

DGGSTI officers are competent authorities to issue SCN post introduction of GST on erstwhile notification - Madras High Court

13 February 2023



Summary

The Madras High Court (HC) has dismissed a batch of writ petitions and held that the Director General of GST Intelligence (DGGSTI) is competent to issue a show cause notice (SCN) post-GST based on erstwhile exemption notification. The petitioners argued that the aforesaid notification, under which the officials of the DGGSTI have assumed jurisdiction, have not been expressly saved under Section 174(2) of the CGST Act, 2017 (CGST Act), and hence, the impugned orders/notice are without jurisdiction. The HC stated that the duality in the adjudicatory process continues, and practice and procedure, both pre and post GST, are consistent and involve participation of the officer of the DGGSTI in issuance of SCNs. Thus, the HC has concluded that until the provision specifically carves out an exception in the context of an exemption notification, the same shall continue even under GST. Therefore, the assumption of jurisdiction by the officials of the DGGSTI is valid.

Facts of the case

- A.R. Rahman (hereinafter referred to as petitioner) the petitioner, is a renowned music composer, composing songs and background score for films. A SCN was issued by the DGGI proposing to levy service tax on transfer of copyright in musical work for the period April 2013 to June 2017 on the ground that the petitioner was not the owner of the musical work composed, and hence no copyright as contemplated under Section 13(1)(a) of the Copyright Act, 1957, vested in him.
- The SCN proposes to impose service tax under Section 66E(c) for temporary transfer, permitting use, or enjoyment of copyright in musical work. The petitioner had claimed exemption in respect of receipts from temporary transfer or permitting to the use or enjoyment of a copyright in terms of clause (15) of Notification No. 25 of 2012.
- The petitioner submits that though SCN is issued from January 2013 to June 2017, it has been issued post GST implementation. The petitioner views that the proceedings are without jurisdiction, as DGGSTI does not have legitimate power to issue SCN.
- The petitioner contends that he is the sole and absolute owner of a copyright that subsists in the musical works composed by him. The petitioner assigns the copyrights to the film producers under an agreement executed between them.
- In a previous petition filed by the petitioner, the Madras HC granted an interim stay on the order demanding service tax on copyright in respect of musical work.
- The petitioner contends that the SCN issued by DGGSTI officials under the Finance Act, 1994, is unsustainable.

Madras HC observations and ruling (Writ Petition No. 12291 of 2019 dated 2 February 2023) :

- **Assignment of adjudication of SCNs under erstwhile laws:** The HC viewed that under the erstwhile service tax regime, the jurisdiction for issuing SCN and passing orders is dealt by Notification No. 22/2014 where the board has appointed the Directorate General of Central Excise Intelligence and Directorate General of Service Tax, as central excise officers. As per Notification No. 2/2015-ST, the board has specified that the Principal Director General of Central Excise Intelligence shall have the power to assign SCN issued by the Directorate General of Central Excise Intelligence.
- **Section 174 saved all rights, privileges and obligations under erstwhile laws:** Section 174 of the CGST Act unequivocally saved all rights, obligations, privileges and liabilities that were available under the old laws, which would continue in the new regime.

While interpreting the effect of repeal and savings clauses, it needs to be ensured that there is smooth continuity rather than one that disrupts the flow of the levy itself. The court also needs to consider if the new enactment specifically militates against such the continuance.

- **Consistency in procedure for adjudication:**

The HC observed that indirect tax departments follow the practice of issuance of SCN by one authority and its adjudication by another. The dual procedure has been preferred by the department to be in the interest of administrative feasibility. The HC has propounded that the court is guided by consistency in procedure adopted by the authorities and there is need to examine the procedure, including adjudication, and the issuance of SCN post the introduction of GST.

- **Jurisdiction of DGGSTI officials is valid:** The HC has referred to Circular No.169/01/2022-GST, wherein it can be drawn that practice and procedure, both pre-GST and post GST, are consistent and involve participation of DGGI officer in issuance of SCN. Accordingly, the HC has dismissed the petition and concluded that the assumption of jurisdiction by DGGI officials is valid under law.

Our comments

Earlier, in the case of Redington (India) Limited, the Madras HC had ruled that the officers of DGGSTI are Central Excise Officers and can issue SCN and adjudicate service tax demand.

In the present case also, the Madras HC has stated that there was no necessity for the DGGSTI to invoke the General Clauses Act since Chapter-V of the Finance Act, 1994, which had been omitted by virtue of Section 173 of the CGST Act, had been saved by the operation of Section 174(2). Thus, the present ruling is likely to open a Pandora's box for many other assesseees and will have widespread ramifications, as more assesseees are likely to come under the DGGSTI's scanner.

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