By Adv (CA) (Dr) Arpit Haldia

(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

Section 5. Powers of officers under GST.-

(1) 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.

(2) 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.

(3) 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.

(4) 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.

What is a Jurisdictional Fact

What is a Jurisdictional Fact

'Jurisdiction' means authority to decide. Therefore, the fact or facts upon which the jurisdiction of a court, a tribunal or an authority depends can be said to be a "jurisdictional fact". If the jurisdictional fact exists, a court, tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, tribunal or authority cannot act.

The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a court or tribunal. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide adjudicatory facts or facts in issue.

Can a matter in absence of Jurisdictional fact be remanded-*When an order passed by the authority is bad in law, it has to be quashed. The order may be set aside either for non-adherence to procedural formalities or on account of the absence of the jurisdictional facts. Executive orders are often set aside on the ground of violation of principles of natural justice. The statute would provide for issuance of notice. But without issuing such notice, an adverse order would be passed. When such orders are set aside, the writ court has to remand the matter. The authority has to be given liberty to proceed afresh*. But *when jurisdictional facts are absent, the order has to be set aside and the court will have to stop at that. The presence of the jurisdictional fact alone confers power on the authority to initiate action and proceed in the matter. Their absence would completely undermine the very foundation itself. In such cases, the question of making a remand does not arise at all. An order of remand cannot be made mechanically. When the issue goes to the root of the matter touching on the jurisdictional aspect and the issue is answered in favour of the assessee, the writ court will not be justified in remanding the matter.* Neeyamo Enterprise Solutions (P.) Ltd. vs. Commercial Tax Officer [2025] 180 taxmann.com 480 (Madras)/[2025] 103 GSTL 352 (Madras)/[2026] 113 GST 137 (Madras)[11-11-2025]

Absence of Jurisdictional Fact

A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not posses.-Arun Kumar & Others vs Union Of India & Ors on 15 September, 2006 AIRONLINE 2006 SC 636

Absence of Jurisdictional Fact

Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not posses.-Carona Ltd vs M/S Parvathy Swaminathan & Sons on 5 October, 2007 2007 AIR SCW 6546

The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues.-MRF Mazdoor Sangh v. The Commissioner of Labour & Others, reported in 2014 (3) ALT 265, MANU/AP/1685/2013

Summary of Judgements on absence of Jurisdictional Fact

-The fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'.

-If the jurisdictional fact does not exist, the court, authority or officer cannot act.

-Thus, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.

-No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it

-No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly

Examples of Jurisdictional Fact

-The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact-TW Signode India Ltd. v. CCE 2003 taxmann.com 382 /2003 (158) E.L.T. 403 (SC)

-Vesting itself with power under Section 74 is a question of jurisdictional fact- NCS Pearson Inc. vs. Union of India [2025] 178 taxmann.com 452 (Karnataka)[16-07-2025]

Existence of a jurisdictional fact is essential for the respondents to assume jurisdiction and consequently invoke Section 73/74 of the CGST/KGST Act and in the absence of existence of such jurisdictional fact, the very invocation/assumption of jurisdiction for the purpose of issuing a show cause notice under Section 73/74 would be illegal and arbitrary-Pramur Homes and Shelters vs. Union of India [2025] 181 taxmann.com 541 (Karnataka)[11-12-2025]

In terms of Section 74 of the Act, fraud, wilful misstatement or suppression of facts to evade tax would constitute the "jurisdictional fact" for invoking extended period of limitation and failure to record the existence of the above jurisdictional fact while invoking the extended period under section 74 of the Act, would vitiate the entire proceedings-Neeyamo Enterprise Solutions (P.) Ltd. vs. Commercial Tax Officer [2025] 180 taxmann.com 480 (Madras) [11-11-2025] relying upon CCE v. H.M.M. Ltd. 1995 Supp (3) SCC 322, CCE v. Pepsi Foods Ltd. [2011] 30 STT 284 (SC)/(2011) 1 SCC 601

-Glance at provisions contained in Section 63 would reveal that the Assessing Authority is vested with power to invoke jurisdiction under section 63 inter alia in the event "taxable person fails to obtain registration even though liable to do so". Evidence available on record is silent about existence of such jurisdictional fact-Arupa Nanda Dhal vs. Additional Commissioner of State Tax (Appeal) [2024] 159 taxmann.com 684 (Orissa)[29-01-2024]

Examples of Jurisdictional Fact

In the instant case, it appears that the assessee has filed the return for the month of May, 2019 on 10-12-2019 at 11.30 a.m. through online. Since the assessee had indeed filed return for the month of May, 2019 on 10-12-2019, it goes beyond any doubt that as on the date of issuance of order dated 10-12-2019, the assessee had only five months' continuous default and not the mandatory six months' continuous default, which is the essential jurisdictional fact required for invoking the power of cancellation of the registration under section 29(2)(*c*)-Phoenix Rubbers vs. Commercial Tax Officer, 1st Circle, Palakkod [2020] 115 taxmann.com 182 (Kerala)/[2020] 35 GSTL 8 (Kerala)[03-02-2020]

It is also well settled that if any jurisdiction is conferred upon an authority to do certain acts or to exercise certain powers, such jurisdiction is to be exercised by the said authority within its limit as conferred. A "jurisdictional fact" is a fact which must exist before such an Authority assumes jurisdiction over a particular matter. In the present case the jurisdictional fact to investigate by BIEO must relate to the offences as enumerated in the Schedule-II of the Notification. If the jurisdictional fact does not exist, the BIEO authority cannot act. If an authority wrongly assumes the existence of such a fact and acts, such action can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess. Such jurisdictional facts are absent in the admitted background and pleading by the respondent that the seizure was carried out suspected to be stolen/smuggled goods.-Kumar Traders and Company vs. State of Assam [2024] 163 taxmann.com 360 (Gauhati)[21-03-2024]

