

## 2024 TAXONATION 2051 (PUNJAB AND HARYANA)

# PUNJAB AND HARYANA HIGH COURT

CWP No. 1661 of 2022 (O&M) and CWP No. 7411 of 2023 (O&M)

**Stalwart Alloys India Private Limited-Appellant**

**Versus**

**Union Of India And Others-Respondent**

**Coram: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MR. JUSTICE SANJAY VASHISTH**

**Date of order: 28/08/2024**

## **Decision-In Favour of Revenue**

**Held That:** The petitioner is a manufacturer operating in Haryana. The petitioner faced multiple inquiries regarding wrongful availment of ITC by the Haryana State Tax Department and DGGI. The petitioner challenged the transfer of proceedings from the State Tax Officer to the DGGI. The court held that the State Tax Officer had the jurisdiction to initiate and conduct the proceedings. The DGGI did not have the power to transfer the case from the State GST authority to itself. The court quashed the orders transferring the proceedings to the DGGI and directed the State Tax Officer to continue with the proceedings.

### **Appearance:**

**Mr. Sandeep Goyal, Advocate,. For the Petitioner**

**Mr. R. Venkataraman, Assistant Solicitor General of India (through Video Conferencing) assisted by Mr. Sourabh Goel, Senior Standing Counsel, Ms. Shivani Sahni, Advocate, Ms. Geetika Sharma, Advocate, Ms. Anju Bansal, Advocate, for respondent nos. 1, 4, 5, 7 and 14 in CWP No. 1661/2022 and for respondent nos. 3 and 5 in CWP No. 7411/2023. Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.For the Respondent**

## **JUDGMENT**

1. The brief facts which have come on record are that the petitioner is a manufacturer of Lead alloys, Lead pure in shape of ingots, lead sub-oxide and red lead in power form and is operating in the State of Haryana.
2. An enquiry was initiated by the Haryana State Tax Department with regard to wrongful availment of Input Tax Credit (hereinafter to be referred as “ITC”) against the petitioner company and also by multiple DGGI Zonal Units. Aggrieved by multiple enquires, the petitioner preferred CWP No. 21658 of 2019, which was disposed of on 23.01.2020 and the respondents were directed to take a decision in this regard for conducting proceedings by one agency alone for the period of 01.07.2017 to 31.12.2018. In pursuance thereto, the State Government GST Department decided to take up the enquiry proceedings against the petitioner vide order dated 08.07.2020 and the record including ledger account, sales and purchase invoices and proof of payment etc. were requisitioned upto 31.01.2021.
3. The Director General of Goods and Services Tax Intelligence (hereinafter to be referred as “DGGI”), conducted search and seizure proceedings and a panchnama was also drawn on 19.02.2021. It was mentioned therein that records/ documents have already been seized by the State Government authorities and the visitor officers of the DGGI, Meerut Zonal Unit, verified the facts from the State Taxation Officer, who confirmed about having taken all the documents on record relating to the period from July 2019 to January 2021. With reference to the earlier period from 01.07.2017 to 31.12.2018 also the record was seized in the search conducted by the State GST authorities. A notice under [Section 74](#)(1) of the Haryana Goods and Services Tax Act, 2017 was also issued for the tax period from 01.07.2017 to 21.07.2019 to the petitioner. The issue of fraudulent availment of ITC is pending with the State authorities.
4. Respondent no. 14 – Senior Intelligence Officer filed a short-written reply. In his reply, he has stated that intelligence was gathered in regard to a racket involved in passing of ITC to various beneficiaries without supply of any underlying goods/ services. Working thereon, the said intelligence searches were conducted at the registered addresses of eight suspicious suppliers, who were supplying goods to the petitioner-company. They were all found to be nonexistent/ non-operational at their registered place of business. Investigations were further conducted with regard to creation of fake firms and mastermind behind it emerged, namely, Anant Rastogi, who has created and operated the above mentioned fake firms through which inadmissible ITC was passed on to various beneficiaries including M/s Stalwart Alloys India Limited during the period from September 2019 to February 2021. Finally Anant Rastogi was apprehended and his statement was recorded under [Section 70](#) of the CGST Act, 2017 and he confessed of creating the fake firms to facilitate fraudulent availment and passing of ITC to various beneficiaries including the petitioner-company. The amount was deposited by the said beneficiaries in the account of the fake/ non-existent firms and the amount was returned by him in cash to the involved companies after retention of his own commission. The petitioner-company who stated to be actively involved with Anant Rastogi.
5. Acting on intelligence gathered, search was again conducted at the registered premises of the petitioner-company on 19.02.2021 and the factory premises was also searched whereupon the officers were informed that records of the petitioner-company were with the Excise and Taxation Officer, Ward-1, Kurukshetra for the period from July, 2019 to January, 2021. The petitioner also preferred CWP No. 13995 of 2020 assailing the vires of [Section 69](#) and 132 of the CGST Act, 2017.

