

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

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**W.P.(T) No. 5071 of 2023**  
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M/s AKA LOGISTICS PRIVATE LIMITED, having its registered office and place of business at 230A, 1<sup>st</sup> Floor, Chitrakoot Building, A.J.C. Bose Road, P.O. – L. R. Sarani, P.S. Bhawanipur, Dist.-Kolkata, West Bengal-700020, in the State of West Bengal and place of business at 3<sup>rd</sup> Floor, Space No.2, Park Plaza, Bariatu Road, Morabadi, Ranchi, Jharkhand, PIN-834009 in the State of Jharkhand, through its General Manager cum Authorized Signatory Shri Ashwani Agrawal, s/o Lalit Kumar Agrawal, resident of At-Royal Villa, Flat 1b, 142/a, SK Deb Road, Near Notunpally Shiv Mandir, P.O. Sreebhumi, P.S. Late Town, Dist.-North 24 Praganas, West Bengal-700048 who is a citizen of India.

... .. **Petitioner**

**Versus**

1. Union of India, through the Secretary, Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. North Block, New Delhi-110001.
2. The Additional Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. & P.S. Sakchi, Jamshedpur, Jharkhand-831001, District-East Singhbhum.
3. The Additional/Joint Commissioner (Adjudication), Central Goods & Services Tax and Central Excise, Kolkata South, Commissionerate having its office at 180, Shantipally, P.O. & P.S. Shantipally, R.B. Connector, Kolkata-700107.
4. The Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. & P.S. Sakchi, Jamshedpur, Jharkhand-831001, District East Singhbhum.

... .. Respondents

5. Damodar Valley Corporation, DVC Head Quarter, DVC Towers, VIP Road, P.O. & P.S. Baguiati, Kolkata – 700054, through its authorized signatory.

.... .... Proforma Respondent

**With**

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**W.P.(T) No. 4861 of 2023**  
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M/s Ambey Mining Pvt. Ltd. having its registered office at 8, A.J.C. Bose Road, Circular Court, P.O. Circus Avenue, P.S. Shakespeare

Sarani, Dist.-Kolkata, West Bengal-700017 and place of business at Park Plaza, Office-Space No.1, 03<sup>rd</sup> Floor, Vill-Morabadi, P.S. Bariatu, Ranchi-834009, in the State of Jharkhand through its Authorized Signatory Sri Om Prakash Pareek, s/o Sri Radhe Shyam Pareek, aged about 62 years, resident of at-48, Subhash Sangha Square, Subhas Pally, Benachity, Durgapur, P.O. Benachity, P.S. Durgapur, Dist.-Burdwan, West Bengal-713213.

.... Petitioner

**Versus**

1. Union of India, through the Secretary Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. Central Secretariat, New Delhi-110001.
2. The Additional Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. & P.S.-Sakchi, District-East Singhbhum, Jharkhand-831001.
3. The Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. & P.S. Sakchi, District-East Singhbhum, Jharkhand-831001.
4. The Additional/Joint Commissioner (Adjudication), Central Goods & Service Tax and Central Excise, Ranchi, Commissionerate having its office at Central Revenue Building, 5A, Mahatma Gandhi Road, P.O. G.P.O., P.S. Chutia, District-Ranchi, Jharkhand-834001.

... .. Respondents

5. Damodar Valley Corporation, DVC Head Quarter Towers, DVC Towers, VIP Road, P.O. & P.S. VIP Road, District-Kolkata, West Bengal, 700054, through its authorized signatory.

..... Proforma Respondent

**With**

**W.P.(T) No. 6464 of 2023**

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Gora Koley, s/o Late Kartick Prasad Koley, aged about 66 years, resident of At -A5/4 Lake Window, 66A Gobindpur Road, P.O. Lake Garden, P.S. – Lake Thana, Dist. Kolkata, West Bengal-700045, who is citizen of India, working as Director for gain in Company M/s Ambey Mining Private Limited, through his authorized signatory, Om Prakash Pareek.

.... Petitioner

**Versus**

1. Union of India, through the Secretary Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. North Block, New Delhi, 110001.

2. The Additional Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, P.O. & P.S.- Sakchi, Jamshedpur, Jharkhand-831001.
3. The Additional/Joint Commissioner (Adjudication), Central Goods & Services Tax and Central Excise, Ranchi, Commissionerate having its office at Central Revenue Building, 5A, Mahatma Gandhi Road, P.O. + P.S. Chutia, Jharkhand-834001.
4. The Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, P.O. & P.S.-Sakchi, Jamshedpur, Jharkhand-834001.

... .. Respondents

5. Damodar Valley Corporation, DVC Head Quarter Towers, DVC Towers, VIP Road, P.O. & P.S. VIP Road, Kolkata, 700054, through its authorized signatory.

..... Proforma Respondent

**With**

**W.P. (T) No. 6465 of 2023**

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Shourabh Agrawal, Director of M/s Aka Logistics Pvt. Ltd. having its registered office and place of business at 230A, 1<sup>st</sup> Floor, Chitrakoot Building, A.J.C. Bose Road, P.O. – L. R. Sarani, P.S. Bhawanipur, Dist.-Kolkata, West Bengal-700020, in the State of West Bengal and place of business at 3<sup>rd</sup> Floor, Space No.2, Park Plaza, Bariatu Road, Morabadi, P.O. Morabadi, P.S. Bariatu, Distict-Ranchi, Jharkhand, Pin-834009 in the State of Jharkhand, who is a citizen of India.