The GST has been demanded based on the income recorded in the financial statements, however the activity has to qualify supply to be made liable to GST. The amounts that are chargeable to tax arise on account of supply of goods or services or both and in the absence of this, the show cause notice would be bad on jurisdictional facts. We rely on the decision of the Supreme Court in *Girdhari Lal Nannelal* v. *CST* [1977] 109 ITR 726 (SC)/[1976] 3 SCC 701 (Para 7), *Haleema Zubair* v. *State of Kerala* [2009] 13 STR 113 (SC) (Para 22) and *P.C. Ittymathew and Sons* v. *Dy. CST (Law)* 2001 taxmann.com 2290 (SC) [2000] 9 SCC 318 in support of our observations. For the reasons aforementioned we are of the opinion that the activities of the petitioner University not being commercial in nature, are not amenable to GST. In our considered view, there is a complete absence of jurisdictional facts to issue the impugned show cause notice-Goa University vs. Joint Commissioner of Central Goods and Service Tax [2025] 173 taxmann.com 562 (Bombay) [15-04-2025]

Examples of Jurisdictional Fact

Section 83-Existence of jurisdictional fact is sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction and if the impugned order does not discloses application of mind by the respondent to the existence of jurisdictional fact much less existence of the above jurisdictional fact, it vitiates the proceedings. Kesar Jewellers vs. Additional Director General [2025] 172 taxmann.com 129 (Madras)[07-02-2025]

The court relied upon following judgements-

a) “What, then, is an error in respect of jurisdictional fact-A jurisdictional fact is one on existence or nonexistence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad." Shrisht Dhawan (Smt) v. Shaw Bros., reported in (1992) 1 SCC 534

b) “A 'jurisdictional fact' is a fact which must exist before a court, Tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or nonexistence of which depends jurisdiction of a court, a Tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess. Arun Kumar v. Union of India, reported in (2007) 1 SCC 732

c) 'Where the jurisdiction of a Tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue.-Halsbury's Laws of England

Proper Officer for Levy of Penalty Under Section 122 and 125

No Reference to Proper Officer in Section 122 unlike Section 123 or 127

Section 122-(1) Where a taxable person who-

Section 123-If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, *the proper officer may direct*

Section 124-If any person required to furnish any information or return under section 151,-

Section 125-Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Section 127-*Where the proper officer is of the view Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 1[or section 74A] or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.*

Rule 142. Notice and order for demand of amounts payable under the Act. - (1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 10[or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01 ,

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

- On a bare reading Section 122 and 125, it is obvious that unlike Section 123 and 129, there is no mention of proper officer to levy penalty and these sections only mention penalty amount for the offences.

- It is only Rule 142(1) which refers to the proper officer and provides that he shall serve, along with the notice issued section 122 or section 125, a summary thereof electronically in FORM GST DRC-01.

- Reference when made to Circular No. 3/3/2017-GST, Dated 05-07-2017 also does not throw any light as there is no mention of Section 122 in that Circular.

- The first is reference to Section 127 wherein Assistant or Deputy Commissioner Tax is considered as the proper officer. Can it be considered that reference to Section 127 covers Section 122 and 125 as well. This cannot be a case, because when we refer Rule 142(1), it contains reference to Section 122, Section 125 and Section 127 separately. Therefore all these sections shall be construed separately.

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

- Also, one more interesting aspect which further makes the matter murkier, is that Circular No. 3/3/2017-GST Dated 05-07-2017 makes Superintendent of Central Tax as the proper officer for Sub-rule (1), (2), (3) and (7) of Rule 142. Now Rule 142(1) provides for issuance of notice under section 52 or section 73 or section 74 or section 74A or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 but then interestingly there is a separate authorisation for Section 73, 74, 76, 123, 127, 129 and 130 in Circular No. 3/3/2017-GST Dated 05-07-2017.

a) Since 122 and 125 does not make any reference to the proper officer unlike other sections, therefore whoever officer is seized of any of the proceedings under the Statute, he can levy penalty under Section 122 and 125 in those proceedings on being satisfied that offence leviable to penalty under those sections has been committed and interestingly, there is no monetary prescribed for this unlike for Section 73 and 74, or
b) We have to draw analogy from reference of Section 127 in Circular No 3/3/2017 Dated 05-07-2017 or
c) We have to draw analogy from reference to Rule 142(1) of CGST Rules in Circular No 3/3/2017 Dated 05-07-2017 or
d) What would be the impact of no. 254 Dated 27.10.2025.

