

Parallel proceedings cannot be initiated by State GST authorities on the same subject matter

The Hon'ble Calcutta High Court in ***Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021, dated March 24, 2021]*** stayed the summons issued and proceedings initiated thereunder against assessee by the State GST Authorities since the proceedings were already pending on same subject matter under Central Goods and Services Tax Act, 2017 (**"the CGST Act"**). Held that, the summons issued is, prima facie, in violation of Section 6(2)(b) of the West Bengal Goods and Services Tax Act, 2017 (**"the WBGST Act"**)

Facts:

Raj Metal Industries (**"the Petitioner"**) has filed this petition challenging the actions initiated by the State GST Authorities (**"the Respondent"**) with respect to summons issued dated October 19, 2020 under Section 70 of the WBGST Act and blocking of the electronic credit ledger on December 8, 2020 being challenged the vires of Rule 86A of the West Bengal Goods and Services Tax Rules, 2017 (**"the WBGST Rules"**)/ Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**) & Section 16(2)(c) of the WBGST Act/ CGST Act. Further, the proceedings were already pending against the Petitioner on the same subject matter under the CGST Act.

Issue:

Whether the summon issued and proceedings initiated by the Respondent is in violation of the Section 6(2)(b) of the WBGST Act?

Held:

The Hon'ble Calcutta High Court in ***W. P. A. 1629 of 2021, dated March 24, 2021*** held as under:

- Noted that, as per Section 6(2)(b) of the WBGST Act, where a proper officer under CGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the WBGST Act on the same subject matter.
- Stayed the summons and proceedings thereunder and held that the summons issued by the Respondent is, prima facie, in violation of Section 6(2)(b) of the WBGST Act.

- Clarified that, the order passed shall not preclude the CGST Authorities to proceed in accordance with law and to continue with any proceedings that have been initiated by them.
- Directed to exchange the affidavits w.r.t. challenging vires of Rule 86A of the WBGST Rules/ CGST Rules and Section 16(2)(c) of the WBGST Act/ CGST Act. Listed the matter after completion of exchange.

Our Comments:

There certain relevant judgement on stated issue may be important for perusal of the readers.

Recently, the Hon'ble Punjab & Haryana High Court in ***Kaushal Kumar Mishra v. Additional Director General & Anr. [CWP-21387-2020 (O&M), decided on February 12, 2021]*** dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment of Input Tax Credit (“ITC”). Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima facie cognizable and punitive offences under CGST Act, without any overlapping, such investigation is not barred by Section 6(2)(b) of the CGST Act.

Further, the Hon'ble Allahabad High Court in ***G.K. Trading Company v. Union of India & Ors. [Writ Tax No. 666 of 2020, dated 2.12.2020]*** dismissed the petition filed for prohibiting another proper officer to initiate any inquiry/proceeding on the same subject-matter. The Court observed and held that, there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.

These judgments draws a clear distinction between a proceeding drawn for the demand of tax, inquiry, and the investigation conducted by the Authorities in respect of an offence committed by the assessee.

Relevant Provisions:

Section 6(2)(b) of the WBGST Act:

“6. Authorisation of officers of central tax as proper officer in certain circumstances-

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(b) 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.”

Section 16(2)(c) of the CGST Act:

“16. Eligibility and conditions for taking input tax credit-

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and”

Rule 86A of the CGST Rules:

“86A. Conditions of use of amount available in electronic credit ledger.-

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained;

or

ii without receipt of goods or services or both; or

- b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
- c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
- d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,*

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”

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