

Proper Officers under GST – A discordance

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❖ Introduction

We are about to reach completion of 8 years from the implementation of Goods and Services Tax – a self-proclaimed revolution by the Government in the Indirect Tax realm in the country. It is irony that even today there is no consensus in the system with regard to determination of “Proper Officer” under the law.

Delving into section 2(91), 3, 4 & 5 of the CGST Act 2017 shall shed lights on the who is the proper officer under CGST Act, how they are appointed and what powers can be discharged by such officers under this law.

In terms of provisions of GST law, not every officer other than “Commissioner” is entrusted with the powers to perform the activities laid down. Every class of officers is entrusted with the specific responsibilities and duties in a specific provision.

In this article we will be discussing contemporary issues which were/are being faced in the GST regime pertaining to the realm of “Proper Officer”:

❖ Is Officer of Director General of GST Intelligence (“DGGI”) – A Proper Officer under GST

There was a disrupt in the industry regarding whether Officers of DGGI are really Proper Officer under GST law especially after the decision by the Hon’ble Supreme Court in the matter of Canon India Private Limited vs UOI in the context of Directorate of Revenue Intelligence (“DRI”) under Customs Act 1962. However, the revenue refuted the said grounds referring to the notification 14/2017-C.T. dated 01.07.2017 and circular 3/3/2017 dated 05.07.2017 that the officers of the DGGI are “Proper Officers” under GST and even the Hon’ble Gujarat HC affirmed the said view in its decision in the case of Yasho Industries Ltd vs UoI 2021 (54) GSTL 19 (Guj.)

With all due respect to the decision of Hon’ble HC, there has been an oversight into the due procedures of appointing a proper officer and empowering the board to assign and impose powers to the central tax officers. There is a converse view too that section 5 requires the board only to impose any conditions or limitations on the powers conferred under the law and once a central tax officer is appointed, he is saddled with all the powers of a Proper Officer.

Though the matter is not disputed currently at large, if the matter is disputed in detail in higher forums there requires the ratification in the appointment of Proper Officers under GST law especially when the definition of the Proper Officer requires the Commissioner in Board to assign the functions to the Central Tax Officers.

❖ Cross Empowerment

GST is a special levy introduced under Article 246A of Constitution of India which equally disseminates the powers between the State and the Central Government to levy and collect tax on the same subject i.e., “Supply of Goods or Services or both”

Since the administration of the said law must be done in conjunction and co-operation a mechanism of GST council has been enshrined in Article 279A of the Constitution of India.

Accordingly, the council was established and a circular¹ was issued based on the outcome of the 21st council meeting, with regard to the administration of the taxpayers and division of powers under GST between Centre and States *to ensure single interface*.

Accordingly, once a taxpayer is allocated to be administered by either Centre or State, the communication / administration shall be made by the said office.

However, recently hassles began wherein notices were issued by the State authorities to the taxpayers who were administered by the Centre or vice versa. The justification given by the revenue in this regard is that, in terms of section 6 of the CGST Act 2017, any officer appointed as Proper Officer under the respective State Goods and Services Tax shall be authorized to be a Proper Officer under this Act. A notification under the said section is required only to impose any conditions if required necessary by the Government.

Single Judge Bench of Madras HC² and the Madurai Bench of Madras HC³ has been consistently quashing the proceedings initiated by the department other than to which the taxpayer was allocated for administration stating there is no notification issued under GST law for cross-empowerment, stating that the manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts.

Alas, the division bench of Kerala HC⁴ recently has taken a dissenting view that the requirement of notification from the Government is purely for imposing any condition on the officers. Further, cross empowerment gets effective merely based on the provisions of section 6(1) of the CGST Act 2017. Moreover, the provisions of section 6(2)(b) which deal with parallel proceedings itself clears the intent of the legislature that the State Tax Officer is empowered to pass orders under CGST Act.

In this regard, with all due respect, we wish to differentiate the conclusions in the said decision of Kerala HC which have been overlooked:

1. The objective of the single interface administration under GST as instructed by the GST council has not been considered.
2. The provisions of section 6(1) clearly cross empowers the State tax officer to pass an order under the CGST Act too, in case the taxpayer is allotted to the State department. Since the provisions of section 73/74 of the CGST Act 2017 do not have mutatis-mutandis provisions just like section 26, 27, 28, etc. of the CGST Act 2017 which clears that without such cross empowerment an Officer may not be able to demand the tax under corresponding SGST law vide proceedings to their division of taxpayers. Therefore, cross empowerment should be read in this context. Otherwise, the discussion of the GST council and their circular expressing their intention to have a single interface to ensure smooth administration of the tax and keeping the GST a good and simple tax, would go futile.
3. Notification no.39/2017-C.T. ***cross empowers*** the Proper Officers under respective SGST Act to act as Proper Officers under section 54, 55 of the CGST Act 2017 except for the

¹ Circular no.01/2017 – GST council bearing Reference F. No. 166/Cross Empowerment/GSTC/2017 dated 20th September 2017.

