THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Two Days National Conference on GST

on August 30 and 31, 2024

Organised by : GST & Indirect Taxes Committee

Hosted by : SIRC of ICAI

TOPIC: LEGAL & PRACTICAL ASPECTS OF LETTER, NOTICES, INVESTIGATIONS FROM MULTIPLE JURISDICTION

Date: 31.08.2024

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RESTRICTION ON PARALLEL PROCEEDINGS

S. 6(2)(b) of the CGST Act and the SGST Acts prohibits a proper officer from initiating any proceedings on a subject matter for which another proper officer has already initiated.

The word 'subject matter' in Section 6 (2)(b) with reference to any proceedings, means the same cause of action for the same dispute involved in a proceeding before the PO under GST Laws.

- ***M/s G.K Trading Company v Union of India –***

If Central Government authorities are proceeding with a matter, State Government authorities should refrain from interference.

- ***Anurag Suri v. DGGST - W.P.(C) No.158 of 2020***

Only one assessment can be made for the same transaction, and it is appropriate for the authority that initiated the action first to continue with it while the other authority refrains from proceeding.

- ***Fondement Bitumenous Industries (P) Ltd. v State of Bihar***

Jharkhand HC that restricted and thereafter directed the DGGI and CGST to send over investigations to the State authorities in interrelated proceedings.

- ***Vivek Narsaria vs. State of Jharkhand & Ors. [TS-17-HC(JHAR)-2024-GST]. SLP pending before Supreme Court.***

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CBIC

The authority initiating the action has the power to complete the entire process of investigation, issue of SCN, adjudication, recovery, and filing of appeals arising from such action.

- ***CBIC Letter F No. CBEC/20/43/01/2017-GST dated 05.10.2018***

GST Council has recommended that as a more efficient alternative, recurring SCNs should ideally be issued by the concerned jurisdictional tax authorities administering the taxpayer.

- ***OM F. No. 757/Follow-up/GSTC/2018 dated 19.10.2022.***

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INVESTIGATION INITIATED BY TWO WINGS OF THE SAME DEPARTMENT

Once the audit proceedings have been initiated, it is appropriate that the Audit Commissionerate itself take them to the logical end.

- *M/s R.P Buildcon Private Limited & Anr. V. The Superintendent, CGST & CX Circle-II Group 10 & Ors. - WPA 20025 of 2022 (Cal HC).*

Audit under s.65 of the CGST Act was a routine procedure independent of investigation under s.67 of the CGST Act.

- *Suresh Kumar P.P. v Deputy Director - [2020] 120 taxmann.com 173 (Kerala). Appeal dismissed by Supreme Court*

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GUIDELINES FROM DGGI & CBIC ON GST INVESTIGATIONS

-CBIC vide Instruction No. 01/2023-24-GST (Inv.) dated 30.03.2024 has published detailed guidelines and directions to GST officers across the country concerning the conduct of investigations of "regular taxpayers".
-DGGI vide internal letter F.No.DGGI/17/2023-INV-O/o Pr DG-DGGI-HQ-DELHI-Part(1)/ dated 08.02.2024 for regulating investigations by the DGGI.

- Prior approval for initiation of investigation.
- Avoiding multiplicity of investigations and proceedings.
- Information requisition letters as opposed to Summons.
- Time-bound conclusion of investigation.
- Issue of closure report and conclusion of investigation.

Avoiding multiplicity of investigations and proceedings – When a taxpayer holds multiple GSTINs across different jurisdictions under the same PAN, the matter should be referred to the DGGSTI. According to CBIC Guidelines, field formations in one jurisdiction are required to share information with those in other jurisdictions. Within their assigned jurisdiction, the jurisdictional Commissionerate is responsible for gathering intelligence, carrying out searches, and completing investigations.