.... Petitioner

**Versus**

1. Union of India, through the Secretary Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. Central Secretariat, New Delhi-110001.
2. The Additional Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, P.O. & P.S.- Sakchi, District-Jamshedpur, East Singhbhum, Jharkhand-831001.
3. The Additional/Joint Commissioner (Adjudication), Central Goods & Services Tax and Central Excise, Kolkata South Commissionarte having its office at 180, Shantipally, R.B. Connector, P.O. E.K.T, P.S. Naskarhat, District-Kolkata-700107.
4. The Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2nd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. & P.S. Sakchi, District-Jamshedpur, East Singhbhum, Jharkhand-831001.

... .. Respondents

5. Damodar Valley Corporation, DVC Head Quarter Towers, VIP Road, P.O. & P.S. Salt Lake, District-Kolkata-700054, through its Chairman-cum-Managing Director.

..... Proforma Respondent

**With**

**W.P.(T) No. 4638 of 2024**

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1. Coal Mines Associated Traders Private Limited, a Company registered under the Companies Act, 1956 having its registered office at 18A, Park Street, 6-0/1, Stephen Court, P.O. Middleton Row, P.S. Shakespeare Sarani, District-Kolkata – 700071 through its Senior Accounts Officer cum representative Sri Tilak Banerjee, son of Somnath Banerjee, aged about 43 years, residing at Village – Nabagram, P.O. Nabagram, P.S. Pandabeswar, District Paschim Bardhaman, Pin-713363.
2. Mr. Sundeep De, one of the Directors of Coal Mines Associated Traders Private Limited (CMAT), having its registered office at 18A, Park Street, 6-0/1, Stephen Court, P.O. Middleton Row, P.S. Shakespeare Sarani, District-Kolkata – 700071 represented by his constituted Attorney Sri Tilak Banerjee, aged about 43 years, son of Somnath Banerjee, residing at Village – Nabagram, P.O.-Nabagram, P.S. Pandabeswar, District Paschim Bardhaman, Pin-713363.

... .. Petitioners

**Versus**

1. Union of India, through its Secretary, Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. New Delhi, District-New Delhi-110001.
2. Deputy Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, having its office at 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. – Sakchi, P.S. Sakchi, District-Singhbhum East, Jharkhand 831001.
3. Deputy/Assistant Commissioner (Adjudication), Central Goods & Services Tax and Central Excise, Deoghar Division, having its office at Deoghar Palace, VIP Chowk, Court More, Deoghar, P.O. & P.S. Deoghar, District-Deoghar, Jharkhand-814112.
4. Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. – Sakchi, P.S. Sakchi, District-Singhbhum East, Jharkhand 831001.

5. Assistant Commissioner of Central Tax, Jamshedpur Division, Patna Zonal Unit Commissionerate, having office at Boring Road, P.O. & P.S. Boring Road, District-Patna (Bihar), PIN-800008.
6. Damodar Valley Corporation, DVC Head Quarter, through its Chairman, having its office at DVC Towers, VIP Road, P.O. Manicktala, P.S. Manicktala, District-Kolkata-700054.

... .. Respondents

**With**

**W.P.(T) No. 4676 of 2024**

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1. Coal Mines Associated Traders Private Limited, a Company registered under the Companies Act, 1956 having its registered office at 18A, Park Street, 6-0/1, Stephen Court, P.O. Middleton Row, P.S. Shakespeare Sarani, District-Kolkata – 700071 through its Senior Accounts Officer cum representative Sri Tilak Banerjee, son of Somnath Banerjee, aged about 43 years, residing at Village – Nabagram, P.O. Nabagram, P.S. Pandabeswar, District Paschim Bardhaman, pin-713363.
2. Mr. Sundeep De, one of the Directors of Coal Mines Associated Traders Private Limited (CMAT), having its registered office at 18A, Park Street, 6-0/1, Stephen Court, P.O. Middleton Row, P.S. Shakespeare Sarani, District-Kolkata – 700071 represented by his constituted Attorney Sri Tilak Banerjee, aged about 43 years, son of Somnath Banerjee, residing at Village – Nabagram, P.O.- Nabagram, P.S. Pandabeswar, District Paschim Bardhaman, Pin-713363.

... .. Petitioners

**Versus**

1. Union of India, through its Secretary, Ministry of Finance (Department of Revenue), 137, North Block, P.O. & P.S. New Delhi, District-New Delhi-110001.
2. Deputy Director, Directorate General of Goods & Services Tax Intelligence Regional Unit, Jamshedpur, having his office at 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. – Sakchi, P.S. Sakchi, District-Singhbhum East, Jamshedpur, Jharkhand 831001.
3. Deputy/Assistant Commissioner (Adjudication), Central Goods & Services Tax and Central Excise, Deoghar Division having its office at Deoghar Palace, VIP Chowk, Court More, Deoghar, P.O. & P.S. Deoghar, District-Deoghar, Jharkhand-814112.

4. Senior Intelligence Officer, Directorate of General of GST Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, Jamshedpur, P.O. – Sakchi, P.S. Sakchi, District-Singhbhum East, Jharkhand 831001.
5. Superintendent of Central Tax, Jamshedpur Division, Patna Zonal Unit Commissionerate, having office at Boring Road, P.O. & P.S. Boring Road, District-Patna (Bihar), PIN-800008.
6. Damodar Valley Corporation, DVC Head Quarter, through its Chairman, having its office at DVC Towers, VIP Road, P.O. Manicktala, P.S. Manicktala, District-Kolkata-700054.