6. The Principal Director (Intelligence), DGGI, Headquarters has vide letter dated 15.03.2022 accorded permission to the office of the DGGI, Meerut Zonal Unit to conduct the centralized investigation against the petitioner company for the period after 2019. The petitioner has stated that another search and seizure proceedings were again conducted at the premises of the petitioner company by the DGGI, Meerut Zonal Unit. The State Tax Officer vide letter dated 15.03.2022 had transferred the proceedings pertaining to the petitioner company to the DGGI, Meerut Zonal Unit.

7. Feeling aggrieved of the transfer of all proceedings to DGGI, Meerut Zonal Unit, by the State Tax Officer vide his letter dated 15.03.2022, the petitioner has preferred this writ petition, inter-alia, stating that the action was in violation of provisions of [Section 6](#) (2) (B) of the HGST Act and the proper officer in terms of Section 6 (2) (B) of the HGST Act was the officer who had initiated the proceedings under Section 74 (2) of the Act where after he does have the power to transfer the proceedings to DGGI. It is submitted that the multiple proceedings cannot be allowed to continue and the proper officer would be the State Tax Officer alone who has the jurisdiction to examine the subject matter. It is stated that after the record having been seized by the State Tax Officer at the instance of DGGI, the record cannot be transferred to the office of DGGI nor can the DGGI usurp the power of the officer under the State GST Act, he being the proper officer.

8. Learned counsel for the petitioner has further relied on the circular dated 05.10.2018 issued by the Ministry of Finance in support of his submissions.

9. Learned counsel for the petitioner also relied on the judgments of Delhi High Court in *RCI Industries & Technologies Limited vs Commissioner DGST, Delhi and others 2021 SCC OnLine 3450*; *Calcutta High Court in Ideal Unique Realtors (P) Limited and another vs Union of India and others (2023) 108 GSTR 105*; *Gujarat High Court in Vipulchandra Pursottamdas Mahant Prop of Vaibhavi Construction vs Assistant Commissioner of State Taxes (2023) 9 Centax 243*; and *Jharkhand High Court in Vivek Narsaria vs State of Jharkhand (2024) 14 Centax 283 (Jhar.)*.

10. Learned counsel for the petitioner has also submitted that issue of jurisdiction can be raised at any stage. He further submitted that commencement of investigation in terms of [Section 67](#) of the Central Goods and Services Tax Act, 2017 can be said to be the start of a proceedings to safeguard the government revenue and, therefore, once the proceedings have been started at the State level and notice having also been issued under Section 74 (1) of the HGST Act, it would be only legal for the State authorities to conduct intelligence proceedings and there was no power available to transfer the proceedings to DGGI Meerut Zonal Unit.