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AUDIT

Final Audit Report was in violation of principles of natural justice ad hence, to be quashed.
PBL Transport Corporation Pvt Ltd. Vs. Assistant Commissioner of service tax –TIOL– 132-HC-AP-GST

Audit is a special function which has to be carried out by duly qualified persons like a Cost Accountant or a CA & cannot possibly be undertaken by any officer of the Service Tax Department.
Union Of India & ORS Vs M/s Mega Cabs Pvt Ltd.- 2016-TIOL-162-SC-ST

No audit under Section 65 of the CGST Act cannot be conducted after cancellation of registration.
Tvl. Raja Stores vs. Asst. Commissioner -W.P.(MD).No. 15291 of 2023-Madras High Court

During GST Audit proper officer may initiate action under section 73 and Section 74 of CGST Act,2017.
ABT Limited Vs Additional Commissioner of GST & Central Excise- Writ Petition No. 1756 of 2024-Madras High Court

Petitioner due to untimely demise of his Auditor and on account of bona fide reasons could not making GST payment, file returns. Hon'ble Court held set aside the impugned orders and directed the Revenue to restore the GST registration of the petitioner, subject to payment of all dues by the petitioner.
INXL Digital Vs Addl Commissioner GST & CT - 2022-TIOL-1424-HC-KAR-GST

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ASSESSMENT

Proper officer cannot cancel registration of assessee based on report of intelligence officer. Proper officer ought to independently assess the situation. ***F.R. Trade Links vs. State Tax Officer, Pala – 2022 (56) GSTL 291 (Ker.)***

Letter of DGFT can be considered as assessment order. Refund cannot be rejected on the ground that letter issued by DGFT asking assessee to pay differential duty is not assessment/ adjudication. ***Flexi Caps & Polymers Pvt Ltd Vs. Comm. Of CGST & C.Ex. 2022 (58) GSTL 545 (Tri-Del)***

Ground was not raised in SCN, but was raised as addition ground in subsequent communication and assessee was not given opportunity to reply. Court held that Superintendent of Taxes should carry out proper assessment after affording additional opportunity to assessee to file reply. ***Johal Carriers Pvt. Ltd. Vs State of Tripura. 2022 (58) GSTL 310 (Tripura)***

Orders of assessment exceeding issues raised in SCN and relying on material not shared with assessee is violative of principles of natural justice. Proper assessment is to be framed afresh. ***OPC Assets Solutions Pvt. Ltd. Vs State of Tripura. 2022 (58) GSTL 279 (Tripura)***

The proper officer' can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. It is completely impermissible to allow an officer, who has 'not' passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorized to make the assessment. ***Canon India Private Limited v. Commissioner of Customs. TS-75-SC-2021-CUST***

Best judgment method adopted by the Department in case of non – filers of GSTR – 3B returns in multiplying monthly SGST tax amount three times and imposing 100% penalty is contrary to provisions of CGST Act, 2017. ***Assistant Commissioner, State Tax Vs. Golden Mesh Industries . 2022 (57) GSTL J64 (SC)***

Ex parte assessment order is violative of principles of natural justice. ***Aamna Parween Vs. State of Bihar. 2021 (51) GSTL 225***

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ISSUANCE OF NOTICE IN FORM GST ASMT-10

The demand cum show cause notice issued by the department was stayed by the Gauhati High Court as the same was without compliance with the conditions precedent in the CGST Act and Rules.
M/s Pepsico India Holding Pvt. Ltd. vs UOI & Ors. 2023-TIOL-1735-HC-GUW-GST

The notice issued in Form GST ASMT-10 has to be issued after the proper officer's authorization. The Andhra Pradesh High Court set aside a notice under section 61 of the CGST Act, 2017 due to lack of authorization by the proper officer.
M/s Sudhakar Traders, Kurnool vs The State of Andhra Pradesh. W.P. No, 6599 and 6601 of 2023.

Upholding the principles of natural justice the Kerala High Court held that a physical copy of the notice is Form GST ASMT-10 is to be issued and the assesse has to be given a right to furnish a reply for the same before a demand is raised.
Vadakkoot Chackoo Devassy vs Assistant State Tax Officer W.P.(C) No. 42265 of 2023.