... .. Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

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For the Petitioner	: Mr. Kartik Kurmy, Advocate Mr. Nitin Kr. Pasari, Advocate Ms. Sidhi Jalan, Advocate
For the Resp.-CGST	: Mr. P.A.S. Pati, Sr. Standing Counsel Mr. Amit Kumar, Sr. Standing Counsel Mr. Anurag Vijay, Jr. Standing Counsel Mr. Om Prakash, Advocate Mr. Srijan, Advocate
For the Resp.-DVC	: Mrs. Debolina Sen Hirani, Advocate

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**C.A.V. on 11<sup>th</sup> September, 2024**  
**Per Sujit Narayan Prasad, J.**

**Pronounced on 03/10/2024**

1. The instant writ petitions have been filed under Article 226 of the Constitution of India wherein demand notice-cum-show cause notices dated 31.03.2023 issued by the respondent no.2 in exercise of power conferred under Section 74(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act, 2017) for the period from July, 2020 to March, 2022; November, 2017 to April, 2020; November, 2017 to April, 2020; July, 2020 to March, 2022; April, 2019 to March, 2022 and; April, 2019 to March, 2022, respectively, have been assailed on the ground of lack of jurisdiction.
2. Since in all these writ petitions, common issue has been raised, as such, are being taken up together for its consideration.

3. Since the show cause notices are under challenge in these batch of writ petitions and hence, serious objection has been raised on behalf of the respondent-Union of India and the CGST agitating the issue that these cases are not the cases where the writ petitions should be entertained at this initial stage. The writ petitioners can very well raise all the grounds before the assessing officer contending that it is a case of composite/mixed supply.
4. It needs to refer herein that the co-ordinate Bench has passed the order on 18.06.2024 in W.P.(T) Nos. 5071 of 2023; 4861 of 2023; 6464 of 2023 and; 6465 of 2023 holding the writ petitions maintainable.
5. This Court has posed a question to the learned counsel for the petitioners to argue the matter on merit. Upon this, learned counsel for the respondent-Revenue has submitted that although in paragraph-10 of the order dated 18.06.2024, the writ petitions have been held to be maintainable but if the same is read along with the observation made by the co-ordinate Bench at paragraph-8, wherein it has been observed on the basis of the consideration of the show cause notice and the factual aspect about the prima facie view of the Court that the writ petitioners have been able to establish a prima facie case of abuse of process of law and lack of jurisdiction, hence, it has been contended that since the Court on the basis of the prima facie view has held the writ petitions maintainable, as such, the same is to be decided conclusively by appreciating the statutory provisions and it has also been submitted by Mr. Pati, learned counsel for the respondent-Revenue that the issue of jurisdiction is still to be decided finally. For ready reference, paragraph- 8 and 10 of the said order is being referred as under:

*08.--- After going through the showcause and the factual aspects, which are undisputed; it prima facie appears that the Petitioner has been able to establish a **prima facie** case of abuse of process of law and lack of jurisdiction---*

*“10. Having regard to the aforesaid discussions coupled with the background of the instant case, relegating the Petitioner to alternative remedy will be a palpable in-justice. Accordingly, we hold that the instant writ application is maintainable.”*

6. Learned counsel for the petitioners after going through paragraph-8 of the said order passed by the co-ordinate Bench of this Court has not disputed the aforesaid fact rather he is fair enough to submit that since the co-

ordinate Bench has expressed the prima facie view and as such, the same needs to be decided for the purpose of coming to the conclusive finding.

7. This Court, considering the observation made as under paragraphs-8 and 10 of the order dated 18.06.2024, is of the view that if the co-ordinate bench on the basis of the prima facie view has held the writ petitions maintainable, as such, the same is to be considered by coming to the conclusive finding as to whether the writ petitions are maintainable or not.
8. Mr. Kartik Kurmy, learned counsel for the petitioners assisted by Mr. Nitin Kr. Pasari, learned counsel has advanced his argument that the show cause notices are under challenge on the ground of jurisdiction of the authority who has issued the said show cause notices, since according to him, the said notices have been issued under the signature of Additional Director, Directorate General of Goods and Services Tax Intelligence, Regional Unit, Jamshedpur and Deputy Director, Directorate General of Goods and Services Tax Intelligence, Regional Unit, Jamshedpur who have got no authority to issue the said notices.
9. It has been submitted that the Additional Director, Directorate General of Goods and Services Tax Intelligence, Regional Unit, Jamshedpur and Deputy Director, Directorate General of Goods and Services Tax Intelligence, Regional Unit, Jamshedpur are not competent to issue the said show cause notices due to the reasons that the notices are to be issued by the proper Assessing Officer in view of the provision of Section 74 of the Act, 2017 wherein it has been provided that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.



10. Heard learned counsel for the parties.

11. Since the show cause notice has been issued under section 74 of the Act, 2017, therefore for ready reference, Section 74(1) and other sub-sections of the Act, 2017 where the power has been conferred under the Proper Officer are being referred as under:

***“74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.— (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.***

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty*

*equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.”*

12. It is thus evident that the Proper Officer has been made competent to exercise the power for the purpose of initiating a proceeding under Section 74 of the Act, 2017.

13. At this juncture certain definitions are required to be referred herein which are relevant for the purpose of consideration of the instant issue.

14. The definition of ‘Commissioner’ which has been defined under Section 2(24), ‘Commissioner in the Board’ which has been defined under Section 2(25) and ‘Proper Officer’ as has been defined under Section 2(91) are being referred as under:

*“2(24) —Commissioner means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;*

*2(25) —Commissioner in the Board means the Commissioner referred to in section 168;*

*2(91) —proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;”*

15. It is thus evident from the definition of ‘Commissioner’ as defined under Section 2(24) of the Act, 2017 which means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act. While the ‘Commissioner in the

Board' which has been defined under Section 2(25) which means the Commissioner referred to in Section 168.