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

		vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65 [1] [***] vii. Sub-sections (2), (3), (6) and (8) of Section 76 viii. Sub-section (1) of Section 79 ix. Section 123 x Section 127 ix. Section 123 x. Section 127 xi. Sub-section (3) of Section 129 xii. Sub- sections (6) and (7) of Section 130 xiii. Sub- section (1) of Section 142 xiv. Sub-rule (2) of Rule 82 xv. Sub-rule (4) of Rule 86

		xvi. Explanation to Rule 86 xvii. Sub-rule (11) of Rule 87 xviii. Explanation 2 to Rule 87 xix. Sub-rules (2) and (3) of Rule 90 xx. Sub-rules (2) and (3) of Rule 91 xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92 xxii. Explanation to Rule 93 xxiii. Rule 94 xxiv. Sub-rule (6) of Rule 96 xxv. Sub-rule (2) of Rule 97 xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98 xxvii. Sub-rule (2) of Rule 100 xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101 xxix. Rule 143 xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144 xxxi. Sub-rules (1) and (2) of Rule 145 xxxii. Rule 146 xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147 xxxiv. Sub-rules(1),(2) and (3) of Rule 151 xxxv. Rule 152 xxxvi. Rule 153 xxxvii. Rule 155 xxxviii. Rule 156

Who is the Proper officer for levy of Penalty U/Sec 122-Circular no. 254 Dated 27.10.2025

Table-I

S. No.	*Designation of the officer*	*Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder*
(1)	(2)	(3)
1.	a. Additional or Joint Commissioner of Central Tax, b. Deputy or Assistant Commissioner of Central Tax, c. Superintendent of Central Tax	i. Sub-sections (1), (2), (3), (6), (7), (8), (9) and (10) of Section 74 A. ii. Section 122. iii. Rule 142(1A) of the CGST Rules, 2017.

What if there is no limitation in the Statute for taking an action-Can it be taken for an indefinite period

There has been much talk that whether under the provisions of Section 122 of CGST Act, 2017 read with Section 127 of CGST Act, 2017 and Rule 142(1) of CGST Rules, 2017, is there any time limit applicable for taking the Action.

Lets consider for the sake of making argument, that there is none, then in such cases what would be the time limit.

A similar proposition came before the Apex Court in the matter of State of Jharkhand v. Shivam Coke Industries [2011] 10 taxmann.com 561 (SC) wherein under the concerned statute, there was no period of limitation prescribed for initiation of suo motu revisional proceeding by the Joint Commissioner. The question was whether the action of Joint Commissioner of Commercial Taxes was valid wherein exercising the power vested on him under Section 46(4) of the Bihar Finance Act, 1981, which power in most cases concerning the appeals was exercised by him within a period of three years but in some other cases beyond the expiry of three years period, but soon thereafter. The Court observed as follows-

If the legislature intended to provide for any period of limitation or intended to apply the said provision of Article 137 into Section 46(4), the legislature would have specifically said so in the Act itself. Therefore, the High Court wrongly read application of Section 137 of the Limitation Act to Section 46(4) of the BFT Act.

The court however agreed with the position that such a power cannot be exercised by the revisional authority indefinitely.

The court then referred to various decision on the issue[1], and held that it is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

Thus, it was concluded that the power exercised within about three years or soon after the expiry of three years cannot be said to be unreasonable by any stretch of imagination. Three years period cannot be said to be a very long period and thus the power was exercised within a reasonable period of time.

Conclusion-Reference is to be made to nature of statute, rights and liabilities thereunder and other relevant factors and also to the concluding lines of the court “three years period cannot be said to be a very long period”.

So what would be a very along period for GST for Section 122, if at all, there is no period for initiating action..5 Years or much longer..[1] Sulochana Chandrakant Galande v. Pune Municipal Transport and Others (2010) 8 SCC 467, Govt. of India v. Citedal Fine Pharmaceuticals, Madras (1989) 3 SCC 483, State of Punjab Sc Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd. (2007) 11 SCC 363

Proper Officer for issue of Draft Audit Report

Who is the Proper officer to issue Draft Audit Report

- Rule 101(4) of the CGST Rules, 2017 provides that the **the proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.**

		vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54
		ii. Sub-sections (1), (2) and (3) of Section 60
		iii. Section 63
		iv. Sub-section (1) of Section 64
		v. Sub-section (6) of Section 65
		[1] [***]
		vii. Sub-sections (2), (3), (6) and (8) of Section 76
		viii. Sub-section (1) of Section 79 ix. Section 123 x Section 127
		ix. Section 123
		x. Section 127
		xi. Sub-section (3) of Section 129
		xii. Sub- sections (6) and (7) of Section 130
		xiii. Sub- section (1) of Section 142
		xiv. Sub-rule (2) of Rule 82
		xv. Sub-rule (4) of Rule 86
		xvi. Explanation to Rule 86
		xvii. Sub-rule (11) of Rule 87
		xviii. Explanation 2 to Rule 87
		xix. Sub-rules (2) and (3) of Rule 90
		xx. Sub-rules (2) and (3) of Rule 91
		xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92
		xxii. Explanation to Rule 93
		xxiii. Rule 94
		xxiv. Sub-rule (6) of Rule 96
		xxv. Sub-rule (2) of Rule 97
		xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98
		xxvii. Sub-rule (2) of Rule 100
		xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101
		xxix. Rule 143
		xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144
		xxxi. Sub-rules (1) and (2) of Rule 145
		xxxii. Rule 146
		xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147
		xxxiv. Sub-rules(1),(2) and (3) of Rule 151
		xxxv. Rule 152
		xxxvi. Rule 153
		xxxvii. Rule 155
		xxxviii. Rule 156

Proper Officer for Determination of Tax in case a person is ineligible for composition scheme

Who is the Proper officer to decide ineligibility of composition scheme and determination of liability

Withdrawal from Composition Scheme- Rule 6(4)-Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.

Rule 6(5)-Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

Proceedings for Determination of Tax in case a taxpayer is ineligible for Composition Scheme-Section 10(5)-If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) 11 or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 14[or section 74A] shall, mutatis mutandis , apply for determination of tax and penalty.

