

# EY Tax Alert

Delhi HC allows consolidation of GST proceedings initiated by different authorities

## Executive summary

This Tax Alert summarizes a recent judgement of the Delhi High Court (HC)<sup>1</sup> upholding the legality of consolidation of proceedings in case where two authorities concurrently initiate investigations.

The issue in the present case was whether the investigation initiated by Jurisdictional Commissionerate can be transferred to Directorate General of Goods and Services Tax Intelligence (DGGI), where the latter had also commenced investigation on a different subject matter but had certain issues in common.

The key observations of the HC are:

- ▶ It is undisputable that both the authorities possess necessary jurisdiction to conduct investigations.
- ▶ The object of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act) is to ensure that cross empowerment of officers of central and state tax do not result in the taxpayer being subjected to parallel proceedings.
- ▶ Neither the above provision, nor does the Circular dated 5 October 2018<sup>2</sup> proscribe the transfer of investigations or proceedings merely because the authority that commences the investigation is also empowered to see it through various stages.
- ▶ In a case where investigations are commenced separately by two authorities and coincides at some stage, it cannot be implied that two authorities cannot consolidate the same.
- ▶ If the said provision is read in a restrictive manner, DGGI and Jurisdictional Commissionerate will still be able to pursue their investigations independently.

Accordingly, HC dismissed the writ petition filed by assessee.

<sup>1</sup> TS-530-HC(DEL)-2023-GST

<sup>2</sup> F. No. CBEC/20/43/01/2017

## Background

- ▶ Assessee in the present case has two sole proprietorship concerns which are registered separately under the Central Goods and Services Tax Act, 2017 (CGST Act). One concern is engaged in the business of trading of commercial urea whereas the other deals in agricultural urea, pesticides and seeds.
- ▶ Initially, investigations for the relevant period were commenced by CGST Commissionerate of Delhi (Jurisdictional Commissionerate) regarding availment of ineligible input tax credit (ITC) from non-existent firms.
- ▶ Thereafter, Directorate General of GST Intelligence (DGII) initiated investigation relating to diversion of agricultural grade urea and its sale as technical grade urea, while also reflecting purchase of the same on the basis of fake invoices.
- ▶ Assessee made representations to inform DGII regarding proceedings commenced by Jurisdictional Commissionerate and to refrain from any further action as parallel proceedings were impermissible.
- ▶ Investigation conducted by Jurisdictional Commissionerate were instructed to be transferred to DGII and its officers would continue the investigation from the same stage.
- ▶ Agreed by the same, assessee filed a writ petition before the Delhi HC on the issue of whether DGII is precluded from conducting any investigations on account of summons issued by Jurisdictional Commissionerate.

## Assessee's contentions

- ▶ DGII and its officers cannot proceed with the investigation initiated by Jurisdictional Commissionerate in view of Section 6(2)(b) of the CGST Act.

As per the above provision, where a proper officer under the State GST Act has initiated any proceedings on a matter, no proceedings can be initiated by the proper officer under the CGST Act on the same subject matter.

- ▶ Even as per Circular dated 5 October 2018<sup>3</sup>, it is not permissible to transfer the investigation by one authority to other.
- ▶ Moreover, there is no express provision under the CGST Act for affecting any such transfer.

## Revenue's contentions

- ▶ The investigations conducted by Jurisdictional Commissionerate and DGII are separate investigations gathered with their respective intelligence.
- ▶ There is no bar to conduct said investigations as the substratum of their respective investigations are not identical.
- ▶ The Jurisdictional Commissionerate agreed for the transfer of investigation which would be continued by DGII.
- ▶ No dispute is expressed either by the Jurisdictional Commissionerate or the DGII in relation to the investigation to be conducted by a singular agency.

## HC ruling

- ▶ There is no dispute that officers of both the authorities possess necessary jurisdiction to conduct the investigations.
- ▶ The object of Section 6(2)(b) of the CGST Act is to ensure that cross empowerment of officers of central and state tax do not result in the taxpayer being subjected to parallel proceedings.

It cannot be said that the said provision proscribes the transfer of investigations or proceedings.
- ▶ The Circular relied by the assessee clarifies that the officers of both, central and state tax authorities, are authorized to initiate intelligence-based enforcement action on the entire taxpayers' base, notwithstanding the administrative assignment of such taxpayers to any authority.

It further clarifies that the officers of the central or the state tax are not disabled from continuing the intelligence-based enforcement action initiated by them for completing the entire process.
- ▶ The said Circular also does not proscribe the transfer of investigations or proceedings among proper officers who otherwise have the jurisdiction to conduct those proceedings.
- ▶ The same cannot be read in the negative as prohibiting transfer of investigations or consolidation of investigations with one authority, merely because the authority that commences the investigation is also empowered to see it through various stages.
- ▶ In a case where investigations are commenced separately by two authorities and coincides at some stage, it cannot be implied that two authorities cannot consolidate the same.
- ▶ In the present case, the focus of DGII's investigation is somewhat different from the one being

<sup>3</sup> F. No. CBEC/20/43/01/2017

commenced by Jurisdictional Commissionerate. However, the issue regarding availment of ITC is common for both the authorities.

- Hence, it cannot be accepted that the provisions of Section 6(2)(b) of the Act can be interpreted to proscribe consolidation of investigation or proceedings under a single authority, where warranted.
- If the said provision is read in a restrictive manner, DGFI and Jurisdictional Commissionerate will still be able to pursue their investigations independently.
- At the outset, the assessee's grievance was in respect of conduct of parallel proceedings. The same perished with the handover of the investigation given by Jurisdictional Commissionerate to DGFI.
- Hence, DGFI can continue the investigation from the stage, as obtained from the Jurisdictional Commissionerate.

## Comments

- a. Earlier, Calcutta HC had held that parallel proceedings cannot be initiated or conducted simultaneously by the different wings of the same department for the same period and on the same subject matter against the assessee [2022-TIOL-1305-HC-KOL-GST].
- b. While the provisions referred in the judgement pertained to cross empowerment of the officers of the State and Central tax authorities, in the present case both the authorities involved were under the Central Government.

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