

PART-I

CROSS-EMPOWERMENT IN GST

The principle of cross empowerment is discussed in detail under ***Section 6 of both the CGST Act, 2017 and the UTGST Act, 2017***. These provisions allow for the authorization of officers from either the central or state tax administration to act as the "proper officer" for proceedings under the relevant statute.

Section 6 of the CGST Act prescribes:

- When a proper officer under the CGST Act issues an order, he shall also issue a corresponding order under the SGST or UTGST Act, with due intimation to the jurisdictional officer of the other tax authority.
- Where a proper officer under the SGST Act has initiated any proceedings on a subject matter, no proceedings are to be initiated by the proper officer under CGST Act on the same subject matter.

Similarly, Section 6 of the UTGST Act mirrors these provisions, ensuring that cross empowerment is consistently applied across central, state, and union territory tax administrations.

To further elucidate the scope of cross empowerment, the CBIC issued ***Clarification No. CBEC/20/43/01/2017-GST (Pt.) dated October 5, 2018***. The clarification empowers both central and state tax authorities to initiate intelligence-based enforcement actions, irrespective of the taxpayer's administrative assignment. In essence, this means that if an officer of the Central Tax authority initiates an enforcement action against a taxpayer assigned to the State Tax authority, the Central Tax officer retains jurisdiction over the entire process, including investigation, adjudication, and recovery.

This clarification reinforces the principle that jurisdictional assignment for administrative purposes does not preclude either authority from carrying out enforcement actions, when necessary, in cases involving suspected tax evasion.

VA-GST UPDATES

GST council meeting was held on 6th Oct 2017 and effect of decisions taken in that meeting was given on 13th Oct 2017 by **Notification 39/2017- Central Tax & 11/2017- IGST**

Officers appointed under the respective State Goods and Services Tax Act, 2017 or the Union Territory Goods and Service Tax Act, 2017 (14 of 2017) (hereafter in this notification referred to as “the said Acts”) who are authorized to be the proper officers for the purposes of section 54 or section 55 of the said Acts (hereafter in this notification referred to as “the said officers”) by the Commissioner of the said Acts, shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act

Officers empowered to issue Refund u/s 54 & 55. This will help exporters it getting their refunds quickly.

There are multiple judicial pronouncements regarding cross empowerment. We have noted some of important judgements as follows:

In the case of **M/s. Bhawani Textiles vs. Additional Director General Gujarat High court** had with the issue of simultaneous initiation of enforcement action by different authorities on the same subject matter. In this regard, the High Court has referred to the clarification given by the Government dated 05th October 2018 (supra) and it was held that the Central Tax authority who has initiated proceedings is directed to look into the matter and ensure that no undue harassment is caused to the writ applicant by way of issuing summons by the State tax authority on the same subject matter.

The Delhi High Court in the case of **RCI Industries and Technologies Limited v Commissioner DGST Delhi** rejected assessee's contention regarding absence of guidelines regarding cross-empowerment of the Central and State Authorities. In this context, the HC opined that "if an officer of the Central GST initiates intelligence-based enforcement action against a taxpayer administratively assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion". The HC also held that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to challenge the same in accordance with law.

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In the case of ***Subhash Agarwalla Vs. State of Assam (W.P. (C) No. 683 of 2024, decided on 12-2-2024)***, the Guwahati High Court held that simultaneous proceedings under both CGST and SGST for the same period and "subject matter" under the provisions of Section -6(1) (b) of the CGST Act 2017 are impermissible.