+ Follow

SECTION 3, READ WITH SECTION 2(91), OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND SECTION 20 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017- OFFICERS UNDER THIS ACT - NOTIFIED PROPER OFFICER - PROPER OFFICER FOR PROVISIONS RELATING TO REGISTRATION AND COMPOSITION LEVY UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 OR THE RULES MADE THEREUNDER

CIRCULAR NO. 1/1/2017, DATED 26-6-2017
[AS AMENDED BY CIRCULAR NO. 223/17/2024-GST, DATED 10-7-2024]

In exercise of the powers conferred by clause (*91*) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the Act) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and subject to sub-section (2) of section 5 of the said Act, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the said Act or the rules made thereunder mentioned in the corresponding entry in Column (3) of the said Table:—

[1] **Table**

Serial Number	*Designation of the Officer*	*Functions under section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder*
(1)	*(2)*	*(3)*
1.	Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax	i. Sub-section (5) of section 10
2.	Superintendent of Central Tax	*i.* Sub-section (8) of section 25 *ii.* Proviso to sub-section (1) of section 27 *iii.* Section 28 *iv.* Section 29 *v.* Section 30 *vi.* Rule 6 *vii.* Rule 9 *viii.* Rule 10 *ix.* Rule 12 *x.* Rule 16 *xi.* Rule 17 *xii.* Rule 19

Proper Officer for Levy of Late Fees or Interest

What if there is no limitation in the Statute for taking an action-Can it be taken for an indefinite period

Section 47. Levy of late fee. -

(1) Any registered person who fails to furnish the details of outward or supplies required under section 37 or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

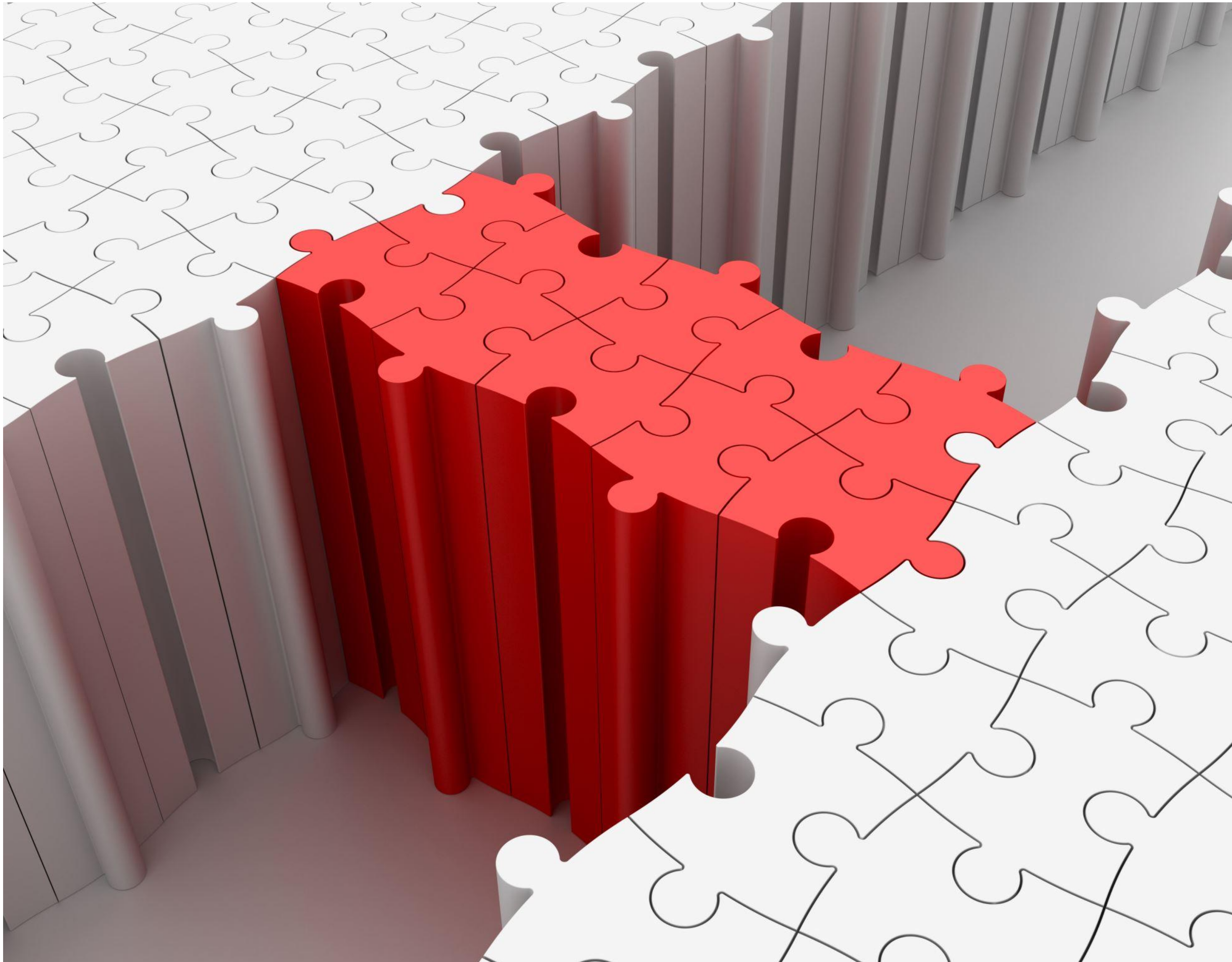
(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

