

The Apex Court addressed the persisting ambiguity surrounding the “same subject matter” and “initiation of proceedings” in the context of the parallel investigation by the Central and State Tax Authorities. Further, the Apex Court dismissed the Special Leave Petition, upholding the High Court’s decision not to interfere with the summons issued under Section 70 of the CGST Act.

Case Background (Factual Matrix):

The Petitioner, **M/S ARMOUR SECURITY (INDIA) LTD.**, a public limited company providing security services and having its registration with the Delhi State GST.

- **Show Cause Notice (SCN):**

Respondent No. 2 being the Delhi State GST Authorities issued a SCN dated 18.11.2023 under Section 73 of the CGST Act for the tax period April 2020-March 2021, wherein the demand of **Rs. 1,24,92,162/-** (CGST, SGST, IGST) along with interest and penalty. The grounds included under-declared net tax due to non-reconciliation of turnovers and e-way bill information, as well as an excess claim of Input Tax Credit (ITC).

- **Search and Summons by Central Authority:**

Further, the officers of Respondent No.1 being the (Commissioner, CGST, Delhi East Commissionerate) on 16.01.2025 conducted a search at the premises of the Petitioner under Section 67(2) of the CGST Act. Further, the electronic gadgets and documents were seized, and summons were issued to four directors of the company directors under Section 70 of the CGST Act asking them to produce certain documents. Another summons was issued on **January 23, 2025**, to a director for document production.

- **Petitioner’s Challenge:**

The Petitioner on 24.01.2025 informed the Respondent No.1 that the Delhi GST was already investigating the Petitioner on the similar grounds on similar grounds including ITC claimed from cancelled suppliers and requested the release of seized items.

Further, the Petitioner filed a Writ Petition before the Hon’ble Delhi High Court on being aggrieved by the summons issued by the Respondent No. 1, wherein it was argued that the Respondent No. 1 lacked jurisdiction due to Respondent No. 2’s prior investigation on the same issue, invoking Section 6(2)(b) of the CGST Act.

High Court’s Impugned Order:

The Hon'ble High Court of Delhi dismissed the writ petition, refusing to interfere with the summons. The High Court reasoned that:

- The expression “any proceeding” in Section 6(2)(b) does not include a search or investigation.
- Summons or investigations following a search are considered precursors to formal proceedings, intended primarily to elicit information, unlike assessment proceedings.
- The statute aims to prevent parallel *assessment* proceedings, particularly those under Sections 73 and 74 of the CGST Act. At the summons stage, authorities are merely gathering information, and the specific course of action is not yet determined.
- The High Court also distinguished the petitioner's case from *Vivek Narsaria v. State of Jharkhand*, where parallel inquiries required reversal of input tax credit, noting that the search in the present case occurred *subsequent* to the pending proceedings and was not related to prior assessments.

Further, the Petitioner filed an SLP before the Hon'ble Supreme Court against the order of the Hon'ble Delhi High Court.

Petitioner's Submissions before the Supreme Court:

The Petitioner argued that Section 6(2)(b) expressly prohibits parallel proceedings on the same subject matter by State and Central GST authorities.

Key arguments included:

- The summons issued by Respondent No. 1 concerning the availment of ITC from cancelled dealers were barred as Respondent No. 2 had already issued an SCN on the same subject.
- The Hon'ble High Court erred in limiting Section 6(2)(b) to proceedings under Sections 73 and 74, arguing that the statutory bar should apply to summons issued under Section 70.
- The common GST portal reflects all proceedings, making both authorities aware of ongoing matters.
- The GST regime is founded on cooperative federalism, requiring one authority to aid proceedings initiated by the other, rather than conducting parallel investigations.

- Reliance was placed on **Circular dated 05.10.2018** emphasizing harmonious exercise of powers.
- The CGST Act is a self-contained code, and Section 6(2)(b) should be interpreted literally, where “any proceedings” implies a broad and inclusive scope.

Supreme Court’s Analysis and Key Rulings:

The Hon’ble Supreme Court focused on whether the issuance of summons amounted to “initiation of proceedings” concerning the “same subject matter” under Section 6(2)(b) of the CGST Act.

I. Whether issuance of summons is “initiation of proceedings” under Section 6(2)(b)?

The Supreme Court examined contrary views from various High Courts and affirmed the High Court of Delhi’s decision:

- **Definition of “Proceedings”:**

It was held that the summons issued under Section 70 of the CGST do not constitute the initiation of proceedings within the meaning of Section 6(2)(b) of the CGST Act. The summons are merely a step in an inquiry or investigation to gather information and not the culmination.