16. Section 168 also needs to be referred herein of the Act, 2017 as per which power has been given to issue instructions or directions. For ready reference, Section 168 of the Act, 2017 reads as under:

*“168. Power to issue instructions or directions.— (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

*(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, [sub-section (1) of section 44, sub-sections (4) and (5) of section 52]103, [sub-section (1) of section 143, except the second proviso thereof]104, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”*

17. It is evident from the provision as contained under Section 168 of the Act, 2017 that the Board has been conferred with the power to issue instructions or directions and from sub-section (2) thereof it would be evident that the Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, [sub-section (1) of section 44, sub-sections (4) and (5) of section 52]103, [sub-section (1) of section 143, except the second proviso thereof]104, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

18. The aforesaid statutory provision clarifies that the Board has been conferred with the power to issue instructions or directions upon the

Commissioner to exercise the power specified in the other sections with the approval of the Board.

19. The 'Proper Officer' as has been defined under Section 2(91) of the Act, 2017 means proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board, meaning thereby, the Proper Officer will be said to be the Officer either the Commissioner or the Officer of the Central Tax who is assigned that function by the Commissioner in the Board.
20. If the definition of the Proper Officer will be taken into consideration along with the provision of Section 168 of the Act, 2017, the Commissioner if authorized to act by the Board in view of the power as conferred under Section 168 of the Act, 2017, the Commissioner or the Joint Secretary will be said to exercise the power of Commissioner or Joint Secretary construed to be with the approval of the Board.
21. The reference of a notification dated 01<sup>st</sup> July, 2017 has been made upon which much emphasis has been given by the learned counsel for the petitioners. The said notification has been issued under the authority of the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs in exercise of powers conferred under Section 3 read with Section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and Section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017). For ready reference, the said notification is being referred as under:

***“Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Notification No. 14/2017 – Central Tax***

***New Delhi, the 1<sup>st</sup> July, 2017  
10 Ashadha, 1939 Saka***

*G.S.R. (E). – In exercise of powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit as specified in column (2) of the Table below, as central tax officers and invests them with all the powers under the Central Goods and Services Tax*

Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank as specified in column (3) of the said Table, namely:-

**TABLE**

<i>Sl. No.</i>	<i>Officers</i>	<i>Officers whose powers are to be exercised</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	<i>Principal Director General, Goods and Services Tax Intelligence or Principal Director General, Goods and Services Tax</i>	<i>Principal Chief Commissioner</i>
2.	<i>Director General, Audit</i>	<i>Chief Commissioner</i>
3.	<i>Principal Additional Director General, Goods and Services Tax Intelligence or Principal Additional Director General, Goods and Services Tax or Principal Additional Director General, Audit</i>	<i>Principal Commissioner</i>
4.	<i>Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit</i>	<i>Commissioner</i>
5.	<i>Additional Director, Goods and Services Tax Intelligence or Additional Director, Goods and Services Tax or Additional Director, Audit</i>	<i>Additional Commissioner</i>
6.	<i>Joint Director, Goods and Services Tax Intelligence or Joint Director, Goods and Services Tax or Joint Director, Audit</i>	<i>Joint Commissioner</i>
7.	<i>Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit</i>	<i>Deputy Commissioner or Assistant Commissioner</i>
8.	<i>Senior Intelligence Officer, Goods and Services Tax Intelligence or Superintendent, Goods and Services Tax or Superintendent, Audit</i>	<i>Superintendent</i>
9.	<i>Intelligence Officer, Goods and Services Tax Intelligence or Inspector, Goods and Services Tax or Inspector, Audit</i>	<i>Inspector</i>

2. This notification shall come into force with effect from the 1<sup>st</sup> day of July, 2017.

[F. No.349/52/2017-GST]

(Dr. Sreeparvathy S.L.)

Under Secretary to the Government of India”

22. Subsequent to the aforesaid notification, a corrigendum has been issued on 29<sup>th</sup> July, 2019 whereby and whereunder, the notification which was issued on 01<sup>st</sup> July, 2017 has been modified to the extent that in place of “Central Board of Excise and Customs”, the same shall be read as “the Government” in view of the provision of Section 3. For ready reference, the said notification is also being referred as under:

**“Ministry of Finance  
(Department of Revenue)  
(Central Board of Indirect Taxes and Customs)**

**Corrigendum**

*New Delhi, the 29<sup>th</sup> July, 2019*

**G.S.R. 533(E).**—*In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 14/2017-Central Tax, dated the 01<sup>st</sup> July, 2017, published in the Gazettee of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 01<sup>st</sup> July, 2017, in English version, in page 2, in line 3, for “the Central Board of Excise and Customs” read “the Government”.*

*[F. No.349/52/2017-GST]*

*Ruchi Bisht, Under Secy.”*

23. It is evident that initially the notification dated 01<sup>st</sup> July, 2017 was issued in exercise of power conferred under Sections 3 and 5 but subsequently, it has been modified said to be replacement by the words that the “Central Board of Excise and Customs” be read as “the Government”.

24. This Court, before proceeding further, needs to refer herein the provisions as contained under Sections 3, 4 and 5 of the Act, 2017. For ready reference, the same are being referred as under:

**“3. Officers under this Act.**— *The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—*

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,*
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,*
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,*

- (f) *Joint Commissioners of Central Tax or Joint Directors of Central Tax,*
- (g) *Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,*
- (h) *Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and*
- (i) *any other class of officers as it may deem fit:*

*Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.*

**4. Appointment of Officers.**— (1) *The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.*

(2) *Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.*

**5. Powers of officers under GST.**— (1) *Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*

(2) *An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.*

(3) *The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.*

(4) *Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.”*

25. It is evident from the bare perusal of section 3 of the Act, 2017 which is under Chapter II, the officer under this Act has been referred stipulating therein that the Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—

- (a) *Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
- (b) *Chief Commissioners of Central Tax or Directors General of Central Tax,*
- (c) *Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
- (d) *Commissioners of Central Tax or Additional Directors General of Central Tax,*

- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

Section 4 of the Act is with respect to the appointment of the officers by the Board wherein it has been provided that the Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.

