

Part-5- Snapshot to the Cases on Cross Empowerment and Issuance of Summons/SCN for same subject by different authorities/same authority for same year/different years

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S. No.	Case Subject	Case	Held	Favour	Cases Referred
Subject-Summon issued on same subject by Centre and State Authority					
1.	Summon Issued on same subject matter by Central and State Authority	Tvl. Al-Madhina Steel Traders v. Superintendent/Intelligence Officer (ECM) [2023] 148 taxmann.com 86 (Madras) Dated 07-02-2023	It was alleged that Central Authority has <u>issued summon on the same subject matter</u> on which summon has already been issued by the State Authority, which is impermissible under law as per the provisions of section 6(2)(b) of the GST Act 2017. The High Court directed the Central Authority to consider the reply submitted by the petitioner and in case it is decided that the subject matter is one and the same, they will have to necessarily drop the proposed initiation of proceedings against the petitioner as per the provisions of section 6(2)(b) of the GST Act 2017.	In Favour of Petitioner	-
Subject-Simultaneous Proceedings by State and Central Authority					
2.	Summon issued by State Authority and by DGGSTI	Kuppan Gounder P.G. Natarajan v. Directorate General of GST Intelligence [2022] 143 taxmann.com 289 (Madras) Dated-01-09-2021	<u>State authority had conducted the search and seizure operations and summons had been issued</u> , order of provisional attachment had been passed and in such situation it was alleged by the petitioner that <u>Directorate General of GST Intelligence cannot initiate any action and issue summons under section 70 of the CGST Act</u> and the summons is barred as per the provisions of Section 6(2)(b) of the CGST Act. It was held that the scope of section 6(2)(b) and section 70 is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, section 70 deals with power to summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondent to invoke the power under section 70 of the CGST Act.	In Favour of Respondent	-G.K. Trading Co. v. Union of India [2021] 126 taxmann.com 211/51 GSTL 288 (All.) -RCI Industries and Technologies Ltd. v. Commissioners DGST Delhi [2021] 123 taxmann.com 342/84 GST 636/46 GSTL 123 (Delhi). -Dadhichi Iron and Steel (P.) Ltd. v. Chhattisgarh GST [2020] 116 taxmann.com 334/80 GST 167/35 GSTL 4 (Chhattisgarh)
3.	Summon issued by State	G.K. Trading Co. v. Union of India [2021] 126	It was contended by the petitioner that once <u>Deputy Commissioner (SIB), Ghaziabad, has conducted a survey of the business premises of the petitioner on 30-5-2018 and</u>	In Favour of Respondent	

	Authority and by DGGSTI	taxmann.com 211/51 GSTL 288 (All.) Dated-02-12-2020	<p><i>is investigating</i> in the matter pursuant to the aforesaid survey, no <i>inquiry can be initiated or summon can be issued by the DGGSTI Meerut Zonal Unit, Meerut under section 70 of the C.G.S.T. Act</i> against the petitioner even if basis of material of inquiry/investigation by them may be different. In other words, the State Authority may investigate/inquire in all the matters pertaining to the business of the petitioner and, therefore, the summons in the matter of inquiry issued by the Central Authority is barred by the provisions of section 6(2)(b) of the C.G.S.T. Act.</p> <p>It was held by the High Court that the word "proceedings" used in Section 6(2)(b) is qualified by the words "subject-matter" which indicate an adjudication process/proceedings on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties etc. It was further pointed out that these proceedings are subsequent to inquiry under section 70 of the CGST Act and the words "in any inquiry" are referable to the provisions under Chapter XIV viz., sections 67, 68, 69, 71 and 72. Thus, it was held that the proper officer may invoke power under section 70 in any inquiry and the prohibition under section 6(2)(b) shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under section 6(2)(b) of the CGST Act. Thus, the key words occurring in both the provisions viz., "in any inquiry" and "proceedings on the same-subject matter" indicate the crucial difference between these two provisions.</p>		
4..	Summon issued by State Authorities stayed pending the proceedings before Central Authorities	Raj Metal Industries v. Union of India [2021] 127 taxmann.com 546 (Calcutta) Dated-24-03-2021	The High Court stayed the <i>proceedings initiated by summons issued on October 19, 2020 by the State GST</i> which prima facie, in the opinion of the High Court were in violation of Section 6(2)(b) of the WBGST Act <i>since the proceedings were pending before the Central GST Authorities.</i>	In Favour of Petitioner	-Liberty Oil Mills v. Union of India [1984] 3 SCC 465 -Ballabh Das v. Dr. Madanlal [1970] 1 SCC 761
5.	Show Cause Notice issued by State Authority for Illegal availment of ITC and subsequent commencement of proceedings	Dadhichi Iron and Steel (P.) Ltd. v. Chhattisgarh GST [2020] 116 taxmann.com 334 (Chhattisgarh) Dated 25-02-2020	<p>It was alleged that once <i>a show cause notice proceeding have been initiated and are pending before the concerned authorities under the SGST</i>, then <i>DGGSTI could not have issued or initiated another investigation or proceeding in-respect of the same subject matter</i>, which otherwise is not permissible under the provisions of Section 6(2)(1)(b).</p> <p>The High Court held that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the petitioner, whereas</p>	In Favour of Respondent	

