

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 7<sup>TH</sup> DAY OF NOVEMBER 2024 / 16<sup>TH</sup> KARTHIKA, 1946

WP(C) NO. 25724 OF 2024

**PETITIONER(S):**

PINNACLE VEHICLES AND SERVICES PRIVATE LIMITED, WEST HILL P.O.,  
ATHANIKKAL, KOZHIKODE, REPRESENTED BY ITS DIRECTOR MR. GABI GAFOOR,  
PIN-673005

**RESPONDENT(S):**

1. JOINT COMMISSIONER, (INTELLIGENCE & ENFORCEMENT), STATE GST COMPLEX BUILDING, 4TH FLOOR, JAWAHAR NAGAR COLONY, ERANHIPALAM P.O., KOZHIKODE, PIN-673006
2. JOINT COMMISSIONER (GENERAL), OFFICE OF THE COMMISSIONER OF STATE GOODS AND SERVICES TAX, KILLIPALAM, KARAMANA P.O., THIRUVANANTHAPURAM, PIN-695001
3. COMMISSIONER, TAXES, SECRETARIAT, 9TH FLOOR, TAX TOWER, KILLPPALAM, KARAMANA P.O., THIRUVANANTHAPURAM, PIN-695001
4. THE SECRETARY, GST COUNCIL, 5TH FLOOR, TOWER-II, JEEVAN BHARATHI BUILDING, CONNAUGHT PLACE, NEW DELHI, PIN-110001

Writ Petition (Civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings in pursuance of Exhibit P2 authorisation and Exhibit P4 show cause notice against the petitioner, pending disposal of this Writ Petition and restrain the respondents from initiating any coercive measures against the petitioner, including but not limited to, demands for payment, penalties, or further inspections.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 09-10-2024 and upon hearing the arguments of SRI. AMMU CHARLES, Advocate for the petitioner, and of SRI. J. VISHNU, Advocate for R4, the court passed the following:

**GOPINATH P., J**

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**W.P(C) No.25724 of 2024**  
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Dated this the 7<sup>th</sup> day of November, 2024

**REFERENCE ORDER**

The petitioner is a registered person under the Central Goods and Services Tax/State Goods and Services Tax Acts, 2017 (CGST/SGST Acts) allocated to the jurisdiction of the Central Tax Authorities. The petitioner has approached this Court challenging Ext.P4 show cause notice on a short ground. It is the case of the petitioner that Ext.P4 show cause notice has been issued by the State Tax Authority without jurisdiction and without there being any notification as contemplated by the provisions of Section 6(1) of the Central Goods and Services Tax Act, 2017 (CGST Act).

2. The learned counsel appearing for the petitioner places reliance on Ext.P8 judgment of the Madras High Court in ***Tvl. Vardhan Infrastructure v. Special Secretary, Head of the GST Council Secretariat; MANU/TN/2310/2024***, which takes the view that, without there being a notification as contemplated by the provisions of Section 6(1) of the CGST Act, there is no cross-empowerment, and the Central Authority or the State Authority to which a taxpayer is assigned must be the one

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to initiate proceedings under the provisions of the CGST/SGST Acts.

3. The learned Senior Government Pleader would submit that a reading of the provisions of Section 6(1) of the CGST Act will show that empowerment of the State Authorities as proper officers under the CGST Act is contemplated by the provision itself, and it is only when any restriction on such powers is to be placed that a notification as contemplated by the provisions of Section 6(1) of the CGST Act has to be issued. In support of this submission, the learned Senior Government Pleader has also made available for my perusal a copy of the letter bearing number F.No.CBEC-20/10/07/2019-GST, dated 22-06-2020, issued by the GST Policy Wing of the Central Board of Indirect Taxes and Customs, which answers a reference from the Directorate General of GST Intelligence and takes the view that it is only when any restriction has to be placed on the power of the State Authorities that a notification as contemplated by the provisions of Section 6(1) of the CGST Act has to be issued. It is thus submitted that the petitioner has not made out any ground for interference with Ext.P4 show cause notice on the ground that it is issued without jurisdiction.

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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;*

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*(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.

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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*

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*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-*

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*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*



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*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.



**Sd/-  
GOPINATH P.  
JUDGE**

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**APPENDIX OF WP(C) 25724/2024**

- Exhibit P1** TRUE COPY OF THE GST REGISTRATION CERTIFICATE OF THE PETITIONER ISSUED ON 26.08.2020
- Exhibit P2** TRUE COPY OF THE AUTHORISATION DATED 26.11.2019
- Exhibit P3** TRUE COPY OF THE SHOW CAUSE NOTICE NO.MS/VTK/INS03/2019-20 DATED 08-10-2021
- Exhibit P4** TRUE COPY OF THE SHOW CAUSE NOTICE NO. ZD320124033112C DATED 30.01.2024 ISSUED BY THE 1ST RESPONDENT
- Exhibit P5** TRUE COPY OF THE PETITIONER'S REPLY TO THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 28.02.2024
- Exhibit P6** TRUE COPY OF THE LETTER DATED 02.04.2024 FORWARDED BY THE PETITIONER TO THE 1ST RESPONDENT
- Exhibit P7** TRUE COPY OF THE LETTER DATED 01.07.2024 SENT BY THE PETITIONER TO THE 1ST RESPONDENT
- Exhibit P8** TRUE COPY OF THE ORDER IN TVL. VARDHAN INFRASTRUCTURE V. THE SPECIAL SECRETARY, HEAD OF THE GST COUNCIL SECRETARIAT AND OTHERS DATED 11.03.2024
- Exhibit P9** TRUE COPY OF THE ORDER IN M/S. RAM AGENCIES V. THE ASSISTANT COMMISSIONER OF CENTRAL TAX, THANJAVUR DATED 10.04.2024
- Annexure R4(a)** A true copy of the relevant portion of the Minutes of the 11th GST Council Meeting held on 4th of March 2017
- Annexure R4(b)** A true copy of CBEC notification D.O.F. No. CBEC/20/43/01/2017-GST (Pt.) dated 05.10.2018
- Annexure R4(c)** A true copy of the clarification notification issued by CBEC F. No. CBEC-20/10/07/2019-GST, dated 22-6-2020