² Tvl. Vardhan Infrastructure 2024 (84) GSTL 443 (Mad.), Ram Agencies 2024 (87) GSTL 158 (Mad.).

³ John Buildwell India Private Limited 2024 (88) GSTL 298 (Mad.).

⁴ Pinnacle Vehicles and Services Private Limited WP (C) No. 25724/2024 order dated 07.11.2024.

purpose of Rule 96 of the CGST Rules 2017. If the interpretation of the Kerala HC to be upright, the notification instead of cross empowering the State Tax officers, it should have simple laid down the condition that the State Tax Officer cannot sanction refund under Rule 96 of CGST Rules. The same is authenticated vide Minutes of 22nd council meeting Agenda item 9.

Therefore, the cross-empowerment issue is still a contemporary one, wherein presently the taxpayers in the State of Tamil Nadu enjoys the benefit of the decision of Hon'ble Madras HC and the taxpayers in the State of Kerala are unfortunately bound by the decision of division bench of the Hon'ble Kerala HC. It is necessary to get a decision by the higher forum i.e., Supreme Court, or at least notifications from the Government to cross-empower the other department officers to be Proper Officer under either CGST/ respective SGST Acts to put an end to this dispute.

❖ **Monetary Limits for 73 and 74 proceedings**

CBIC has defined the monetary limits⁵ for different levels of officers for issuing the show cause notices in order to ensure accountability and optimal work distribution.

However, many States other than Kerala and Haryana⁶ have not prescribed such monetary limits causing asymmetrical approach and hassles in cahoots with the cross-empowerment issue discussed supra.

This creates another perplexity where State Officers are not following the said central circular stating the reasons that the said circular issued under section 168 of CGST Act 2017 does not bind them.

In this regard, it is pertinent to infer the rationale from the decision of Hon'ble Supreme Court⁷ wherein the implementation of DIN was suggested to States too by the Court.

❖ **Separation between investigation and adjudication**

Though there is no specific restriction in GST law for the investigating authority to be an adjudicating authority especially when both the powers are assigned to the said officer vide circular 3/2017⁸.

However, it is settled principle that the process of adjudication is a Quasi-judicial process and it is necessary to ensure the principles of natural justice are enshrined in its process, in addition to the specific procedures elucidated in section 75 of the CGST Act 2017.

One of the principles of natural justice to be adhered is "**Rule of Bias**". Reference invited renowned legal maxim "Nemo Judex in Causa sua" meaning "No one should be a judge in their own case" which was upheld by Kerala HC⁹ in one of the Service Tax matters.

Person trying a cause should be able to deal with it objectively, fairly and impartially. He must not only act fairly but must be able to act above suspicion of unfairness and bias¹⁰. No one can act

⁵ Circular 31/05/2018 – GST dated 9th February 2018.

⁶ The State of Kerala has prescribed the monetary limits to their State officers independently vide circular 6/2023 and State of Haryana adhered to the CBIC pecuniary limits vide its instruction no. 01/2025.

⁷ Pradeep Goyal vs UOI 2022 (63) G.S.T.L. 286 (S.C.)

⁸ Kerala has separated the powers of adjudication from the investigation, audit, intelligence authority vide their circular no.04/2023, whereas the CBIC has separated the said powers only with respect to DGGI vide circular 169/2022.

⁹ Mohammed Bilal 2018 (16) GSTL 549 (Ker.)

¹⁰ Narinder Singh Arora 2012 (83) ELT 481 (SC)

in judicial/Quasi-judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially.

The real question is not whether the judge was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, we have to take into consideration human probabilities and ordinary course of human conduct¹¹.

❖ **Proper Officers for Section 74A**

Vide Finance Act (No.2) of 2024 a new section was introduced to demand and recover the dues if any under GST law w.e.f. FY 2024-25.

However, proper officers under the said section has not been notified yet by the Board. Only the States of Kerala and Haryana have notified the proper officer under section 74A of the CGST Act 2017.

Though the taxpayers are not receiving any show cause notices for FY 2024-25, it is apposite to examine the relevant circular empowering the respective officers to be the proper officer under section 74A of the CGST Act 2017.

❖ **Conclusion**

An officer acting beyond such entrusted powers would lead to illegality and makes such act ultra-vires resulting in void. Such acts are not to be contested within the mechanism provided in GST law, who are mere creatures of the statute rather should be contested before Judiciary to nullify the impact of such non-tenable acts.

Therefore, it is necessary for every taxpayer to analyse whether the officer initiated any proceedings against them is a Proper Officer under the provisions for the initiated proceedings. This basic determination would help the taxpayer to decide the field in which the matter has to be litigated and save their sources and efforts.

One should keep in mind the legal maxim "*vigilantibus non dormientibus jura subveniunt*" which translates to "the law assists those who are vigilant, not those who sleep over their rights"

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¹¹ A.K. Kraipak v. Union of India, (1969) 2 SCC 262