Section 73. Determination of tax pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Section 50. Interest on delayed payment of tax.-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:



Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi East Commissionerate [2025] 177 taxmann.com 478 (SC)/[2025]

The Judgement and its landscape

Summary and Detailing out the Judgement

Part-1-Overview of Provisions of Section 6

Part-2-Supremacy of Self-Assessment

Part-3-What is intelligence based action

Part-4-Scope of issuance of Summons in GST

Part-5-Importance of Show Cause Notice in GST

Part-6-Conditions to be followed by authority issuing Valid Show Cause Notice

Part-7-For the purpose of arriving at "initiation of proceedings", what is the difference between issuance of summon and issuance of SCN

Part-8-Meaning of the Phrase "same subject matter“

Part-9-"Same subject matter" and logical conclusion of a matter may not always involve passing of order

Part-10-What to do when similar investigation being carried out by both Central and State Divisions

Part-1-Overview of Provisions of Section 6

Question 1-What is the objective of Section 6?

Section 6 advances the objective of establishing a unified national market for goods and services and to prevent taxpayers from the undue hardship of being subjected to the rigours of multiple jurisdictions. Para 92

Question 2 - What is stipulated by Section 6(1) of CGST Act, 2017?

Sub-section (1) of Section 6 stipulates the general power, encompassing both the single-interface mechanism and cross-empowerment, inasmuch as each "proper officer" may act as a proper officer under the SGST Act or the UTGST Act, and vice versa. Para 53

Question 3-What does provision of Section 6(2)(a) stipulate?

It reinforces both the single-interface mechanism and cross-empowerment by mandating that where a proper officer issues an order under the CGST Act, he must simultaneously pass a corresponding order under the SGST or UTGST Act, with due intimation to the jurisdictional officer of the State or Union Territory tax authorities.-Para 53

Question 4- What is stipulated by 6(2)(b)?

Clause (b) of sub-section (2) yet again affirms the principle of cross empowerment, albeit operating within the narrower confines of intelligence-based enforcement action.-Para 53

Part-1-Overview of Provisions of Section 6

Question 5-What purpose does Section 6(2)(a) of CGST Act serve?

The provision serves a twofold purpose: first, to insulate taxpayers from the prospect of being proceeded against by more than one authority for the same subject matter; and secondly, to vest in the officers functioning under the CGST Act, the SGST Act, or the UTGST Act, to render a comprehensive order, thereby avoiding multiplicity of proceedings. Para 93

To give effect to the above intent, Section 6(2)(a) is couched in terms that are both enabling and mandatory. It confers upon, and simultaneously obliges, the proper officer to issue a corresponding order under the SGST Act or the UTGST Act in cases where an order is being issued under the CGST Act. Para 94

Question 6-What is the meaning of order under Section 6(2)(a)?

The expression 'order', qualified by the terms "under this Act", occurring in the said provision admits of a broad construction, so as to include every form of order which a proper officer is competent to issue by virtue of the authority vested in them under the statute. Such an interpretation is necessary to ensure that the statutory mandate achieves its intended purpose of avoiding multiplicity of proceedings and securing uniformity of adjudication across the parallel enactments. Para 94

Question 7-Is it imperative of the authority passing the order to inform the Jurisdictional Counterpart about issuance of order?

Yes, given that the statutory framework envisages a regime of cross-empowerment amongst officers, the obligation so cast operates as a safeguard against the prejudice which may arise from the initiation of parallel or overlapping proceedings against the same taxpayer by different wings of the Department. Para 95

Part-2-Supremacy of Self-Assessment

Question 1-What is the Scope of Self-Assessment?

GST regime operates on the principle of self-assessment, as enshrined in Section 59 of the CGST Act, hence, all provisions are to be read in consonance, and not in derogation of Section 59.-Para 46

Part-3-What is intelligence based action

Question-1-What is the scope of intelligence based enforcement action?

An action that is predicated on information of tax evasion emanating from the value chain or chain of transactions rather than from any administrative scrutiny by way of audit of accounts or returns.-Para 47

Question 2-Whether Intelligence based action would include information procured from the taxpayer through issuance of summon or letters?

Taxpayers must be mindful that intelligence about evasion of tax cannot be procured from them through issuance summons or other non-descript letters and correspondence. Para 48

Question 3-How information would be collected in case of an intelligence based action?

Such gathering of intelligence is intended to be a non-intrusive exercise. The Department relies on data analytics, validation with third-party data, and other methods to collect actionable intelligence via analytical tools, human intelligence, modus operandi alerts as well as information through past detections. Para 48

Part-3-What is intelligence based action

Question-4- How Proceedings would be taken ahead in case of other than intelligence-based action?

Any action arising from the audit of accounts or detailed scrutiny of returns must be initiated by the tax administration to which the taxpayer is assigned. Para 96(ii)

Question 5- How Proceedings would be taken ahead in case of an Intelligence based action?

In contrast, Intelligence based enforcement action can be initiated by any one of the Central or the State tax administrations despite the taxpayer having been assigned to the other administration. Para 96(iii)

Question-6-Whether division of taxpayer operates as a bar in case of enforcement action?

The division of the taxpayer base does not operate as a bar to the initiation of enforcement action by Central Tax officers against a taxpayer assigned to the State Tax authority, and vice versa. Para 76

Question 7-Can Scruitiny and Audit be conducted both by Centre and State?