Department mandatorily required to have pre-show cause notice consultation with assessee. Not being done so, proceedings initiated via impugned show cause notice non est in law.
Back Office IT Solutions Pvt. Ltd. Versus Union of India - 2021 (50) G.S.T.L. 522 (Del.)

Show cause notice cannot issued without issuance of ASMT – 10 under Rule 99 of CGST Rules, 2017.
Hindustan Construction Company Limited v. Union of India & Ors [CWP No. 1827 of 2024 – Himachal Pradesh HC]

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INGREDIENTS OF PROPER SHOW CAUSE NOTICE

Authority cannot confer themselves the jurisdiction which is not vested in them under the law.
M/s. Ram Textiles Ltd., Rampur Vs The Income Tax OfficeR, Rampur reported in AIR 1973 SC 1362, Kiran Gems Private Limited vs Union of India and Ors. (Writ Petition No. 1135 of 2019) passed by the Hon'ble Bombay High Court, Matrix Traders vs. The Deputy Assistant Commissioner & Anr. [TS-224-HC(AP)-2022-GST]

No recovery based on presumption.
Kush Constructions v. CGHST Nacin 2019 (24) GSTL 606 (Tri. – All)

The Show Cause Notice should not be bereft of any material particulars or information.
Vahanvati Steels vs. State of Gujarat [TS-151-HC(GUJ)-2022-GST], Apparent Marketing Pvt Ltd vs. State of U.P. & Ors. [TS-136-HC(ALL)-2022-GST], Dayamay Enterprise vs. State of Tripura and 3 Ors. [TS-77-HC(TRI)-2021-GST], Nirmal Metal v. Union of India - [2024] 159 taxmann.com 39 (Delhi)

No suppression, if demand is based on interpretation of law.
Vinoth Shipping Services v. Commr. of C.EX & ST, Tirunelveli – 2021 (55) GSTL 313 (Tri- Chennai), Commr. Of S.T., New Delhi v. Melange Developers Private Limited - 2020 (33) G.S.T.L. 116 (Tri. - LB), M/s International Air Charter Vs. Commissioner of Central Tax (Appeals - II), Delhi in Service Tax Appeal No. – 52064 of 2018

No suppression if demand is time barred.
The Lalit Ashok vs. CST – 2018-TIOL-3658-Bang, Graphite India Limited 2018-TIOL-1028, CCE vs. Thyssenkrup Industries India Ltd - 2017 (48) STR 81

No demand can be raised merely by comparing STR-3 return with the balance sheet figures.
Jadeja Associates Vs. Commissioner Of Central Excise & Service Tax- (2024) 18 Centax 389 (Tri.-Ahmd)

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DEMAND & RECOVERY

Recovery proceedings cannot be initiated for a period of three months from the date of service of the order in terms of section 78 of the CGST Act. ***Alkem Laboratories Ltd Vs Union of India [2021-TIOL-328-HC-AHM-GST]***

Payment made during investigation can be considered as ascertained tax. ***UoI Vs Bundl Technologies Pvt Ltd [2022-TIOL-333-HC-KAR-GST]***

Just because a search has taken place, it does not ipso facto necessitate provisional attachment of properties. ***Valerius Industries Vs Union of India [2019 SCC OnLine Guj 6866]***

Commissioner cannot pass orders on chemical science without any expert evidence. ***Monopoly Innovations Pvt Ltd Vs Union of India [2021-TIOL-1907-HC-MUM-GST]***

Officers cannot provisionally attach the Cash Credit Account of the assessee. ***Manish Scrap Traders Vs Principal Commissioner [2022-TIOL-54-HC-Ahm GST]***

Mere allegation is not sufficient for imposing sentence under Section 132 of the CGST Act, 2017. ***Krishna Murari Singh vs. Union of India & Ors. [TS-220-HC(BOM)-2021-GST]***

