

(2025) 01 KL CK 1768

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25724 Of 2024

Pinnacle Vehicles And Services Private Limited

APPELLANT

Vs

Joint Commissioner, (Intelligence & Enforcement)

RESPONDENT

Date of Decision : 15-01-2025

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 6, 6(1), 74

Citation : (2025) 01 KL CK 1768

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S, J

Bench : Division Bench

Advocate : Ammu Charles, Mohammed Rafeeq, J.Vishnu, S.Sreejith

Final Decision : Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. This Writ Petition has been posted before us by the Registry after getting orders from the Honourable the Chief Justice pursuant to a reference order dated 07.11.2024 of a learned Single Judge in the writ petition.

2. We have heard Smt.Ammu Charles, the learned counsel for the petitioner, Sri.Mohammed Rafeeq, the learned Special Government Pleader for the State and Sri.S.Sreejith and Sri. J. Vishnu, the learned counsel for the Union of India. We have also gone through the pleadings in the case, the judgments cited across the bar and the reference order of the learned Single Judge.

3. The petitioner is essentially aggrieved by Exts.P2 and P4 authorisation and show cause notice, respectively, served on it in connection with proceedings initiated against under Section 74 of the Central Goods and Services Tax Act [hereinafter referred to as the "CGST Act"]. In the writ petition, the main challenge was essentially with regard to the jurisdiction of the Officers of the State GST Department to issue the aforesaid authorisation and show cause notice to the petitioner. It is the case of the petitioner that under Section 6 of the CGST Act, the officers appointed under the State Goods and Services Tax Act

[SGST Act] or the Union Territory Goods and Services Tax Act [UTGST Act] cannot be authorised as proper officers for the purposes of the CGST Act unless and until conditions for exercise of the powers of a proper officer are first specified by the Government on the recommendation of the GST Council through a notification issued for the purpose. In support of the said contention, the petitioner relies on the judgment of a Single Judge of the Madras High Court in *Tvl. Vardhan Infrastructure v. Special Secretary, Head of the GST Council Secretariat* – [MANU/TN/2310/2024] that takes the view that Section 6(1) of the CGST Act empowers the Government to issue a notification, based on the recommendation of the GST Council, for cross-empowerment and, in the absence of such an enabling notification, the proceedings initiated by the State GST Authority are to be seen as without jurisdiction.

4. The learned Single Judge, who considered the writ petition at first instance, in his reference order dated 07.11.2024, expressed the following prima facie view in the matter:

"4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader, I am prima facie of the view that the petitioner has not made out any case for interference with Ext.P4 show cause notice on the ground that it is issued without jurisdiction on account of the fact that there is no notification issued under the provisions of Section 6(1) of the CGST Act empowering the officers of the State Goods and Services Tax Act to issue such a show cause notice. Section 6(1) of the CGST Act reads as follows:

Section 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

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

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory 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.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of

any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

A reading of Section 6(1) of the CGST Act makes it clear that the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be proper officers for the purposes of the Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify. Unaided by authority, a reading of the provision suggests to me that by virtue of the operation of the provision itself, the officers appointed under the State Goods and Services Tax Act are proper officers for the purposes of the Central Goods and Services Tax Act, and it is only when any restriction or condition has to be placed on the exercise of power by any officer appointed under the State Goods and Services Tax Act that a notification as contemplated by the provisions of Section 6(1) of the CGST Act has to be issued. Paragraph Nos. 2 to 3.3 of the letter issued by the GST Policy Wing of the Central Board of Indirect Taxes and Customs as F.No.CBEC-20/10/07/2019-GST dated 22-06-2020, reads thus:

"2. Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as notification No.39/2017- CT dated 13.10.2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the CGST Act.

3.1. The issue has been examined in the light of relevant legal provisions under the CGST Act, 2017. It is observed that Section 6 of the CGST Act provides for cross empowerment of State Tax officers and Central Tax officers and reads as:-

"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes- of this Act, Subject to such conditions as the Government shall, on the recommendations of the Council, by Notification specify.

3.2. Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3. The confusion seems to be arising from the fact that, the said sub-section

provides for notification by the Government if such cross empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017-CT dated 13.10.2017 restricts powers of the State Tax officers for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports). If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts”.

While the opinion expressed in the communication referred to above does not deter this Court from taking a view different from the view expressed therein, as already noted, I am prima facie of the view that the opinion expressed in the said communication represents the true meaning of the provisions of Section 6(1) of the CGST Act. The Madras High Court in *Tvl. Vardhan Infrastructure* (Supra) held thus:

“61. Thus, Section 6(1) of the respective GST Enactments empowers Government to issue notification on the recommendation of GST Council for cross- empowerment. However, no notification has been issued except under Section 6(1) of the respective GST Enactments for the purpose of refund although officers from the Central GST and State GST are proper officers under the respective GST Enactments.