Both Central and the State tax administration are well empowered to undertake audit of accounts or detailed scrutiny of returns, as long as these actions are initiated on the basis of any intelligence relating to tax evasion. Para 51

Part-4-Scope of issuance of Summons in GST

Question 1-Why legislature has used the term “inquiry” under Section 70?

A summons is not the culmination of an investigation, but merely a step in its course. It is in this context that the legislature has used the term "inquiry" in Section 70, as at the stage of issuing a summons, the Department is primarily engaged in gathering information regarding a possible contravention of law, which may subsequently form the basis for proceedings against an assessee.-Para 57

Question 2-Why are summons issued?

The issuance of summons is one of the instruments employed by the Department to obtain information, documents, or statements in cases involving suspected tax evasion.-Para 56

Question 3-Who can be issued a summon under Section 70?

Summons may be issued to the person under investigation or to a person considered a witness in investigation against another person.-Para 56

Question 4-When summons shall not be issued?

That said, summons should not be issued in routine matters or for documents readily available on the GST portal. They ought to be issued after much thought and consideration as to the exact information required. We acknowledge that the issuance of multiple, cyclostyled summons may indicate a roving inquiry.-Para 58

Part-4-Scope of issuance of Summons in GST

Question-Are the guidelines issued by the Board dated 17-08-2022 mandatorily to be followed in both letter and spirit?

The court referred to the Guidelines on Issuance of Summons under Section 70 of the CGST Act issued by the CBIC (GST - Investigation Wing) dated 17.08.2022. The court injected thrust into the Guidelines dated 17.08.2022, and directed the concerned Departments to adhere to the said Guidelines, in both letter and spirit.-Para 60

Question-Does the judgement in a manner regularise the practice of the department of issuing letter instead of summon?

The court at Para 57 observes that since the objective is to collect information, the Department has, in certain instances, advised resorting to a letter of requisition in place of a formal summons.

Just for reference of the readers-{In the matter of Shree Kunj Bihari Infracon (P.) Ltd vs. State of U.P. [2024] 167 taxmann.com 683 (Allahabad), it was held that the entire procedure of issuing letter advising payment to the taxpayers without issuing show cause notice is unknown in law and counsel on behalf of the respondents was not able to indicate any provision under which such a letter could be issued by the authorities.}

Part-5-Importance of Show Cause Notice in GST

Question 1-What is the importance of a Show Cause Notice?

Under the GST regime, issuance of a show cause notice is a mandatory precondition for raising a demand. It forms the bedrock for proceedings related to the recovery of tax, interest, and penalty. The notice ensures adherence to the principles of natural justice by granting the assessee an opportunity to present their case before any adverse action is taken. In essence, it serves as both a procedural safeguard and a legal necessity, marking the commencement of quasi-judicial adjudication under the Act. Para 65

Question 2-What is the fundamental purpose of issuing a notice?

The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained.-Para 83

Question 3-At which stage it is contemplated by the department to issue show cause notice?

Relying upon the flowchart Prepared and published by the Comptroller and Auditor General of India in Report No. 1 of 2021 (Indirect Taxes -Goods and Services Tax, Central Excise and Service Tax), court stated that the flow chart illustrates that in cases involving determination of tax not levied, or short levied, or not paid, or short paid, or erroneously refunded, or input tax credit wrongly availed or utilized, the assessee can discharge the liability by voluntarily paying tax alongwith interest and, where applicable, penalty; failing which, the Department contemplates an action. At this stage, the Department initiates action aimed towards ascertaining the tax liability and issuing a show cause notice accordingly. Para 70

Part-6-Conditions to be followed by authority issuing Valid Show Cause Notice

Question 4-Can a Show Cause Notice cannot be vague and If no then why?

A show cause notice sets out the alleged violations of legal provisions and requires the assessee to explain why the duty should not be recovered from them. Thus, a show cause notice cannot be vague, nor can any allegations be made without evidence being commensurate with the gravity of the charges levelled against the noticee. Para 66

It sets forth the framework for the proceedings proposed to be undertaken and provides the noticee with an opportunity to submit their explanation before the adjudicating authority. It outlines the background for the initiation of such proceedings, whether arising from an audit of accounts by the internal audit wing, scrutiny of returns, or intelligence gathered by officers of the Audit and Intelligence Commissionerate. Para 67

Question 5-Should Notice set out all relevant legal provision?

The authority issuing the notice must meticulously set out all relevant legal provisions under which the alleged contraventions are framed. Para 67

Question 6- Can a notice be issued without providing all relied upon documents?

The materials obtained through summons and relied upon for issuing the show cause notice must be appended and disclosed to the assessee. In essence, a show cause notice enumerates the charges levelled against the notice. Para 67

Part-6-Conditions to be followed by authority issuing Valid Show Cause Notice

Question 7- Should notice be exhaustive and capable of presenting the case of revenue?

A show cause notice must lay down the foundation of the case. Such is the importance of a show cause as a starting point in proceedings. Para 84

Primacy is given to the cogency of a show cause notice. The subject matter of the proceedings lies in the contents of the notice. Hence, it ought to be exhaustive, so much so that it is capable of presenting the case of the Revenue in a nutshell. Para 84

Question 8- Can grounds not raised in the notice be raised subsequently?

A show cause notice delineates the scope of the proceedings in the expression of subject matter with which the authority would be dealing. It would be impermissible for an authority to invoke such rules, claims or grounds at a later stage which do not figure in the show cause notice. That is to say, any ground, reasoning or claim which does not figure out in the show cause notice cannot be permitted to adversely affect the noticee. Such recognition has even been made statutorily, as per sub-section (7) of Section 75 of the Act. Para 85

Part-7-For the purpose of arriving at "initiation of proceedings", what is the difference between issuance of summon and issuance of SCN

Question 1-Whether at the stage of summon, department has determined about proceedings to be initiated?