Cross-empowerment of state GST officials doesn't require issuance of separate notification: Kerala HC

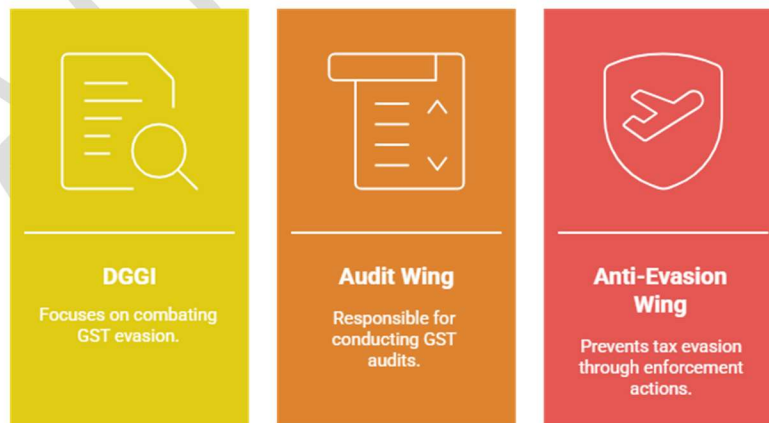
The Kerala High Court in the case of ***Pinnacle Vehicles and Services Private Limited Vs Joint Commissioner*** held that there is no need for issuance of separate notification for cross-empowerment for authorising state GST officials as proper officer for the purpose CGST Act. Accordingly, writ disposed of.

Parallel proceedings cannot be initiated by Central/ State Tax Authorities on the same subject matter

If the defects are similar in the SCNs then it shall be omitted and no proceedings to be initiated against the assessee w.r.t. the defects, which are already the subject matter or consideration by the Central Tax Authority – Madras HC in ***M/s. VGN Projects Estates Private Limited vs. Assistant Commissioner (State Taxes) and others W.P. No. 2391 of 2023 and W.M.P. No. 2481 of 2023, dated 30.01.2023]***

Parallel proceedings cannot be conducted by the 3 wings of same department for the same tax period

GST Investigation Wings



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Audit proceedings under sec 65 of the CGST Act being commenced by Audit Commissionerate, it is appropriate that the proceedings should be taken to the logical end by Audit Commissionerate itself and further proceedings initiated by the Anti-Evasion and Range Office for the very same period shall not be proceeded with any further action – Calcutta HC in ***M/s. R.P. Buildcon Private Limited & Anr vs. The Superintendent, CGST & CX [M.A.T. No.1595 of 2022 with I.A. No. CAN 1 of 2022 of 2022 dated 30.09.2022***

Inquiry cannot be considered as any proceeding initiated on the same subject matter

The court dismissed the petition filed for prohibiting another proper officer to initiate any inquiry / proceeding on the same subject matter. Held that, there is no proceeding initiated by the proper officer on the same subject matter referable to sec 6(2)(b) of the CGST Act and it is merely an inquiry by a proper officer by issuance of summons under sec 70 of the CST Act. ***Allahabad HC in G.K. Trading Company vs. Union of India & Ors. [Writ Tax No. 666 of 2020, dater 2.12.2020].***

There cannot be two parallel investigations under State Act as well as Central Act

The proceedings were initiated by the SGST officers where CGST officers have already initiated the proceedings. Further, it was submitted that the authorities under the SGST Act are well aware that the authorities under the CGST Act are investigating the matter. It was submitted that there cannot be two parallel investigations under the State Act as well as the Central Act. Hence, interim relief restraining any coercive action pursuant to the impugned inquiry proceedings granted – ***Gujarat HC in Sureshbhai Gadhecha v. State of Gujarat [R/ Special Civil Application No. 23279 of 2019 dated 27.12.2019]***

No bar on investigation by different officers independently investigating different matters without any overlapping

Dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment ITC. Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima face cognizable and penal offences under the CGST Act, without any overlapping, such investigation is not barred by Sec 6(2) of the CGST Act. ***Punjab***

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& Haryana HC in Kaushal Kumar Mishra Vs. Additional Director General [SLP (C) No. 003013/2021 dated 26.02.2021]

Punjab & Haryana High Court in the case of ***Stalwart Alloys India Pvt Ltd Vs. Union of India & Others*** has made following observations:

- GST law does not provide any provisions for transferring the proceedings from one proper officer to another and further, it prohibits the same. Also, it empowers both the State authority as well as Central authority with equal powers.
- High Court opined that the proceedings are in the nature of judicial proceedings and the same cannot be transferred by administrative actions, merely because the DGGI has information relating to similar fraudulent avilment of ITC by other firms who may be related to the taxpayer and further, it would not be a sufficient ground to presume that the State GST authority would not be able to conduct the proceedings or examine the culpability of the taxpayer against whom proceedings have been initiated.
- The word 'subject matter' used in Section 6(2)(b) of the Act would mean 'the nature of proceedings'. If the State has already initiated proceedings by issuing notice for the same subject matter, the DGGI cannot be allowed to initiate proceedings for same subject.

Madras High Court in the case of ***Vardhan Infrastructure Vs. Special Secretary, Head of The GST Council Secretariat***, held that,

- No notification in respect of cross empowerment has been issued except for processing of refund.
- Also, if a taxpayer has been assigned administratively with the Central Authorities, pursuant to Circular No. 01/2017 (supra), 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. Conversely, taxpayer is assigned to State, Central officers cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules.
- The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts

Similarly, Jharkhand High Court in the case of *Vivek Narsaria Vs. State of Jharkhand*, ruled against parallel proceedings initiated by both central and state authorities, directing Preventive Wing of the CGST and DGGI Wing, to forward all their investigation carried out as against the petitioner and inter-related transaction to the State Authorities, who shall continue with the proceedings from the same stage.

Requirement of separate notification for cross-empowerment u/s. 6(1) of CGST Act referred to division bench

Recently the Kerala High Court in the case of *Pinnacle Vehicles and Services Private Limited Vs Joint Commissioner WP(C) No. 25724 of 2024 dated 7.11.2024* that the issue relating requirement of separate notification as contemplated by the provisions of section 6(1) of the CGST Act for cross-empowerment requires an authoritative pronouncement by a Division Bench of this Court.

Plain 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.

Held that since the issue raised in this writ petition will affect several proceedings, and taking note of the view expressed by the Madras High Court **BLOCKED CREDIT** in Tvl. Vardhan Infrastructure, 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.

As per the above discussed divergent legal jurisprudence, the issue of parallel proceedings still persists. Further, courts have ruled that cross-empowerment does

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not empower State Government to apply provisions of states' Act or Rules made thereunder to inter-state transactions. Furthermore, it draws a clear distinction between a proceedings drawn for the demand of tax, and enquiry/ investigation initiated/conducted by the Authorities in respect of an offence committed by the assesses and there shall not be any parallel investigation/proceeding to be initiated by the Central and State Tax authorities on the same subject matter.

It is pertinent to note that, the term '**intelligence-based enforcement action**' has not been defined anywhere in the CGST Act that has created a lot of confusion and ambiguity in terms of the borderlines and powers of the authorities under which the scope of this term can be executed. In absence of clarification, both the Centre and State GST authorities are initiating proceedings against the assesses irrespective of allocated jurisdictions, which is in real terms is taking away ease of business for taxpayers.

The courts are allowing parallel proceedings for the same period on the basis that the subject matter is different. However, it is to be noted that when search is conducted, the officers look at all the records, documents etc. for that period and proceed with the discrepancies found. Thus, parallel proceedings cannot be allowed on the basis that the subject matter is different as it will be then endless procedure causing undue hardship to the taxpayer.

Due care is expected by the GST authorities to initiate any proceedings not only on the basis of intelligence received, but also after conducting a proper verification of any parallel proceedings going on against an assessee, and wherever such proceedings are already initiated, the subsequent ones need to be stopped

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PART-II

FREQUENTLY ASKED QUESTIONS

General Understanding of Cross Empowerment

Q1. What is cross empowerment under GST?

A: Cross empowerment allows officers of either the **Central GST (CGST)** or **State GST (SGST/UTGST)** administration to act as the "proper officer" for proceedings under the respective GST law. This prevents duplication of tax administration efforts and ensures smooth compliance.