The power of officers has been defined under Section 5 thereof wherein it has been provided that subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act. An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him. The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him. Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

26. This Court, after going through the provisions of Sections 3, 4 and 5 of the Act, 2017, is of the view that as per Section 3, it is the Government, by notification, is to appoint the officers for the purpose of the Act while Section 4 confers power upon the Board in addition to the appointment which is to be made in pursuance of the provision of Section 3 to appoint such persons as it may think fit to be the officers under the Act.



27. This Court, after having discussed the aforesaid statutory provision and coming to the notification dated 01<sup>st</sup> July, 2017 reading it together with the notification dated 29<sup>th</sup> July, 2019, is of the view that both are under Sections 3 and 5 since Section 3 confers power upon the Government to appoint the officers to act under the Act while Section 4 of the Act, 2017 confers power upon the Board in addition to the appointment which is to be made by the Government, the Board can also appoint officers under this Act.

28. It is evident from the notification dated 01<sup>st</sup> July, 2017, particularly from the tabular chart, in column-(2), the reference of Officers is there and in column-(3) Officers whose powers are to be exercised has been referred.

It appears from sl. no. 4 that the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit is an officer who has been authorized to exercise the power of Commissioner and from sl. No.7, the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit has been authorized to exercise the power of Deputy Commissioner/Assistant Commissioner.

29. This Court, therefore, is of the view that since the notification dated 01<sup>st</sup> July, 2017 has been issued in exercise of power conferred under Section 3 read with Section 5 under which the Board has been conferred with the power, in addition to appointment to be made by the Government, to impose the power upon the officer under the act and hence, the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit has been notified to exercise the power of Commissioner and the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit has been authorized to exercise the power of Deputy Commissioner/Assistant Commissioner.

30. The “Commissioner” has been defined under Section 2(24) of the Act, 2017 which has been taken note herein which means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act, as such, on the basis of the conjoint reading of the said provision along with Section 2(91) where the “Proper Officer” has been defined which means proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.
31. Since the notification dated 01<sup>st</sup> July, 2017 has been issued in exercise of power conferred also under Section 5 of the Act, 2017 wherein the power upon the Board may impose/confer powers upon the Officers in addition to the Government in view of the provision of Section 3 and as such, the notification dated 01<sup>st</sup> July, 2017 clarifies that the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit has been conferred with the power to exercise the power of Commissioner by the authority as conferred to the Board under Section 5 of the Act, 2017, hence, according to the considered view of this Court, Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit will be the Proper Officer within the meaning of Section 2(91) of the Act, 2017.
32. Further, it would be evident from the Circular No.3/3/2017-GST dated 05.07.2017 issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Government of India, wherein the Officers, particularly in sl. No.3, the Deputy or Assistant Commissioner, Central Tax has been mentioned, who has been empowered to function as “Proper Officer” under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74 of the Act.

33. Further, it would be evident from the Circular No.31/05/2018-GST dated 09.02.2018 issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Government of India, wherein at paragraph-5, pecuniary limit was fixed and specific power was provided to the Superintendent of Central Tax; Deputy or Assistant Commissioner of Central Tax; Additional or Joint Commissioner of Central Tax. For ready reference, paragraph-5 of the said circular is being referred as under:

...

*5. Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax needs to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of IGST Act (read with sections 73 and 74 of CGST Act), up the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:*

**Table**

<b>Sl. No.</b>	<b>Officer of Central Tax</b>	<b>Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act</b>	<b>Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act</b>	<b>Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
<b>1.</b>	Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
<b>2.</b>	Deputy or Assistant Commissioner	Above Rupees 10 lakhs and not exceeding Rupees	Above Rupees 20 lakhs and not exceeding Rupees 2	Above Rupees 20 lakhs and not exceeding Rupees

	of Central Tax	1 crore	crores	2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

34. The said issue has been taken note by different High Courts. In the case of *Yasho Industries Limited Versus Union of India reported in 2021 SCC Online Guj 3131*, wherein at para 13, the Gujrat High Court has held that "proper officer" in relation to any function to be performed under the CGST Act means the Commissioner or the officer of the Central Tax, who is assigned that function by the Commissioner in the Board and respondent No. 3 is an officer of Directorate General of Goods and Services Tax Intelligence (DGGI) holding the designation of Senior Intelligence Officer, who was appointed as the Central Tax Officer with all the powers under the CGST Act and IGST Act and the Rules made thereunder, as are exercisable by the Central Tax Officers of the corresponding rank of Superintendent as specified in the Notification No. 14 of 2017-CT dated July 1, 2017 issued by the Central Board of Excise and Customs. The Gujrat Haigh Court further observed that respondent No. 3 being the officer of the Central Tax and the Superintendent under the CGST Act by virtue of the said notification dated July 1, 2017, he was also assigned the powers of proper officer by the Board vide circular dated July 5, 2017 issued in exercise of the powers conferred by clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act. For ready reference the relevant paragraph of the aforesaid judgment is quoted as under:

*"13. From the bare reading of section 70 of the CGST Act, it clearly emerges that the proper officer has the power to summon any person whose attendance he considers necessary either to give evidence or to produce the documents in any inquiry in the same manner in the case of a civil court under the CPC. Now, as per the definition of "proper officer" as contained in section 2(91), a "proper officer" in relation to any function to be performed under the CGST Act means the Commissioner or the officer of the Central Tax, who is assigned that function by the Commissioner in the Board. It is pertinent to note that as stated in the petition itself, respondent No. 3 is an officer of Directorate General of Goods and Services Tax Intelligence (DGGI) holding the designation of Senior Intelligence Officer, who was appointed as the Central Tax Officer with all the powers under the CGST Act and IGST Act and the Rules made thereunder, as are exercisable by the Central Tax Officers of the corresponding rank of*

*Superintendent as specified in the Notification No. 14 of 2017-CT dated July 1, 2017 issued by the Central Board of Excise and Customs. It is further pertinent to note that respondent No. 3 being the officer of the Central Tax and the Superintendent under the CGST Act by virtue of the said notification dated July 1, 2017, he was also assigned the powers of proper officer by 5 the Board vide circular dated July 5, 2017 issued in exercise of the powers conferred by clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act. Therefore, respondent No. 3 is a proper officer in relation to the function to be performed under the CGST Act as contemplated under section 2(91), and as such, was entitled to issue summons under section 70 of the CGST Act in connection with the inquiry initiated against the petitioner.”*

35. Further the Allahabad High Court in the case of ***R.C. Infra Digital Solutions Vs. UOI*** reported in ***2024 SCC Online All 36***, wherein the authority of Government who issued Notification No. 14/2017-CT dated 01-07-2017 was under challenge contending that U/s 5(2) of the CGST Act, on the ground that only the Board could have issued the said notification not Government. The Division Bench has observed which is quoted as under:

*“14. No doubt, this Court is clear in its mind that in a taxation statute, any officer performing a function under the said statute must necessarily meet three concomitants, namely, (i) existence of a class/post; (ii) appointment of officers to that said post/class; and (iii) assignment of power to the said post/class. Under the CGST Act, 2017, it is seen and as has been rightly contended by the learned counsel for the petitioner that Section 3 of the CGST, 2017 creates the class/post of officers and it clearly says that the Government by notification shall appoint the said class of officers for the purposes of the CGST Act. Further, Section 4 of the CGST Act, 2017 provides for appointment of officers/additional officers by the Board in addition to the notification by the Government under Section 3 of the CGST Act, 2017. Most significantly, Section 5 of the CGST Act, 2017 says that the Board may impose conditions/limitations on exercise of powers and discharge of duties conferred or imposed on an officer of central tax under the Act. It further says that an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the GST Act on any other officer of central tax, who is subordinate to him. Section 5(3) of the CGST Act, 2017 says that the Commissioner may delegate his powers to any other officer who is subordinate to him subject to conditions and limitation as may be specified by him. Thus, it can be safely said that Section 5 of the CGST Act provides that any officer who has been so appointed must be assigned/entrusted/invested with specified powers under the CGST Act to enable him to perform those functions.*

*15. Apparently, unless these processes are undertaken, an officer cannot perform the functions under the law. The functions are specified in various provisions where either it is assigned to a class of officers or to a “proper officer”. A proper officer as per Section 2(91) of the CGST Act, 2017 is a “Commissioner” or the officer of the central tax, who has been assigned that function by the Commissioner*

*in the Board. Thus, assignment of function to a specific class of officers is an inevitable requirement.*

**16.** *Vide Notification No. 02/2017-CT, dated 19-6-2017 issued under Section 3 read with Section 5 of the CGST Act, 2017, the Central Government appointed classes of officers for central tax and vested them with all the powers in respect of the territory specified. However, these provisions do not provide for assignment/entrustment/investment of powers by the Government. The Central Government issued another Notification No. 14/2017-CT, dated 1-7-2017 under Section 3 read with Section 5 of the CGST Act, 2017 notifying equivalent class/posts for officers of DGGI. Thus, officers of DGGI became central tax officers of specified class/post. However, as pointed out by the learned counsel for the petitioner, these DGGI officers were merely appointed by the Government in view of Section 3 of the Act and they could not have been assigned/entrusted/invested with specified powers under the CGST Act to enable them to perform those functions under Section 5 of the Act, as it is essentially the Board, which has been empowered under the said section of the GST Act to confer such power on the officer of central tax.*

**19.** *However, the question of investing powers on the central tax officers by the Board or the Government does not end there as this Court finds that the Circular No. 3-3-2017-GST, dated 5-7-2017 (Annexure 11) issued by the Commissioner in Board relates to assignment of various functions under the CGST Act, 2017 to different class of officers, who had been construed to be DGSI officers in terms of Notification No. 14/2017.*

**20.** *A conjoint reading of Notification No. 14/2017, dated 1-7-2017 and Circular No. 3-3-2017-GST, dated 5-7-2017 sufficiently contemplates the assigning of powers to DGSI officers by the Board. Let's take an example, as per the circular of 5-7-2017, a Superintendent of Central Tax has been assigned the power to function as is mentioned in Sub-section (1) of Section 70 and a reading of Notification No. 14/2017 leads us to conclude as mentioned in Serial No. 8 that a Senior Intelligence Officer, Goods and Service Tax Intelligence or Superintendent, Goods and Services Tax or Superintendent, audit has been notified to be appointed under Section 3 of the GST Act as a central tax officer and is invested with all the powers under the Central Goods and Service Tax Act, 2017, throughout the territory of India, as are exercisable by the central tax officers of the rank of "Superintendent". In any case, this Court does not find any force in holding that such technical nuances to be fatal for the notification or to the functions performed by various DGGI officers. The jurisprudence on the implications of invocation of a wrong provision suggests that as long as an authority has power, which is traceable to a source, the mere fact that source of power is not indicated or wrongly indicated in an instrument does not render the instrument invalid.*