At the stage of issuing a summons, the Department is yet to determine whether proceedings should be initiated against the assessee. Such evidence-gathering and inquiry do not constitute "proceedings" within the meaning of Section 6(2)(b) of the CGST Act.-Para 58

Question 2-Can Issuance of summon be considered as initiation of proceedings?

Issuance of summons, by no stretch, can be considered as the initiation of proceedings, since at that stage, the Department still retains the discretion not to initiate any proceedings. A mere contemplation or possibility of initiating action cannot be equated with "proceedings", as doing so would undermine the framework of cross-empowerment under the Act. Para 74

All actions that are initiated as a measure for probing an inquiry or gathering of evidence or information do not constitute "proceedings" within the meaning of Section 6(2)(b) of the CGST Act. Para 96(v)

Question 3- Whether Search and summon issued in pursuance of search are distinct from “proceedings”?

The term "any proceedings" does not encompass summons issued pursuant to a search or investigation, as at the stage of issuance of summons the Department is merely engaged in gathering information.-Para 62

Part-7-For the purpose of arriving at "initiation of proceedings", what is the difference between issuance of summon and issuance of SCN

Question 4-When can legislative intent to prevent subjugation of a taxpayer to parallel proceedings be realized?

A show cause notice marks the commencement of a process that culminates in an order passed by the adjudicating authority. The legislative intent to prevent the subjugation of a taxpayer to parallel proceedings and to avoid contradictory orders can only be realized only when the Department is clear about the subject matter it seeks to pursue, a certainty that arises only at the stage of issuance of the show cause notice.-Para 73

Question 5-When issuance of show cause notice only partakes the nature of proceedings?

The statutory framework of the CGST Act does not admit of any interpretation of the phrase "initiation of proceedings" under Section 6(2)(b) other than one which ties it to the issuance of a show cause notice. An action qualifies as 'proceedings' only when it is undertaken with the object of attaining a determinate outcome. In the present context, the issuance of a show cause notice partakes the character of proceedings, as it is inherently required to culminate in a definitive determination; there must exist a point of finality or conclusion thereto. Para 72

Question 6- So what does the expression "initiation of proceedings" mean?

The expression "initiation of any proceedings" occurring in Section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a show cause notice, and does not encompass the issuance of summons, or the conduct of any search, or seizure etc. Para 96(vi)

Part-8-Meaning of the Phrase "same subject matter"

Question 1-What is "subject matter"?

Under Section 6(2)(b), the "subject matter" is intrinsically tied to the determination of the specific violation under scrutiny or the liability alleged to be unpaid. Para 87

The expression "subject matter" contemplates proceedings directed towards determining the taxpayer's liability or contravention, encompassing the alleged offence or non-compliance together with the relief or demand sought by the Revenue, as articulated in the show cause notice through its charges, grounds, and quantification of demand. Para 86

Question 2-When it is the same subject matter-

The bar on the "same subject matter" is attracted only where both proceedings seek to assess or recover an identical liability, or even where there is the slightest overlap in the tax liability or obligation. Para 86

Clause (b) of sub-section (2) of Section 6 of the CGST Act and the equivalent State enactments bars the "initiation of any proceedings" on the "same subject matter". Para 96(i)

Part-8-Meaning of the Phrase "same subject matter"

Question 3-What is the Two-fold test laid down for determining same subject matter?

The twofold test to determine whether a subject matter is "same": first, the subject matter will be considered the same if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts; and secondly, if the demand or relief sought is identical. Para 88 and Para 96(x)

Where the proceedings concern distinct infractions, the same would not constitute a "same subject matter" even if the tax liability, deficiency, or obligation is same or similar, and the bar under Section 6(2)(b) would not be attracted Para 96(ix)

Question 4-When the statutory bar in Section 6(2)(b) is triggered?

The statutory bar is triggered only when the two proceedings against the same taxpayer are, in substance, directed towards the very same or overlapping deficiency in tax discharge or the identical contravention alleged. Where the proceedings concern distinct infractions, each Department is entitled to proceed within its respective statutory remit without infringing the prohibition. Para 87

Part-9-"Same subject matter" and logical conclusion of a matter may not always involve passing of order

Question 1-Can summon on their own reveal subject matter?

Summons, on its own, cannot reveal the subject matter; and secondly, the subject matter can be ascertained only from the show cause notice. The apprehension of the petitioner cannot be countenanced merely because a facet of the ongoing inquiry overlaps with the subject matter of the show cause notice already issued. Para 89

Question 2-Issuance of summons does not constitutes proceedings?

The mere issuance of a summons cannot be equated with proceedings barred under the Act, as the subject matter cannot be ascertained solely through summons.-Para 58

Question 3-Does overlapping aspect of investigation at summons stage means same subject matter?

At the summons stage, it cannot be predicated with certainty that the subject matter of the proceedings will be identical; the mere presence of an overlapping aspect under investigation does not ipso facto render the subject matter "same". Para 61

Question 4-No other authority to assume jurisdiction, once show cause notice issued on subject matter ?