Q2. Under which section of the GST law is cross empowerment provided?

A: Cross empowerment is discussed under **Section 6** of both the **CGST Act, 2017** and the **UTGST Act, 2017**. It lays down the rules for jurisdictional authority in GST enforcement and adjudication.

Q3. What does Section 6(1) of the CGST Act specify?

A: It states that when a **proper officer** under the **CGST Act** issues an order, a corresponding order shall also be issued under the **SGST/UTGST Act**, with due intimation to the jurisdictional officer of the other tax authority.

Q4. Can both CGST and SGST authorities initiate proceedings on the same issue?

A: No, as per **Section 6(2)(b) of the CGST Act**, once an officer from one authority (Central or State) initiates proceedings on a subject matter, the other authority **cannot** initiate separate proceedings on the same issue.

Q5. Does Section 6 allow for intelligence-based enforcement actions by both authorities?

A: Yes, per CBIC Clarification No. **CBEC/20/43/01/2017-GST (Pt.)** dated **October 5, 2018**, both **Central and State GST officers** can initiate intelligence-based enforcement actions **irrespective of the taxpayer's administrative assignment**.

Judicial Pronouncements on Cross Empowerment

Q6. What did the Gujarat High Court rule in the case of M/s. Bhawani Textiles?

A: The Gujarat High Court held that once the Central GST authority initiates proceedings, the State GST authority cannot issue separate summons for the same subject matter. This was based on the 2018 clarification by CBIC.

Q7. What was the Delhi High Court's stance in RCI Industries and Technologies Limited vs Commissioner DGST Delhi?

A: The court ruled that if Central GST officers initiate intelligence-based enforcement, they must take the case to its **logical conclusion** without transferring it to State GST officers.

Q8. What was held in Subhash Agarwalla Vs. State of Assam?

A: The **Guwahati High Court** ruled that simultaneous proceedings under CGST and SGST for the same period and subject matter are impermissible under Section 6(1)(b) of the CGST Act, 2017.

Q9. What did the Madras High Court rule in M/s. VGN Projects Estates Pvt Ltd?

A: It held that if defects in **Show Cause Notices (SCNs)** are the same, **duplicate proceedings should not be initiated** by CGST and SGST authorities.

Q10. Can different wings of the same department conduct parallel investigations for the same tax period?

A: No, the **Calcutta High Court** (M/s. R.P. Buildcon Pvt Ltd) ruled that once **Audit Commissionerate** initiates an audit under **Section 65 of CGST Act**, further action by **Anti-Evasion or Range Office** for the same period **must be stopped**.

Inquiry and Investigation under GST

Q11. Can an inquiry be considered a proceeding under Section 6(2)(b) of the CGST Act?

A: No, the **Allahabad High Court** (G.K. Trading Company) ruled that an **inquiry (summons under Section 70)** does not amount to "proceedings" and does not violate Section 6(2)(b).

Q12. Can both CGST and SGST conduct parallel investigations on a taxpayer?

A: No, as per the **Gujarat High Court** (Sureshbhai Gadhecha v. State of Gujarat), **two parallel investigations cannot be initiated for the same subject matter**.

Q13. Can different officers investigate separate matters for the same taxpayer?

A: Yes, as per the **Punjab & Haryana HC** (Kaushal Kumar Mishra case), if the matters are **different** (e.g., separate fraudulent ITC claims), **parallel investigations are allowed**.

Q14. Can CGST officers interfere with an SGST case?

A: No, the Madras High Court (Vardhan Infrastructure case) ruled that if a taxpayer is assigned to SGST, CGST officers cannot interfere unless a cross-empowerment notification is issued.

Q15. Can cases be transferred between CGST and SGST officers?

A: No, per Punjab & Haryana HC (Stalwart Alloys India Pvt Ltd), GST law does not allow transfer of proceedings between CGST and SGST authorities.

Practical Implications for Taxpayers

Q16. Can a taxpayer challenge parallel proceedings in court?