	by DGGSTI on same matter		subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was revealed that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs. 60 crores and with further investigation the amount is likely to increase manifold. The High Court thus did not find any substance in the arguments of the petitioner, when petitioner contended that the investigation and the proceedings now initiated is one, which hit by section 6(2)(1)(b) of the CGST Act of 2017.		
6.	SCN issued by DGGSTI and investigation commenced by State Authority	RCI Industries and Technologies Ltd. v. Commissioner DGST, Delhi [2021] 123 taxmann.com 342 (Delhi) Dated-07-01-2021	<p>The Primary ground of contention by the Petitioner was of parallel investigation and the contention is borne out of the notice dated 30th September, 2020, whereby the documents for the period of 2017-18 to 2020-21 were requisitioned by State GST Authority. It was contended by the Petitioner that <u>since DGGI has issued a show-cause notice under section 74 of the CGST Act, for the years 2017-18 and 2018-19, then by virtue of Section 6 of CGST Act, State GST authorities cannot carry out the investigation for the said period.</u></p> <p>The High Court observed that the request in the notice dated 30th September, 2020 cannot <i>ipso facto</i> lead to the conclusion that there is a parallel investigation for the same period by both the Central and State Authorities. The High Court also observed that in the event the notice issued by the State authorities pertains to a period which is covered by the investigation carried out by the Central GST authorities, the Petitioner can take recourse to the appropriate remedies in that regard.</p> <p>The High Court held that if an officer of the Central GST initiates intelligence- based enforcement action against a taxpayer administratively assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion. The revenue would be bound by Letter Dated 5-10-2018 and letter issued by the Central Board of Indirect Taxes and Customs being No. CBEC-20/10/07/2019-GST dated 22th June, 2020 and high court reiterated that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to impugn the same in accordance with law.</p>	In Favour of Respondent	
7.	Simultaneous Proceedings by State and Central Authorities	Sonam Berlia v. State of Odisha MANU/OR/0306/2021 Dated 23-03-2021	Petitioner's business premises was impounded by the DGGSTI and a search was undertaken thereof. <u>During the course of search records, documents were seized and summons were issued under Section 70 of the CGST Act on various dates by DGGSTI.</u> Thereafter, <u>show cause notice was issued by the Additional CT and GST</u>	In Favour of Petitioner	

			<p><u>Officer, Sambalpur- I Circle (SGST) wherein Petitioner was asked to pay OGST, CGST, interest, penalty to the tune of Rs.3,78,68,262.08 on ITC wrongly availed.</u> The petitioner submitted that since the Senior Intelligence Officer of the DGGSTI, Bhubaneswar has seized all the documents and issued summons pursuant to which the Petitioner was appearing there from time to time, the proceedings initiated by State GST should be kept in abeyance till such time of proceedings before the DGGSTI concluded. Despite the above request, State GST Officer proceeded to pass an order under Section 74 of the OGST Act requiring the Petitioner to pay a sum of Rs.3,74,74,953.98 towards OGST, CGST, interest, penalty. The State Authorities in their reply did not dispute the circular dated 5th October, 2018 but claim not to have known that the Central tax authority was seized of the matter.</p> <p>The High Court observed that period of enquiry as far as Central tax authority is concerned is from July, 2017 to September, 2018 whereas State Authority has issued a show cause notice specific for April, 2018 and, therefore, there is also an overlapping of the periods. Therefore, the High Court quashed the show cause notice and the impugned order issued by the State Authority and directed that till the conclusion of the proceedings initiated against the Petitioner by the DGGSTI, no coercive action be taken against the Petitioner by State GST Authority.</p>		
Subject-Concurrent Proceedings for Audit, Investigation and Jurisdictional Officer					
8.	Concurrent Proceedings of investigation and Audit	<p>Om Sakthi Construction v. Assistant Commissioner [2023] 147 taxmann.com 434 (Madras)</p> <p>Dated-06-01-2023</p>	<p>In the present matter, <u>Inspection and seizure of documents was on 16-3-2020</u>, the first <u>impugned notice under Section 65 is dated 30-8-2022</u>, 'show cause notice' based on inspection was issued on dated 18-10-2022, reply to the SCN is dated 22-11-2022, second and third impugned notices are dated 23-11-2022 and 27-12-2022.</p> <p>The High Court held that here is nothing to demonstrate that when the audit under section 65 has been kick started by way of a notice, thereafter show cause notice under section 74 is impermissible.</p>	In Favour of Respondent	<p>-R.P. Buildcon (P.) Ltd. v. Superintendent, CGST & C.Ex. [2022] 144 taxmann.com 108/[2023] (Cal.)</p> <p>-Sonam Berlia v. State of Odisha MANU/OR/0306/2021</p>
9.	Simultaneous Existence of Audit and Summons	<p>Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence (DGGI) [2020] 120 taxmann.com 173 (Kerala)</p> <p>Dated-14-08-2020</p>	<p>GST Authorities initiated the search and seizure proceedings against Managing Director and Director of Media Company. <u>Pursuant to such proceedings summons u/s 70 were issued.</u> Thereafter, <u>notice for audit under section 65 of CGST Act was also issued.</u> Various documents were seized vide Order of Seizure dated 09.06.2020. The petitioner prayed for relief from such enquiry proceedings.</p> <p>Petition was dismissed by holding that auditing of books as well as order of seizure of documents would help the department in co-relating the entries in the documents and at the time of auditing of the account. The procedure for further actions is contained in Chapter 15 of CGST Act. Therefore, it would be too premature to comment upon the act of the</p>	In Favour of Respondent	