**21.** *For all the aforesaid reasons, this Court is not inclined to hold that the impugned Notification No. 14/2014, dated 1-7-2017 is ultra vires to the powers provided to the Government under the CGST Act, 2017.*

36. Thus, the Division Bench of the Allahabad High Court has observed that the impugned Notification No. 14/2014, dated 1-7-2017 is not ultra vires to

the powers provided to the Government under the CGST Act, 2017 and it has further been held that a proper officer as per Section 2(91) of the CGST Act, 2017 is a “Commissioner” or the officer of the central tax, who has been assigned that function by the Commissioner in the Board. Thus, assignment of function to a specific class of officers is an inevitable requirement.

37. Learned counsel for the petitioners has relied upon the judgment rendered by the Hon'ble Apex Court in the case of *Commissioner of Customs vs. Sayed Ali and Anr.*, (2011) 3 SCC 537.

38. This Court, before applying the applicability of the said judgment, is of the view that the factual aspect of the aforesaid case needs to be referred herein which is being referred as under:

Set of civil appeals were filed before the Hon'ble Apex Court wherein the validity of the demands raised by virtue of reassessment orders passed by the Collector of Customs (Preventive), Mumbai, pursuant to the issuance of show-cause notices under Section 28 of the Act has been questioned. Since the question of law arising in all the appeals was similar, as such Hon'ble Apex Court had disposed of the said appeals by the common judgment.

In the first set of appeals, Customs, Excise and Gold (Control) Appellate Tribunal (for short “Cegat”) has held that the Commissioner of Customs (Preventive), Mumbai, not being a “proper officer” as defined in Section 2(34) of the Customs Act, 1962, did not have the jurisdiction to issue show-cause notice in terms of Section 28 of the Act. However, in the second set of appeals (Nos. 4603-604 of 2005), the Customs, Excise and Service Tax Appellate Tribunal (for short “Cestat”) has, to the contrary, held that the Commissioner of Customs (Preventive), Mumbai had the jurisdiction to issue notice under Section 28 of the Act.

However, to appreciate the controversy, facts in Civil Appeal being CAs Nos. 4294-95 of 2002 has been taken into consideration by the Hon'ble Apex Court wherein the Respondent No. 1 was a partner in Respondent No. 2 firm viz. M/s Handloom Carpet, which was engaged in

the business of carpet manufacture/export. Respondent No. 2 was charged with misusing the Export Passbook Scheme by selling goods cleared duty free in the open market or selling the passbook on premium in violation of the ITC restriction imposed on such sale.

Investigations in the matter were conducted by the Marine and Preventive Wing of the Customs and the Assistant Collector of Customs (Preventive), Mumbai, issued to the respondents a show-cause notice, alleging violation of the provisions of Section 111(d) of the Act. Later on, the same officer adjudicated upon the said show-cause notice, confirming the demands raised in the show-cause notice.

Being aggrieved, the respondents preferred an appeal before the Collector of Customs (Appeals), which was allowed by holding that since the matter involved demand of duty beyond a period of six months, the show-cause notice was required to be issued by the Collector, and not by the Assistant Collector. However, the Collector (Appeals) granted liberty to the Department to readjudicate the case by issuing a proper show-cause notice.

Accordingly, the Collector of Customs (Preventive) issued show-cause notice dated asking the respondents to show cause as to why the goods should not be confiscated, and customs duty be not levied in terms of Section 28(1) of the Act, by invoking the extended period of limitation.

In reply to the show-cause notice, the jurisdiction of the Collector of Customs (Preventive) was questioned on the ground that the jurisdiction of a commissioner by virtue of Notification No. 251/83 being more specific and limited in nature, the said notification will prevail over Notification No. 250/83. But vide order dated 19-8-1996, the Collector of Customs (Preventive) rejected the objections regarding his jurisdiction and the Collector confirmed the demand of duty under Section 28(1) of the Act and simultaneously ordered confiscation of two consignments of dyes, sulphur blue and sulphur blue green valued, and imposed a redemption fine.



Aggrieved, the respondents preferred appeals before Cegat and accepting the preliminary objection of the respondents regarding jurisdiction of the Collector (Preventive), Cegat has, allowed the appeals by holding that the Commissioner of Customs (Preventive) does not have jurisdiction to issue the impugned show-cause notice and in view thereof he could not have the jurisdiction to adjudicate the matter when imports have taken place at Bombay Customs House.

Further, the facts of another set of Civil Appeals being CAs Nos. 4603-604 of 2005 were similar to those in CAs Nos. 4294-95 of 2002, but, in the former case, the Cestat while upholding the issue of show-cause notice by the Collector of Customs (Preventive) under Section 28 of the Act, set aside the order of adjudication passed by the said officer with a direction that the issues be determined afresh by the jurisdictional Collector of Customs who had earlier assessed the bill of entry in question at Bombay Port. Hence, the cross-appeals were preferred by the Revenue and the importers.

39. In the aforesaid backdrop of the facts the Hon'ble Apex Court while taking into consideration a conjoint reading of Sections 2(34) and 28 of the Act of 1962 wherein "*proper officer*" and "*Notice for payment of duties, interest, etc*" has been dealt respectively, has observed that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act. It has further been observed that only the officers of Customs, who are assigned the functions of assessment, which of course, would include reassessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act.