A: Yes, courts have ruled against parallel proceedings. Taxpayers can challenge them under Article 226 of the Constitution of India.

Q17. What should taxpayers do if they receive notices from both CGST and SGST authorities?

A: Respond to both notices, but highlight the cross-empowerment rules and reference relevant judicial precedents to stop duplication of proceedings.

Q18. Can different authorities conduct tax assessments for the same taxpayer for the same issue?

A: No, per Jharkhand High Court (Vivek Narsaria case), CGST and SGST authorities cannot conduct separate assessments for the same taxpayer for the same issue.

Q19. Is there a requirement for a separate notification for cross empowerment under Section 6(1)?

A: Yes, the Kerala High Court (Pinnacle Vehicles case) held that a separate notification is needed for cross empowerment, requiring a Division Bench ruling.

Q20. Can SGST authorities apply state-specific rules to inter-state transactions?

A: No, State GST officers cannot apply state rules to inter-state transactions, as GST is a unified tax system.

Future Developments & Clarity on Cross Empowerment

Q21. Why is there confusion about "intelligence-based enforcement actions"?

A: The term "intelligence-based enforcement action" is not defined in the CGST Act, leading to disputes between CGST and SGST officers on jurisdiction.

Q22. Can businesses face harassment due to parallel proceedings?

A: Yes, if both CGST and SGST authorities initiate proceedings, it causes unnecessary compliance burdens and legal disputes.

Q23. How can businesses avoid issues related to cross empowerment?

A: Businesses should track notices carefully, seek professional legal advice, and file writ petitions if parallel proceedings are initiated.

Q24. Should GST officers verify existing proceedings before initiating new ones?

A: Yes, courts have emphasized that **GST officers should check for ongoing proceedings** before issuing new notices.

Q25. What is the way forward to resolve cross empowerment issues?

A: The **GST Council needs to issue clear guidelines**, including:

- Defining "intelligence-based enforcement"
- Clarifying notification requirements
- Preventing duplication of proceedings

PART-III

RELATED CIRCULAR/NOTIFICATIONS/CASE LAWS



Introduction

The case of **Ajay Verma vs Union of India and 5 Others** was decided by the **Allahabad High Court on February 9, 2022**. It primarily dealt with the issue of jurisdictional overlap between Central and State GST authorities and the application of **Section 6 of the CGST Act, 2017**. The court examined whether parallel proceedings could be initiated by both CGST and SGST authorities for the same subject matter.

Key Issues in the Case

1. Whether both CGST and SGST authorities can initiate proceedings on the same subject matter.
2. Interpretation of Section 6(2)(b) of the CGST Act—which prohibits parallel proceedings on the same subject matter by different authorities.

3. Jurisdiction of tax authorities—whether a taxpayer assigned to one tax authority can be investigated by another.
4. Legal standing of notifications or circulars that allow for cross-empowerment.

Facts of the Case

1. **Ajay Verma (the petitioner)** was a taxpayer under the GST regime.
2. Both Central GST (CGST) and State GST (SGST) officers initiated separate investigations against him for the same issue.
3. The SGST department first issued a notice regarding alleged tax evasion.
4. Later, the CGST department also initiated proceedings for the same tax period and issue.
5. The petitioner challenged the CGST proceedings, arguing that under Section 6(2)(b) of the CGST Act, once proceedings are initiated by one authority, the other authority cannot start parallel proceedings on the same subject matter.
6. The petitioner sought relief from the **Allahabad High Court**, claiming that the CGST proceedings were **illegal and caused undue hardship**.

Legal Provisions Involved

1. **Section 6(2)(b) of the CGST Act, 2017**
 - States that if proceedings on a subject matter have already been initiated by an officer under the SGST Act, no proceedings shall be initiated by the CGST officer on the same subject matter.

2. Section 6(1) of the CGST Act, 2017

- States that the Central Government may issue a notification to authorize State GST officers to act as proper officers under the CGST Act and vice versa.