Upon crystallization of the subject matter through a show cause notice issued pursuant to an intelligence, no other tax authority may assume jurisdiction over it, provided it is ascertainable that the consequences of any further departmental action would be subsumed within the same subject matter.-Para 90

Parallel proceedings should not be initiated by other tax administration when one of the tax administrations has already initiated intelligence-based enforcement action. Para 96(iv)

Part-9-"Same subject matter" and logical conclusion of a matter may not always involve passing of order

Question 5-Is authority initiating the intelligence based action empowered to take it to logical conclusion which may or may not involve order of assessment in every case?

Enforcement action undertaken by any Department is ordinarily based on intelligence as elucidated in paragraph 48 of the judgment, and the authority initiating such action is empowered to carry the matter to its logical conclusion.

Question 6-What does "Logical conclusion" means and does not invariably refer to an order of assessment in every case?

The term "logical conclusion" does not invariably refer to an order of assessment in every case. Rather, it denotes the decision arrived at by the officers of the Department, having regard to the peculiar facts and circumstances of each case.-Para 77

Question 7-Whether dropping of proceeding even though no order has been passed in pursuance of a search amounts to logical conclusion?

Even when a discovery is made during the search proceedings under Section 67 of the CGST Act, the department is required to bring such proceedings to a definitive conclusion, either by issuing a show cause notice under Section 74 or by dropping the matter altogether. Para 74

Part-10-What to do when similar investigation being carried out by both Central and State Divisions

Question 1-What is the first step which has to be taken by the taxpayer where summons or a show cause notice is issued by either the Central or the State tax authority to an assessee?

The assessee is, in the first instance, obliged to comply by appearing and furnishing the requisite response, as the case may be because mere issuance of a summons does not enable either the issuing authority or the recipient to ascertain that proceedings have been initiated.

Question 2-What should a taxpayer do when he becomes aware that the matter being inquired into or investigated is already the subject of an inquiry or investigation?

Where an assessee becomes aware that the matter being inquired into or investigated is already the subject of an inquiry or investigation by another authority, the assessee shall forthwith inform, in writing, the authority that has initiated the subsequent inquiry or investigation.

Question 3-What should the authority do when he receives the communication from the taxpayer as mentioned above?

Upon receipt of such intimation from the assessee, the respective tax authorities shall communicate with each other to verify the veracity of the assessee's claim because this course of action would obviate needless duplication of proceedings and ensure optimal utilization of the Department's time, effort, and resources, bearing in mind that action initiated by one authority enures to benefit of all.

Part-10-What to do when similar investigation being carried out by both Central and State Divisions

Question 4-What if the claim of the taxpayer is found untenable?

If the claim of the taxable person regarding the overlap of inquiries is found untenable, and the investigations of the two authorities pertain to different "subject matters", an intimation to this effect, along with the reasons and a specification of the distinct subject matters, shall be immediately conveyed in writing to the taxable person.

Question 5-Whether both the authorities are well within their rights to conduct an inquiry or investigation until it is ascertained that both authorities are examining the identical liability to be discharged?

The taxing authorities are well within their rights to conduct an inquiry or investigation until it is ascertained that both authorities are examining the identical liability to be discharged, the same contravention alleged, or the issuance of a show cause notice.

Question 6-What happens to the show cause issued in respect of the liability already covered?

Any show cause notice issued in respect of a liability already covered by an existing notice shall be quashed.

Question 6-What if both the authorities find that the matter being inquired into or investigated is already the subject of inquiry or investigation by another authority?

However, if the Central or the State tax authority, as the case may be finds that the matter being inquired into or investigated by it is already the subject of inquiry or investigation by another authority, both authorities shall decide inter-se which of them shall continue with the inquiry or investigation. In such a scenario the other authority shall duly forward all material and information relating to its inquiry or investigation into the matter to the authority designated to carry the inquiry or investigation to its logical conclusion because, the taxable person except for being afforded the statutory protection from duplication of proceedings, otherwise has no locus to claim which authority should proceed with the inquiry or investigation in a particular matter.

Part-10-What to do when similar investigation being carried out by both Central and State Divisions

Question 7-What if both the authorities are unable to reach to a conclusion as to which of them shall continue with the inquiry or investigation?

However, where the authorities are unable to reach a decision as to which of them shall continue with the inquiry or investigation, then in such circumstances, the authority that first initiated the inquiry or investigation shall be empowered to carry it to its logical conclusion, and the courts in such a case would be competent to pass an order for transferring the inquiry or investigation to that authority.

Question 8- What is the option available to the taxpayer if the authorities do not comply with this instruction

If it is found that the authorities are not complying with these aforementioned guidelines, it shall be open to the taxable person to file a writ petition before the concerned High Court under Article 226 of the Constitution of India. At the same time, taxable persons shall ensure complete cooperation with the authorities. It is incumbent upon them to appear in response to a summons and/or reply to a notice.

Question 9-What were the Central and State Tax Authorities advised about development of Infra for monitoring these sort of cases?

The court deemed it appropriate to make certain suggestions concerning the common IT infrastructure shared by the Central and State tax authorities. It is imperative that the Departments act in harmony and maintain heightened vigilance with respect to intelligence inputs received by them, so as to give full effect to the legislative intent underlying the GST regime. Such coordination would also serve to mitigate the unnecessary hardship caused to taxpayers by overlapping proceedings and lack of interdepartmental communication.

The DGGI may consider adopting necessary measures to develop a robust mechanism for seamless data and intelligence sharing between the Central and State authorities, including provision for real-time visibility to both authorities of any action taken pursuant to an intelligence input, thereby advancing the objectives of harmony and cooperative federalism.

Adv (CA) (DR) ARPIT HALDIA