

Any objection as regards the lack of jurisdiction to be raised at the initial stage of proceedings and not subsequently – Allahabad HC

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Summary

The Allahabad High Court (HC) has held that where the case of an assessee has been assigned to the Central Tax Officer (CTO) and the assessee does not object to the show cause notice and assessment order issued by State Tax Officer (STO), it would not be a case of inherent lack of jurisdiction but a result of contributory error of jurisdiction by STO. The HC opined that if the petitioner had objected to it at the initial stage or during the course of assessment proceedings, the position could have been rectified by informing the central officer to complete the assessment proceedings. The HC compared the contemporaneous provisions of CGST and SGST Act and observed that both are proper officers within their territorial jurisdiction. However, there is a condition that if an order is issued by a proper officer under State or Union territory Act on a subject matter, then the order shall not be passed by a proper officer under CGST Act and vice versa.

Facts of the case

- The petitioner¹ is engaged in the business of lubricants. Under the erstwhile VAT regime, the petitioner was carrying the business in partnership but with the advent of GST, it migrated as a proprietary concern and carried the entire stock.
- The petitioner's jurisdiction was assigned to the central officer, but it was the state officer who had issued the show cause notice (SCN)² to the petitioner. Thereafter, the petitioner had replied and participated in the proceedings without raising any objection.
- The petitioner has challenged the SCN and assessment order passed by the state officer on the ground that such order is without jurisdiction as he was assigned to the central officer.

Allahabad HC observations and ruling³:

- **Cross empowerment under both Central and State Act:** The proper officer under the CGST Act and UPGST Act have been conferred with jurisdiction and powers as a proper officer under both the acts. Thus, if an order has been issued by a proper officer under the state act, then an order on the same subject matter shall not be issued by the proper officer under the Central act and vice versa.
- **Avoiding the possibility of conflicting orders:** An inbuilt provision⁴ has been made in both Central Act and State Act to remove the possibility of conflicting orders. Accordingly, the orders passed by a proper officer under CGST Act shall be intimated to the jurisdictional officer under the state act and vice versa.
- **Case of error of jurisdiction:** The Apex court in a decision⁵ has explained the

¹ Ajay Verma

² Under section 73

³ Writ Tax No. - 1169 Of 2021, Order dated 9 Feb 2022

⁴ Section 6 of CGST Act and UPGST Act

⁵ Nusli Neville Wadia Vs Ivory Properties & Ors.

difference between the existence of jurisdiction and exercise of jurisdiction. In the present case, the state tax officer was competent to exercise the powers but as per the distribution of work, the petitioner was assigned to central officer. Thus, the case does not lack inherent jurisdiction but is a case of exercise of jurisdiction in absence of any objection.

- **Objection at initial stage:** Initially the petitioner did not object to the jurisdiction of state officer. If he had raised an objection at the initial stage or during assessment proceedings, then the situation could have been rectified by the state tax officer informing the central officer to complete the assessment proceedings.

Our comments

The Apex Court in case of Kedar Shashikant Deshpandey & Ors.⁶ had considered the principle “submitting to the jurisdiction of the authority” and held that “it is well settled that if a person has submitted to the jurisdiction of the authority, he cannot challenge the proceedings on the ground of lack of jurisdiction of the said authority in further appellate proceedings”.

Similarly, the Allahabad HC has held that the present case is not a case of lack of jurisdiction as the state officer is also a proper officer authorised to issue SCNs and conclude proceedings.

It is pertinent to note that before filing response, the taxpayer must ensure if the notice issued is by its jurisdictional proper officer or not, whether such officer is empowered to do so or not. In case it is not so, then entire proceedings can be nullified on this ground itself.

⁶ (2011) 2 SCC 654

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 11 4278 7070

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



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