11. Learned counsel for the petitioner further submitted that there was no power to transfer the proceedings between the State and the Centre under the CGST/ HGST, whereas there is an enabling provision available under the Income Tax Act and under the various other taxation Acts, namely, Sections 32C and 35P of the Central Excise Act, 1944; Section 131B of the Customs Act, 1962; Section [25](#) of the Central Sales Tax Act, 1956; and Section 434 of the Companies Act, 2013. Section 127 of the Income Tax Act, 1961 allows transfer of a case with the permission of the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

12. Per contra Mr. R. Venkataraman, learned Assistant Solicitor General has relied on the affidavit filed by the Intelligence Officer, as noticed above, and

submitted that so far as the period after 2019 is concerned, the State Government has not taken any steps for conducting investigation. It is further submitted that it is only for the overlapping periods i.e. 01.07.2017 to 31.03.2018 and 01.10.2018 to 31.12.2018 that the Court had passed an order in the writ petition filed by the petitioner and, therefore, the said proceedings are now being conducted by the proper officer under the Haryana GST Act. Since the suspicious suppliers are not falling in the State of Haryana and the statement of Anant Rastogi would have relevance and the petitioner company has been found to be prima facie involved in fraudulent ITC to the tune of Rs. 23.77 crores involving taxable supplies to the tune of Rs. 132.05 crores, it would be in the interest of justice that the enquiry is conducted by the DGGI, Meerut Zonal Unit. After detailed deliberation, therefore, it was decided that the State GST authority would be examining the action of the previous year and for the subsequent period the action is to be taken by the Central GST authorities, if they have received any information. No investigation is being conducted by the State GST authorities for the period July 2019 to March 2022 and the DGGI Meerut Zonal Unit or the Central GST authorities ought not be prevented from conducted further proceedings.

13. It has also been stated in the reply filed by the Investigating officer (Intelligence) that searches were conducted by the officers at the registered offices of 46 supplier firms, which were also found to be non-existent/ non-operational. 10 firms have shown supply of goods to the petitioner company in the month of November 2021 and based on fraudulent/ inadmissible ITC to the tune of Rs. 121.44 crores involving taxable supplies to the tune of approximately Rs. 674.67 crores for the period from July 2019 to November 2021. Since the said investigation is required to call for investigation of various firms, the same should not be disallowed.

14. Learned counsel for the respondents has relied on judgment of Delhi High Court in ***Indo International Tobacco Limited vs Vivek Prasad, Additional Director General, DGGI and others (2022) 97 GSTR 414*** in support of his contentions.

15. We have considered the submissions.

16. Section 6 (2) (B) of the Central Goods and Services Tax Act, 2017 reads as under:-

***“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 and order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorized 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.”*

17. Section 70 of Haryana Goods and Services Act, 2017 provides as under:-

**“70. Power to summon persons to give evidence and produce documents. (1)**  
*— The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908).*

*(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (Central Act 45 of 1860).”*

From the perusal of the aforesaid provisions, it is apparent that Section 70 of the HGST Act provides for inquiry which the proper officer is required to conduct.

18. Section 72 of the Haryana Goods and Services Act, 2017 reads as under:-

**“72. Officers to assist proper officer (1)** *All officers of Police, Railways, Customs and those officers engaged in the collection of land revenue, including village officers, officers of Central Tax shall assist the proper officers in the implementation of this Act.*

*(2) The Government may, by notification, empower and require any other class of officers to assist the proper officer in the implementation of this Act when called upon to do so by the Commissioner.”*

The power of Inspection, Search, Seizure and Arrest as provided under Chapter XIV of the Central Goods and Services Tax Act, 2017 reflects that the power which is being exercised by the proper officer in terms of Sections 69, 70, 71 and 72 of the CGST Act are purely judicial in nature. In terms of [Section 70](#) (2) of the HGST Act, every inquiry shall be deemed to be a judicial proceedings. Issuance of show cause notice is the point of commencement of any legal proceedings. Thus, once a proper officer has initiated any proceedings as per Section 6 (2) (B) of the Act, on a subject matter, no proceedings can be initiated by another proper officer on the same subject matter.