3. CBIC Circular dated October 5, 2018

- Clarifies that enforcement actions can be taken by either CGST or SGST officers, regardless of taxpayer jurisdiction.

Arguments by the Petitioner (Ajay Verma)

1. Parallel Proceedings Are Illegal

- The petitioner argued that since the SGST authority had already initiated proceedings, the CGST authorities had no jurisdiction to start fresh proceedings on the same issue.

2. Violation of Section 6(2)(b)

- The CGST department's actions violated **Section 6(2)(b)**, which prohibits multiple proceedings on the **same subject matter**.

3. Harassment and Unnecessary Litigation

- The petitioner claimed that facing two simultaneous investigations for the same issue caused undue hardship and harassment.

Arguments by the Respondents (Union of India & Others)

1. Cross-Empowerment Allows CGST Action

- The respondents relied on the CBIC Circular (October 5, 2018), which allows either CGST or SGST officers to investigate tax evasion cases.

- They argued that this cross-empowerment gave CGST officers the right to initiate proceedings, even if SGST had already started an investigation.

2. Different Subject Matter Interpretation

- The government contended that the CGST proceedings covered a different aspect of tax evasion than the SGST proceedings.

3. Power to Conduct Parallel Investigations

- The respondents maintained that tax evasion investigations are different from assessment proceedings and that parallel inquiries could be justified in some cases.

Judgment by the Allahabad High Court

The Allahabad High Court ruled **in favour of the petitioner (Ajay Verma)** and held that:

1. Parallel Proceedings Are Not Allowed

- The court quashed the CGST proceedings, stating that once SGST authorities initiated action, CGST authorities could not investigate the same issue simultaneously.
- Section 6(2)(b) clearly prohibits such parallel proceedings.

2. CBIC Circular Cannot Override Statutory Provisions

- The CBIC Circular (October 5, 2018) cannot be used to justify parallel proceedings.
- The court held that a circular cannot override Section 6(2)(b) of the CGST Act, which clearly restricts parallel proceedings.

3. Unnecessary Harassment of Taxpayers Must Be Avoided

- The court emphasized that subjecting a taxpayer to two investigations on the same matter is unjust and causes undue hardship.
- GST authorities should coordinate their actions to avoid multiple proceedings on the same issue.

4. Jurisdictional Clarity Is Necessary

- The court called for better clarity in tax administration, suggesting that State and Central GST officers should coordinate investigations rather than work in isolation.

Impact of the Judgment

1. Strengthens the Principle of Single Investigation

- Reinforces that once a proceeding is initiated by SGST, CGST authorities cannot interfere on the same issue.

2. Limits the Scope of CBIC's Cross-Empowerment Circular

- The judgment makes it clear that government circulars cannot contradict legal provisions.

3. Prevents Harassment of Taxpayers

- Encourages a more taxpayer-friendly approach, where businesses are not burdened with multiple investigations on the same matter.

4. Sets a Precedent for Future Cases

- This case is now an important precedent for taxpayers facing multiple GST investigations.

Conclusion

The Allahabad High Court's ruling in **Ajay Verma vs. Union of India** is a **landmark judgment** that upholds the principle of single jurisdiction under GST. It reinforces **Section 6(2)(b) of the CGST Act**, preventing simultaneous proceedings by CGST and SGST authorities on the same issue. The judgment provides relief to taxpayers from unnecessary litigation and emphasizes the need for better coordination between tax authorities.

This case serves as a **guiding precedent** for similar disputes and strengthens the principle that jurisdictional overlap in tax investigations must be avoided to promote the ease of doing business in India.

Thanks and Regards

VIJAI ASSOCIATES

Adv Mr. VJ VIJAY VARADHA RAJ M.Com.,M.B.A.,BGL.,LL.M.,

Adv Mr.K.A KRISHNAMURTHY M.Com.,LL.B.,

Adv Mr.M.SIVABHARATHI.,B.Com.,LL.B.,