

**CGST and SGST Authority cannot simultaneously prosecute the assessee on the same subject matter**

The Hon'ble Madras High Court in the matter of *Tvl Metal Trade Incorporation v. the Special Secretary, Head of the GST Council Secretariat and Ors. [W.P. No. 3033 of 2023 And W.M.P. No. 3125 of 2023 dated February 6, 2023]* has held that, the State Tax Authority cannot prosecute the assessee, when the Central Tax Authority has already initiated action in respect of the very same subject matter. Further held that, to substantiate such defence, the assessee has to participate in the personal hearing/ enquiry and only then it can be ascertained whether the proceedings initiated by the Central and State Tax Authority are one and the same involving the same subject matter. Directed the assessee to appear before the Revenue Department and state all its objections.

**Facts:**

This Petition has been filed by Tvl Metal Trade Incorporation (“**the Petitioner**”) challenging summons issued by the State Tax Authority (“**the Respondent**”) under Section 70(1) of the Tamil Nadu Goods and Services Tax Act, 2017 (“**the TNGST Act**”) and by the Central Tax Authority under Section 70 (1) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) dated October 18, 2022 (“**the Impugned Summons**”).

The Petitioner challenged the Impugned Summons on the ground that both the Central Tax Authority and the Respondent do not have powers to initiate proceedings simultaneously under the CGST Act and the TNGST Act, respectively, with regard to the same subject matter. The Petitioner contended that it was he was already facing proceedings initiated by the Central Tax Authority and therefore the Respondent cannot initiate proceedings against it as per Section 6(2)(b) of the CGST Act. Further, it is contended that the Respondent, on a day-to-day basis, is threatening the Petitioner and calling upon it to come for personal hearing even when the Petitioner has already replied to the Summon issued by the Respondent.

**Issue:**

Whether parallel proceedings under the TNGST Act can be initiated when the Petitioner is already facing proceedings pertaining to the same subject matter under the CGST Act?

**Held:**

The Hon'ble Madras High Court in *W.P. No. 3033 of 2023 And W.M.P.No.3125 of 2023* held as under:

- Observed that, no final decision has been taken by the Respondent to initiate action against the Petitioner under the TNGST Act, and the Petitioner was only being called upon for personal hearing and to produce documents under the Impugned Summons.
- Further observed that, the Petitioner has not participated in the personal hearing and instead filed this petition, challenging the Impugned Summons.
- Further noted that, the truth will come out only when the Petitioner appears before the Respondent pursuant to the Summons received by it and not otherwise.
- Held that, the Respondent cannot prosecute the Petitioner once again on the same subject matter, if the Central Tax Authority has already initiated action against the petitioner in respect of the very same subject matter.
- Stated that, to substantiate such defence the Petitioner has to participate in the enquiry to be conducted by the Respondent and only then, it can be ascertained whether the proceedings initiated by the Central Tax Authority and Respondent are one and the same involving the same subject matter.
- Directed the Petitioner to appear before the Respondent and state all its objections with regard to the Impugned Summons.
- Directed the Respondent to consider the Petitioner's objections on merits and in accordance with law.

**Relevant Provisions:**

**Section 6(2)(b) of the CGST Act:**

*“where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”*

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