19. We further noticed that the proper officer, who has initiated proceedings in the present case, the State Tax Officer, would be empowered to summon persons to give evidence and produce documents, while the other tax statutes provide for transfer of cases from one officer to another. The scheme of the Central Goods and Services Tax Act, 2017 or the Haryana Goods and Services Tax Act, 2017, nowhere provides for transferring the proceedings from one proper officer to another. On the other hand, it debars the same. In the circumstances, neither any authority has the power to transfer the case from its own jurisdiction to another nor any other authority can direct for transferring an investigation/ proceeding already undergoing before the proper officer in terms of [Section 6](#) (2) (B) of the Act.

20. We find that the High Courts of Calcutta, Gujarat and Jharkhand in the judgments (supra) relied upon by learned counsel for the petitioner, had held that the DGGI does not have the power to transfer the case already under inquiry/ investigation or pending before the State GST authority to itself. Delhi High Court in Indo International Tobacco Limited (supra) has taken a different approach.

21. Learned Assistant Solicitor General has submitted that the purpose of transferring the matter to DGGI is only because the DGGI would have the authority and jurisdiction Pan India while the State GST authority would be unable to carry out investigation concerning wrongful / inadmissible availment of ITC by the firms outside the State. It was his submission that DGGI having larger jurisdiction to investigate would be, therefore, more competent authority to examine such issues.

22. We have considered his submission but find ourselves unable to accept the same in terms of scheme of the GST Act. As noticed above, the GST Act of 2017 empowers both the State authority as well as Central authority with equal powers. Once we have held that the proceedings are in the nature of judicial proceedings. The corollary, such judicial proceedings cannot be transferred by administrative actions. Merely because the DGGI has information relating to similar fraudulent availment of ITC by other firms who may be related to the firm against which the proceedings have been initiated under [Section 74](#) of the HGST Act by the State authority itself 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 firm against whom proceedings under Section 74 of the HGST Act have been initiated. Merely because there may be other firm also against whom proceedings are initiated, there is no concept of joint proceedings. In view of the above, we do not subscribe to the contentions raised by learned Assistant Solicitor General.

23. The circular dated 05.10.2018 issued by the Government of India, Ministry of Finance reads as under:-

*“1. It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.*

*2. In this regard, GST Council in its 9 meeting held on 16-1-2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:—*

*“viii. Both the Central and State tax administrations shall have the power to take intelligence based enforcement action in respect of the entire value chain”.*

*3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.*

*4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.*

*5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administrative assigned to the Central tax authority.*



6. *It is also informed that GSTN is already making changes in the IT system in this regard.*"

24. Thus, the Central Government has acknowledged that once the officer of the State Tax Authority has initiated action, it would be the proper officer who would conduct further proceedings under the Act.

25. The import of the aforesaid circular dated 05.10.2018 is to be understood to mean that when an inquiry is conducted by a proper officer of the State and investigation is required to be done by the Central Tax Officer, the Central Tax Officer would exercise the said power for the purpose of investigation. However, it would not mean that the proceedings being conducted by the State Tax Officer would also be transferred to them. They would only be in a position as investigating officer as is done in any criminal case. Their report relating to their investigation at the level of Pan India will have to be submitted to the State Tax Officer who has initiated the proceedings and as a State Tax Officer has the power to issue summons and warrants of arrest which would be applicable to Pan India. There is no reason to believe that the proceedings in any manner would be hampered or would suffer as against the company/ firm against which proceedings have been initiated under [Section 74](#) of the Act.

26. It appears that there is another internal communication bearing F. No. CBEC-20/10/07/2019-GST by the GST Wing dated 22.06.2020, which had noticed [Section 6](#) of the CGST Act, 2017. The same reads as under:-

*"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.