Pre-deposit for appeal under GST is not necessary to be made through cash ledger only. ***M/s. Jyoti Constructions v. Deputy Commissioner of CT and GST [2021-TIOL-2007-HC-ORISSA-GST]***

Bail once granted cannot be cancelled on a request from the side of the investigating agency. ***Central Goods and Service Tax Delhi East Vs Sh. Naval Kumar & Ors. [2021-TIOL-1317-HC-DEL-GST]***

No recovery measures to be undertaken for a period of three months from date of order as per proviso to Section 78 of the CGST Act. ***TVL Cargotec India Pvt Ltd Vs. Assistant Commissioner [2024 (6) TMI 122 – MADRAS HIGH COURT]***

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INTERPRETATION OF SECTION 16 (1)

Interpretation of "Used or Intended to be Used"

- Determining whether the goods or services were indeed used, or intended to be used, in the course of business can be subjective. The Department tends to interpret this differently from the taxpayer, leading to disputes.

Linkage to Section 49

- Section 49 deals with the payment of tax, interest, penalty, and other amounts through the electronic cash ledger. Issues arise when Department denies such ITC on basis of procedural lapse.

Denial of ITC

- The Department rejects ITC claims for various reasons, such as non-compliance with conditions, non-payment of tax by the supplier, or other procedural issues.
- ***Portescape India Private Limited vs. Union of India &Ors., 2021-TIOL-522-HC-MUM-CUS; Mangalore Chemicals and Fertilizers Limited vs. Deputy Commissioner 1991 (55) ELT 437 (SC); State of A.P v. Hyderabad Asbestos Cement Production Ltd. (1994) 5 SCC 100***

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CREDIT MISMATCH OF GSTR 2A AND GSTR 3B

ITC Claim Cannot Be Denied merely Due to GSTR-2A, 3B Mismatch.

Philips Auto Agencies (India) Pvt. Ltd. Vs State Tax Officer - WP(C) No. 9312 of 2024 (Kerala High Court); Star Engineers India Pvt Ltd v. Union of India – 2024-TIOL-03-HC-MUM-GST; Mina Bazar Railway Station Road Vs State Tax Officer 2023 Taxscan (HC) 1405; Heena Medicals v State Tax Officers [WP(C) No. 30660 of 2023]; M/s Sun Dye Chem Vs Asstt Commissioner 2020-TIOL-1858-HC-MAD-GST; M/s. Bharat Aluminium Company Ltd. v. UOI & Ors – 2021-TIOL-1414-HC-Chhatisgarh-GST; M/s Wipro Ltd India V/s. The Assistant Commissioner of Central Tax & Ors. 2023-TIOL-84-HC-KAR-GST; Diya Agencies vs. The State Tax Officer - WP(C) No. 29769 of 2023; Bharti Telemedia Ltd Vs Union Of India & Ors 2023 Taxscan (Hc) 534.

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DENIAL OF CREDIT IF NOT PAID TO GOVT BY DEALER

No automatic reversal of input tax credit from buyer on non-payment of tax by seller.

- ***Suncraft Energy Private Limited V/s. Assistant Commissioner , State Tax –(Calcutta HC)-(MAT-1218-2023) upheld by Hon'ble Supreme Court in SLP No. 27827-27828/2023***

ITC to bona fide purchasers cannot be denied if selling dealer fails to deposit tax.

- ***National Plasto Moulding Vs State of Assam And 3 Ors. - WP(C)/2863/2022 (Gauhati High Court)***

Mechanism needs to be put in place to ensure that the purchaser gets ITC benefits when the GST has been recovered from the supplier.

- ***Pinstar Automotive India Pvt Ltd Vs. Additional Commissioner -2023-TIOL-524-HC-MAD-GST***

Omission on the part of the seller to remit the tax to the government must be viewed very seriously and strict action ought to be initiated against the seller.

