruled that in the absence of a notification under section 6 of the respective GST enactments for cross-empowerment, State or Central Tax Officers cannot assume the power of investigation or adjudication of a taxpayer not assigned to them. It emphasized that proceedings should be initiated against taxpayers by the authority to whom they are assigned.

- The authority for assessment has been vested with the proper officers to whom the assesseees have been assigned, as per Circular No. 01/2017-GST. Under Section 3 of the respective Central and State GST enactments, both the Central Government and the State Government have appointed a "class of officers" for enforcement purposes.
- Under Section 4(1) of the enactments, the Board and the State Government can appoint officers deemed fit. As per section 4(2) of the CGST Act, the Board can authorize officers referred to in Section 3 to appoint officers of the Central Tax below the rank of Assistant Commissioner solely for the administration of the CGST Act, implying a linear delegation.
- Similar provisions exist under SGST enactments, aligning with Section 4 of the Customs Act, 1962, and Section 12(E) of the Central Excise Act, 1944. Section 6 of the CGST Act and TNGST Act are relevant for cross-empowerment, albeit slightly differing from the respective Model GST laws, which envisioned broader powers for the Board/Commissioner to delegate powers to officers from their counterpart departments.
- Section 6(1) of the GST enactments empowers the Government to issue notifications on the recommendation of the GST Council for cross-empowerment. However, no such notification has been issued under Section 6(1) except for tax refund purposes.
- Since no notification has been issued for cross-empowerment with the advice of the GST Council, except for tax refund purposes, the impugned proceedings are to be deemed without jurisdiction.
- Thus, if an assessee has been administratively assigned to the Central authorities based on the Circular, the State authorities lack jurisdiction to interfere with the assessment proceedings in the absence of a corresponding notification.
- Similarly, if a taxpayer has been assigned to the State authorities, the officers of the Central tax cannot interfere, although they may possess intelligence regarding alleged violations by the taxpayer.

Key takeaways from the Ruling

This decision constitutes a significant milestone in addressing the gap in the issuance of notifications concerning cross-empowerment. The Madras High Court has undertaken a comprehensive examination to deliberate on this gap, analyzing various facets including the deliberations of the GST Council, comparative provisions between the CGST Act and corresponding SGST enactments, and the Model GST Law, among other considerations. Notably, while different high courts have rendered judgments either upholding or nullifying parallel proceedings by state or central tax authorities under Section 6(2) of the CGST or respective SGST Acts, these rulings have not

specifically addressed the absence of notifications for cross-empowerment. Additionally, conflicts have arisen from the initiation of multiple proceedings by different wings within the same department, such as jurisdictional officers, audit wings, anti-evasion wings, and the DGCI. Taxpayers facing challenges from parallel or multiple proceedings may seek to have them quashed, similar to counterparts in other jurisdictions. However, it is imperative for the government to address the broader issue of parallel proceedings encountered by the industry at large.

¹ *Tvl. Vardhan Infrastructure vs. The Special Secretary and Ors. [TS-162-HC(MAD)-2024-GST*

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