4. Further, it may kindly be noted that a notification under section 6 (1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross-empowerment under section 6 (1) of the CGST Act is absolute and not conditional.”

27. Thus, it is apparent that the State and the Central Governments have same powers under the CGST/ HGST Acts and if one of the officers has already initiated proceedings, the same cannot be transferred to another and he alone be allowed to issue process under the Act and on the same subject matter no proceedings shall be initiated by another officer. However, in the present case, we find that the State authorities have issued notice to the petitioner company and initiated proceedings for the period from 01.07.2017 to 22.07.2019 alone relating to financial years 2017-2018, 2018-2019, 2019-2020, whereafter the order has been passed by the DGGI Meerut Zonal Unit to conduct investigation for the period from July 2019 to March 2022.

28. We also find that entire proceedings under the GST Act for investigation relating to fraudulent availment of ITC are related to a particular firm which is registered in State of Haryana. If there is another firm which has also been found to be availing fraudulent ITC, the Central Government authorities are not precluded from taking action against that firm. Thus, independent action against some other firm would not impede the proceedings already initiated by the State Tax Authorities against the present firm. Neither it can be said to be creating any complication or multiplicity of proceedings. We are, therefore, satisfied that the State Tax Authority could not have been asked to transfer the case already pending before it relating to the availment of wrongful ITC under [Section 74](#) (1) of the Act against the petitioner firm. Any new information which the respondents may have gathered relating to fraudulent availment or passing on, can always be informed to the authority who is already conducting the investigation and inquiry and proceedings under Section 74 (1) of the Act.

29. In the opinion of this Court, the word ‘subject matter’ used in Section 6 (2) (B) of the Act would mean ‘the nature of proceedings’. In the present case, thus, it would mean the proceedings initiated for wrongful availment of input tax credit by fraudulent means. Thus, if the State has already initiated proceedings by issuing notice under [Section 74](#) of the Act for the period upto 22.07.2019, for the same subject matter, the DGGI cannot be allowed to initiate proceedings for the availment of input tax credit by fraudulent means for the period from 28.07.2019 to 20.01.2022. Such action, if allowed, would be contrary to the provisions contained in Section 6 (2) (B) of the Act.

30. It is to be noticed that earlier this Court had already directed the respondents to conduct the proceedings at one place alone. Since the proceedings have already been initiated by the State authorities i.e. the Excise and Taxation Officer at Shahbad. The summons and warrants have already been issued and the entire record is available with them. As has come on record, there is no occasion to uphold the action of the DGGI or the action of the State Tax Officer in transferring the proceedings pertaining to the petitioner firm which were pending before it by his letter dated 15.03.2022. We, accordingly, quash the same and direct the State Tax Officer under the GST Act to proceed and conclude the proceedings in terms of the provisions of the Act.



31. In a federal structure, the Central Government authorities and the State authorities would be required to act in tandem and not to operate in exclusion with one another. The investigation which may be conducted would, therefore, have to be based on one another and once the State or the Central authority has initiated proceedings, the other authority, State or the Central would act in support of the same and provide all necessary inputs so that the proceedings may reach to a final conclusion and achieve its results.

32. In view of the aforesaid findings and conclusion drawn, action of the respondents in transferring the proceedings to DGGI, Meerut vide their orders are not sustainable in law. The proper officer, namely, Excise & Taxation Officer, Shahbad had no jurisdiction to transfer the proceedings to the Central Government vide letter dated 08.07.2020 and 15.03.2022 and the same are quashed and set aside.

33. The writ petitions are, accordingly, allowed with further direction that the Excise & Taxation Officer-cum-proper officer, Shahbad, shall continue with the proceedings initiated under Section 74(1) of the HGST Act against the petitioner-company and shall also examine all the aspects which may have been revealed relating to evasion of tax or availment of ITC after 22.07.2019.

34. All pending applications shall stand disposed of in the aforesaid terms.

35. No costs.