40. Thus, from the factual aspects of the said case it is evident that the matter pertains to the Customs Act, 1962 wherein the provision has been made

under Section 2(34) giving definition of Proper Officer. For read reference, the same is being referred as under:

*“2.Definitions.— \* \* \**

*(34) ‘proper officer’, in relation to any functions to be performed under this Act, means the officer of Customs who is assigned those functions by the Board or the Commissioner of Customs;”*

41. It is evident from the aforesaid definition that the Proper Officer in relation to any functions to be performed under this Act, means the officer of Customs who is assigned those functions by the Board or the Commissioner of Customs.
42. It is evident from the aforesaid provision that only such officers of the customs who has been assigned specific function would be Proper Officer in terms of Section 2(34) of the Act. Specific entrustment of function by either the Board or the Commissioner of Customs is therefore, the governing test to determine whether an “officer of Customs” is the “proper officer”.
43. From conjoint reading of Sections 2(34) and 28 of the Act, it has been found that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions.
44. The Hon'ble Apex Court has further observed at paragraph-21 with the contention of the Revenue that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a “proper officer” in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, inasmuch as all officers of Customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be “proper officers”. Therefore, the Hon'ble Apex Court has observed that it is only the officers of Customs, who are assigned

the functions of assessment, which of course, would include reassessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act.

45. The Hon'ble Apex Court has decided that the view taken in opposition that the source of power to act as a "proper officer" is Sections 4 and 5 of the Act and not sub-section (34) of Section 2 of the Act, as such, said sections merely authorise the Board to appoint officers of Customs and confer on them the powers and duties to be exercised/discharged by them, but for the purpose of Section 28 of the Act, an officer of Customs has to be designated as "proper officer" by assigning the function of levy and collection of duty, by the Board or the Commissioner of Customs.
46. This Court, after going through the aforesaid judgment and again adverting to the factual aspect of the present case, is of the view that the factual aspect of the aforesaid case is quite different to that of the present case since herein the issue pertains to the Act, 2017 while the said case is under the Customs Act, 1962.
47. The Proper Officer which has been defined under Section 2(34) of the Act, 1962 and comparing it with the provision of Section 2(91) of the Act, 2017, it would be evident that there is material difference since under Section 2(34), the Proper Officer means the officer of Customs who is assigned those functions by the Board or the Commissioner of Customs while the Proper Officer as defined under Section 2(91) of the Act, 2017 means the proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.
48. The fact of the judgment relied upon by the learned counsel for the petitioners is different since herein the Central Government has come out with the notification as also the Board, two separate notifications said to be issued in exercise of power conferred under Sections 3 and 5 of the Act, 2017. The moment the notification has been issued in exercise of power conferred under Section 4 which confers power upon the Board to appoint

the Commissioner in addition to appointment of Commissioner under Section 3 by the Government, the conferment of power to act as a Proper Officer will be there within the meaning of Section 2(91) of the Act, 2017.

### **Conclusion**

49. The notification dated 01<sup>st</sup> July, 2017 and 09<sup>th</sup> February, 2018 thus confers power upon the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit to act as Commissioner and the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit to act as Deputy Commissioner/Assistant Commissioner as would be evident from the tabular chart but the aforesaid distinguishable fact as per the discussion made of the factual aspect in the case of *Commissioner of Customs vs. Sayed Ali and Anr.* (supra) is not available, therefore, this Court is of the view that by virtue of the power exercised by the Board under Section 5 of the Act, 2017, a notification has been issued conferring power upon the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit to act as a Commissioner and the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit to act as Deputy Commissioner/Assistant Commissioner and as such, it is incorrect on the part of the writ petitioners to take the ground that the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit and the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit are having no power to initiate a proceeding under the Act, 2017.
50. This Court, therefore, is of the view based upon the aforesaid discussion that the ground which has been taken by the petitioner to quash the show cause notices due to want of jurisdiction is having no substance.

51. Accordingly, this Court is of the view that the Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit and the Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit are having jurisdiction to issue show cause notices.
52. This Court, after answering the said issue and coming to the conclusion that the reference of the factual aspect has widely been discussed which is relevant with the consideration/appreciation of the factual aspect, as such, is of the view that it would not be just and proper to exercise the extraordinary jurisdiction conferred upon this Court to show interference with the show cause notices due to the settled position of law that the writ court should not interfere at the stage of issuance of show-cause notice by the authorities because the parties get ample opportunity to put forth their contentions before the authorities concerned but it is also equally settled proposition of law that when a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice, as has been held by the Hon'ble Apex Court in the case of ***Union of India v. VICCO Laboratories, (2007) 13 SCC 270***. For ready reference the relevant paragraph is quoted as under:

*“Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinance from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”*

53. Further the Hon'ble Apex Court in the case of *State of U.P. v. Arezzo Developers (P) Ltd., (2016) 12 SCC 530* has reiterated the same view which is being quoted as under:

“4. Normally, this Court does not interfere with the show-cause notice, but when any show-cause notice is issued without jurisdiction, the Court has to see whether it is patently illegal, without jurisdiction, arbitrary or mala fide in nature. In the present case, when the landed properties were exchanged amongst the bhumidhars without any consideration, can it be treated to be an instrument of transfer so as to attract stamp duty.”

54. This Court, therefore, is of the view that the writ petitioners are required to response to the said show cause notices for its consideration by the authority concerned, in accordance with law.

55. Accordingly, all the instant writ petitions stand disposed of.

56. Pending interlocutory application(s), if any, also stand disposed of.

**(Sujit Narayan Prasad, J.)**

**I Agree,**

**(Arun Kumar Rai, J.)**

**(Arun Kumar Rai, J.)**

*Saurabh /***A.F.R.**