			<p>respondents and cannot be said to be against the provisions of the statute or misuse, warranting interference under Article 226 of the Constitution of India.</p> <p>SLP Filed before Supreme Court in the matter has been dismissed. Suresh Kumar P. P. v. Deputy Director, Directorate General Of GST Intelligence (DGGI) [2021] 125 taxmann.com 61 (SC)</p>		
10.	<p>Proceedings initiated by Audit, Investigation and Jurisdictional Officer simultaneously for same years</p>	<p>R. P. Buildcon (P.) Ltd. v. Superintendent, CGST & Central Excise [2022] 144 taxmann.com 108 (Calcutta)</p> <p>Dated 30-09-2022</p>	<p>In the present matter, <u>three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020.</u> The first of the department which had taken action was the Audit Commissionerate, which had issued notice under section 65 of the CGST Act, 2017 dated 9th November, 2021. It is submitted that the appellants had furnished the details as called for in the said notice and also responded to the intimation dated 5th January, 2022/6th January, 2022 for conducting GST audit. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices for the very same period for which audit proceedings under section 65 of the Act has already commenced. Revenue in its reply stated that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same.</p> <p>The High Court observed that it is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period. Thus, it held that since the audit proceedings under section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.</p>	In Favour of Petitioner	
Subject-Transfer of Multiple Proceedings having common thread under one umbrella					
11.	<p>Transfer of Proceedings having common link initiated by Multiple Authorities to one single authority</p>	<p>Indo International Tobacco Ltd. v. Vivek Prasad, Additional Director General (DGGI) [2022] 134 taxmann.com 157 (Delhi)</p> <p>Dated-11-01-2022</p>	<p>The investigations were initiated by various jurisdictional authorities against different entities. As contended by the respondents, as common <u>thread were allegedly found in these investigations, the same have been transferred to DGGI, AZU to be brought under one umbrella.</u> We also find that in the CGST Act there is no prohibition to such transfer. Section 6(2)(b) of the CGST Act has limited application and therefore, is not applicable to the facts of the present petitions. Similarly, the Circular dated 5-10-2018 also has no application to the facts of the present petitions.</p>	In Favour of Respondent	<p>Bhawani Textiles v Additional Director General 2020 (35) G.S.T.L. 36</p> <p>Sureshbhai Gadhecha v. State of Gujarat [2020] 114 taxmann.com 478/79 GST 33.</p>

Subject-Show Cause Notice issued on same subject by State and Central Authority

12.	Show Cause Notice issued on same subject matter by Central and State Authority	[2023] 148 taxmann.com 83 (Madras) VGN Projects Estates (P.) Ltd. v. Assistant Commissioner (State Taxes) Dated-30-01-2023	<p>It was alleged that a <i>similar show cause notice has already been issued</i> by the Central Authority under CGST Act, 2017 on 29-7-2022 against the petitioner, involving the very same defects. It was submitted by the authority that a detailed reply has not been sent by the petitioner to the impugned show cause notice and for the similar defects for which notice has been issued by the Central Authority, such defects will be omitted and action shall be initiated in respect of the balance defects alone.</p> <p>The High Court disposed of the petition stating that the limited relief that can be granted to the petitioner is to permit them to file a detailed reply to the impugned show cause notice, stating all their objections that have been raised in this Writ Petition including the objection with regard to section 6(2)(b) of the TNGST Act, 2017 and on receipt of the said reply, a direction can be issued to the respondents to consider the said reply on merits and in accordance with law within a time frame to be fixed by this Court.</p>	In Favour of Petitioner	
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