- ***DY Beathel Enterprises v. STO, - 2021-TIOL-890-HC-MAD-GST***

S. 9 (2) (g) of DVAT Act cannot be Invoke to Deny ITC to a Bonafide Purchaser.

- ***On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi & Ors - 2017-TIOL-2251-HC-DEL-VAT***

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RC CANCELLED DEALER

ITC cannot be denied to genuine buyer in case GST registration of supplier is cancelled retrospectively.

- ***M/s Gargo Traders vs. Joint Commissioner -2023-TIOL-670-HC-KOL-GST; Tvl. Engineering Tools Corporation vs The Assistant Commissioner (ST) , Chennai [Writ Petition No. 3505 of 2024 And W.M.P. Nos. 3758 & 3759 of 2024]***

ITC cannot be denied on the ground of suo-moto cancellation of Registration Certificate.

- ***M/s LGW Industries Limited & Ors. v. Union of India & Ors., MANU/WB/0923/2021.***

ITC cannot be denied where purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of suppliers.

- ***Sanchita Kundu vs. Assistant Commissioner of State Tax 2022-TIOL-724-HC-KOL-GST***

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FAKE INVOICE/ FAKE REGISTRATION

ITC cannot be denied by a cursory order by simply stating that 'tax payer has claimed ITC using fake invoices, hence ITC is disallowed .

- ***Sanchita Kundu & Anr Vs The Assistant Commissioner Of State Tax - 2022-TIOL-724-HC-KOL-GST***

Refund cannot be denied merely apprehending fake invoice issuance without cogent material.

- ***Balaji Exim Vs. Commissioner, CGST and Ors. –TS-86-HC(DEL)-2023-GST***

Registration can be cancelled only in terms of section 29(2) of the act and not on allegations of being a bogus firm .

- ***Shyam Sundar Sita Ram Traders v. State of U.P. [Writ Tax No. 991 of 2021]***

Circular No. 171/03/2022- GST dated 06.07.2022

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CONSITUTIONAL VALIDITY OF 16(4)

The Hon'ble Madras High Court in the case of ***M/s Tvl. Kavin HP Gas Gramin Vitrak vs. The Commissioner of Commercial Taxes & Ors. (W.P.(MD) No.s 7173 and 7174 of 2023 & W.P.(M.D.) No.s 6764 and 6765 of 2023)*** while allowing the writ challenging an order passed confirming violation of section 16(4) of the CGST Act, the Hon'ble Bench of the Madras High Court has remanded the ITC claim of the assessee owning to cash crunch that led the assessee to file GSTR 3B and GSTR 2 belatedly, and the claim of ITC of the Petitioner was rejected on ground of the same being filed belatedly.

The Hon'ble Calcutta High Court had issued notice to the respondent in the case of ***Rainbow Infrastructure Pvt. Ltd. vs. Assistant Commissioner, State Tax (W.P.A. No. 7159 of 2020)*** wherein the Writ Petition was filed challenging the provision under section 16(4) of the CGST Act.

The most significant development in the context of this debated controversy is the recent step in which the Hon'ble Supreme Court of India in ***Shanti Motors vs. Union of India & Ors. (SLP (Civil) Diary No. 4474/2024)*** has issued notice to the revenue authorities in the special leave petition and the interim relief sought for by the petitioners. This SLP has been filed challenging the constitutional validity of section 16(4) of the CGST Act.

In order to resolve High Court petitions and reduce litigation, with the validity of Section 16(4) pending before the Supreme Court, Section 16 (5) has been inserted vide Finance Act, 2017 allowing registered persons to claim ITC for invoices or debit notes from the FY 2017-18 to 2020-21 in any return filed by 30.11.2021. ***However, issue remains what happens to the period post FY 2020-21?***

The Hon'ble Delhi High Court in the case of ***HCC Samsung Joint Venture vs. Union of India and Ors.- WP (C) No. 9737/2024***, has remanded the matter back to the Adjudicating Authority in light of insertion of Section 16(5).

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