



Specter of multi-authority, repetitive and multi-directional proceedings haunting GST-payers

The GST regime, implemented in 2017, turns seven years soon, stepping into its proverbial childhood. In many ways, the sweeping tax reform has lived up to its promise - advancing towards the envisaged vision of "One Nation, One Tax, One Market." The year-on-year growth in numbers can be seen as a testament to the above story. However, as

Albert Einstein once said, *"Not everything that can be counted counts, and not everything that counts can be counted,"* it aptly describes that growth statistics in tax collection numbers should not be the sole parameter to judge the success of GST. Let's look at a specter that is currently plaguing multiple taxpayers across trade and industry.

One of the reasons why GST is hailed as a landmark tax reform is the fact that the Centre and the States were given joint powers to levy tax and administer its collection. Although revolutionary at the time, this complex legal framework now suffers from certain growing pains, especially that of taxpayers facing overlapping inquiries, investigations, and audits by multiple GST authorities for the same tax period. This multiplicity of proceedings across Central and State agencies threatens to defeat one of the fundamental purposes that GST was envisaged to achieve, i.e., reducing tax litigations.

The Root of Overlapping Proceedings

The multiple proceedings arise due to the overlapping powers of various “proper officers” across the Centre and the States under the GST law, tracing back to the federal structure. These powers are defined in Sections 3 and 5 of the Central GST (CGST) Act, read with Notification Nos 1/2017-CT and 14/2017-CT. While State Tax officers like the SGST Commissionerates have jurisdiction limited to their State territory, Central Tax formations like the Director General of GST Intelligence (DGGI) have pan-India jurisdiction. Moreover, Section 6 of the Central and respective State GST legislations provides for cross-empowerment – A CGST officer can issue an order under the SGST Act and vice versa; however, once a particular officer has initiated a proceeding, they cannot. Therefore, currently - (a) jurisdictional SGST authority, (b) jurisdictional CGST authority, and (c) DGGI/DGGST/DG Audit - all have the competency to initiate independent inquiries/investigations on the same GST compliance aspect of a taxpayer. They can issue summons, conduct search and seizures, examine documents, and recover taxes.

What makes this overlap even more cumbersome is the Central Board of Indirect Taxes and Customs (CBIC) Circular D.O.F. No. CBEC/20/43/01/2017-GST (Pt.) dated 5 October 2018 which stipulates that once “intelligence-based enforcement action” is initiated by one proper officer, they need not transfer it to the regular jurisdictional officer where the taxpayer is administratively assigned. So, for instance, a SGST

officer in State 'A' can start an “intelligence-based” investigation into suppliers all over India and retain the case instead of passing it to the CGST authority who oversees entities in that State! Similarly, a jurisdictional DGGI officer can start an inquiry upon some intelligence input against a taxpayer in another State but not transfer proceedings to the CGST authorities in that State. This scatter creates a messy criss-cross of reporting summons, submissions, personal hearings, show cause notices, and orders on the very same compliance/legal aspects.

The Legal Conundrum

It was only a matter of time before cases of overlapping jurisdiction reached the Courts. Revenue has argued that the Circular D.O. F. No. CBEC/20/43/01/2017-GST emanates from the recommendations of the 9th GST Council meeting, intending to enable both Central and State tax authorities to exercise “all India jurisdiction,” especially for intelligence-based searches, seizures, and investigations.

However, the Delhi High Court¹ recently ruled that Section 6(2)(b) of the CGST Act and Circular D.O. F. No. CBEC/20/43/01/2017-GST do not prohibit the transfer of overlapping investigations between agencies to prevent a multiplicity of proceedings against a taxpayer. While the matter in the said case pertained to a taxpayer being a common link and, therefore, being subjected to multiple investigations initiated by various regional GST intelligence directorates, the Hon. High Court ruled that where the intelligence inputs themselves point to a common thread or coordinated tax evasion by multiple entities across States, Section 6(2)(b) of CGST Act and the Circular should not be read as prohibiting consolidation of inquiries by a specialized agency like DGGI. It is to bring harmony between the Centre and the State in implementing the GST regime, with the two not jostling for jurisdiction over a taxpayer.

However, in such a case, the Hon. High Court did not expressly strike down the said Circular nor read down any of the concerned provisions of the said Acts. In effect, currently, certain authorities wield unbridled pan-India power and can initiate parallel investigations into taxpayers because of the criss-cross of powers created by the current structure of the laws!

1. (2022) 1 Centax 142 (Del.)/2022 (67) G.S.T.L. 403 (Del.) [11-01-2022]

Impact on Taxpayers and Department

The taxpayers are at the receiving end due to such a decentralized approach of "every authority for itself", contrary to the ease of doing business! Frequent summons and multi-directional investigations by agencies for already scrutinized periods can prove to be a nuisance, hampering regular business operations. The same records are being repeatedly called for and verified, and conclusions are dissented upon by the authorities, and the inability to reconcile findings across formations is certainly causing headaches to the taxpayers. To add to the woes, the outcome is quite unpredictable, depending on which agency concludes and when. Directions to pay tax by some while others find no liability for the same transaction stretch working capital requirements. Common proceedings also turn out to be not so common!

Not just the industry but the Department as well fritters away significant time and effort with uncoordinated formations inspecting the same taxpayers and transactions independently. The duplicity of inquiries can be considered as gross inefficient utilization of investigation resources, with inter-departmental communication gaps failing to connect the dots toward big-picture analysis of GST fraud patterns. Instead of the collaborative crackdown, taxmen are chasing their own shadows as different wings assess the same company processes, denying a 360-degree risk perspective.

The Way Forward: Structural and Procedural Fix

While the "single proceeding per taxpayer" principle sounds logical, ground realities around the complexities of GST transactions and structure obviate the selective case-based consolidation of overlapping investigations across agencies. The only pragmatic solution is systemic changes toward standardization and unification of GST audits, inquiries, and investigations under one umbrella.

Standardized Annual Audits should encompass all potential compliance risk parameters, ensuring uniform tax positions for taxpayers. One may argue that GST Audit Reports like GST ADT – 02 are already a part of the GST Rules. However, in its current format, it provides for attaching an annexure with the said Report, which ultimately leads to heterogeneous findings, thereby defeating the purpose of standardization itself. A standard detailed GST ADT-02 may be prescribed covering the 360-degree risk factors. This would not only help the jurisdictional GST authorities understand what parameters have been examined during the audit but also reduce duplication, leading to an efficient tax administration.

Furthermore, if taxpayers have more than three GST registrations across the country, the Central Audit Commissionerate may be empowered to conduct audits for all the GSTINs. This would help standardize the tax positions being adopted by the tax authorities for similar kinds of transactions across the country. This would mitigate undue litigations owing to varying interpretations/positions taken by Audit Authorities across States.

The GST Council/CBIC should also formulate binding Standard Operating Procedures and Investigation Manuals – for stringent guidance to the investigating units and mandating case transfers to respective jurisdictions. The GST Council may also recommend the establishment of a central database for documenting the audit and investigation findings and a strict approval chain before any proceeding gets initiated against a taxpayer who has already been scrutinized/audited/investigated.

The maturity of the GST scheme depends on how rapidly such structural and procedural inefficiencies plaguing a supposed 'taxpayer-friendly' compliance ecosystem are acknowledged and addressed by the GST Council/CBIC. Concrete administrative measures assuring ease for legitimate business while augmenting enforcement against large-scale evaders will go a long way in helping GST transition from a troubled childhood to a confident teenage!

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