- **Show Cause Notice as Commencement of Proceedings:**

The Hon’ble Apex Court emphasized that “initiation of any proceedings” refers to the formal commencement of adjudicatory proceedings through the issuance of a show cause notice (SCN). A SCN is a mandatory precondition for raising a demand, sets the law in motion concerning liability, and marks the commencement of quasi-judicial adjudication. Until an SCN is issued, the Department retains the discretion not to initiate proceedings.

- **Distinction between “Inquiry” and “Proceedings”:**

The Court concurred with the Allahabad High Court in the case of (*K. Trading v. Union of India*) and the Kerala High Court in the case of (*K.T. Saidalavi v. State Tax Officer*) that “inquiry” under Section 70 is not synonymous with “proceedings” under Section 6(2)(b). Proceedings under Section 6(2)(b) involve actions related to assessment, demand, and penalty, typically initiated by a show cause notice.

- **Search vs. Proceedings:**

A search operation under Section 67(2) is distinct from proceedings initiated after an SCN. Even after a discovery during a search, the Department must decide whether to issue an SCN or drop the matter.

II. Whether “subject matter” includes all matters dealt with in summons?

The Court clarified the term “subject matter” under Section 6(2)(b):

- “Subject matter” is intrinsically tied to the determination of specific tax liability or contravention articulated in a show cause notice. It refers to the alleged offence or non-compliance, together with the relief or demand sought by the Revenue.
- The bar under Section 6(2)(b) is attracted only when both proceedings seek to assess or recover an identical or overlapping liability. If the proceedings concern distinct infractions, the bar is not attracted, even if the tax liability is similar.

III. Implication of an “Order” under Section 6(2)(a) of the CGST Act

Section 6(2)(a) mandates that if a proper officer issues an order under the CGST Act, they must also issue a corresponding order under the SGST or UTGST Act, with intimation to the jurisdictional officer. This provision aims to:

- Insulate taxpayers from multiple authorities for the same subject matter.
- Enable officers to render a comprehensive order, avoiding multiplicity of proceedings.
- Ensure that any action by the Department is duly apprised to the jurisdictional counterpart.

Supreme Court’s Conclusion and Guidelines:

The Supreme Court summarized its findings and issued vital guidelines to ensure harmonious operation of the GST framework:

Key Conclusions:

- Section 6(2)(b) bars the “initiation of any proceedings” on the “same subject matter”.
- 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/registered.

- Intelligence-based enforcement actions can be initiated by either Central or State tax administrations despite their administrative jurisdiction.
- Parallel proceedings should not be initiated by another tax administration once one of the tax administrations have already intelligence-based enforcement action.
- 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)
- “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..
- “Subject matter” refers to any tax liability, deficiency, or obligation arising from a particular contravention which the Department seeks to assess or recover.
- Where any two proceedings initiated by the Department seek to assess or recover an identical or a partial overlap in the tax liability, deficiency or obligation arising from any particular contravention, the bar of Section 6(2)(b) would be immediately attracted.
- 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”.
- The twofold test for determining whether a subject matter is “same” entails, first, determining 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.

Guidelines for Tax Authorities and Taxpayers:

- An assessee must comply with summons, as their mere issuance does not indicate initiation of proceedings.
- If an assessee is aware of an overlap in inquiry/investigation by different authorities, they shall forthwith inform the authority that initiated the subsequent action in writing.
- Upon receiving such intimation, tax authorities shall communicate with each other to verify the claim and avoid duplication.
- If the overlap claim is untenable, an intimation with reasons and distinct subject matters shall be conveyed to the taxpayer.
- Any show cause notice for a liability already covered by an existing SCN shall be quashed.

- Decision on Continuing Inquiry: If authorities find an overlap, they shall decide inter-se which authority will continue the inquiry/investigation, with the other forwarding all relevant material. The taxpayer cannot choose which authority proceeds.
- First to Initiate Rule: If authorities cannot agree, the authority that first initiated the inquiry/investigation shall continue, and courts may transfer the matter to that authority.
- Writ Petition as Recourse: If guidelines are not complied with, the taxpayer may file a writ petition under Article 226 of the Constitution.
- Taxpayer Cooperation: Taxable persons must ensure complete cooperation with authorities.

Suggestions for concerning common IT infrastructure shared by the Central and State Authorities:

The Supreme Court also urged the DGGI to consider developing a robust mechanism for seamless data and intelligence sharing between Central and State authorities including the provision of real-time visibility of actions taken pursuant to intelligence inputs, fostering harmony and cooperative federalism resulting into mitigation of overlapping proceedings.