62. Since, no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax under Chapter-XI of the respective GST Enactments r/w Chapter X of the respective GST Rules, impugned proceedings are to be held without jurisdiction. Consequently, the impugned proceedings are liable to be interfered in these writ petitions.

63. Thus, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/ Cross-Empowerment/ GSTC/2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments.

64. Similarly, if an assessee has been assigned to the State Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross-Empowerment/ GSTC/2017 dated 20.09.2017, the officers of the Central GST cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules by an assessee.

65. The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is under Section 6 of the respective GST enactment. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the

case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them.

66. Therefore, the proceedings initiated by the respondents so far against the respective petitioners by the Authorities other than the Authority to whom they have been assigned to are to be held as without jurisdiction. Therefore, the impugned proceedings warrants interference”.

Since the issue raised in this writ petition will affect several proceedings, and taking note of the view expressed by the Madras High Court in Tvl. Vardhan Infrastructure (Supra), which is contrary to the prima facie view that I have taken, I am of the opinion that this issue requires an authoritative pronouncement by a Division Bench of this Court.

The writ petition is, therefore, adjourned to be heard by a Division Bench. The Registry shall place the matter before the Division Bench, if necessary, after obtaining orders of Hon’ble the Chief Justice.”

5. We find ourselves in complete agreement with the prima facie view taken by the learned Judge [Justice Gopinath P.] in the reference order. The provisions of Section 6(1) of the CGST Act make it abundantly clear that the cross-empowerment of the Officers of the SGST/UTGST Department to function as proper officers under the CGST Act is through the legislative mandate under Section 6(1) of the CGST Act. It is a mandate and empowerment that is presently unqualified but expressly made subject to such conditions as the Government shall, on the recommendation of the Council, by notification, specify. In other words, while the statutory mandate at present is unqualified, it will be qualified in the event the Government specifies conditions for the exercise of power under the statutory mandate, pursuant to the recommendations of the Council. We cannot persuade ourselves to read the statutory mandate as one that does not presently bring about a cross-empowerment but merely envisages such a situation as and when a notification is issued at some time in the future.

6. We also find that the view taken by us accords with the view taken by a Division Bench of the Delhi High Court in Indo International Tobacco Ltd. and Ors. v. Additional Director General, DGGI and Ors. - [(2022) 97 GSTR 414 (Delhi)], where at paragraphs 56 to 62, it is held as follows:

“56. Sub-clause (1) of Section 6 of the CGST Act provides for the cross empowerment of the Officer appointed under the SGST Act or the UTGST Act as a 'proper officer' for the purpose of the CGST Act. We are informed that pari materia provisions of cross empowerment of the Central Tax Officer are contained in the various SGST Act(s).

57. Sub-section (2)(a) of Section 6 of the CGST Act provides that where a 'proper officer' issues an order under the CGST Act, he shall also issue an order under the SGST Act and the UTGST Act, as the case may be.

58. Sub-section 2(b) of Section 6 of the CGST Act further states that where the

'proper officer' under the SGST Act or the UTGST Act has initiated any proceedings on the subject matter, no proceedings shall be initiated by the 'proper officer' under the CGST Act on the same subject matter.

59. We are informed that similar provisions in the reverse are contained in the various SGST Act(s), with the State Tax Officer being required to pass an order under the CGST Act while passing an order under the SGST Act, and being prohibited from initiating any proceedings on the subject matter on which the Central Tax officer has already initiated some proceeding.

60. Section 6 of the CGST Act is clearly guided by the object of providing a common national market of goods and services and to eliminate the subjection of the taxpayers to multiple jurisdictions. It aims to provide protection to the taxpayers against being subjected to multiple agencies for the same set of transactions, at the same time empowering the Officers under the CGST Act or the SGST Act or the UTGST Act to pass a comprehensive order and take action, keeping in view and extending to the other Acts. There should, therefore, be only one order insofar as the tax entity is concerned.

61. To give effect to the above intent, Section 6(2)(b) of the CGST Act states that where the proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, the Central Tax Officer shall not initiate proceedings on the same subject matter. Clearly the intent being that as the State Tax Officer is empowered to pass an order even under the CGST Act, there is no occasion for the Central Tax Officer to initiate parallel proceedings on the same subject matter.

62. As stated hereinabove, Section 6 of the CGST Act is intended to give the effect of harmonious convergence of the States and the Union for the same event for taxation."

The Special Leave Petition preferred against the said judgment has also been dismissed as withdrawn, as is evident from the order dated 07.11.2022 of the Supreme Court in SLP (C).No.5434 of 2022.

Thus, we answer the reference by upholding the view taken by the learned Single Judge in the reference order for the reasons stated therein, as supplemented by the reasons in this judgment. Further, as we find that no other issue arises for consideration in the writ petition, we also deem it appropriate to dismiss the writ petition through this judgment. Needless to say, it will be open to the petitioner to pursue its statutory remedies against the show cause notice issued to it by raising all contentions available in law and thereafter getting the matter adjudicated in terms of the statutory provisions.