Proceeding versus Inquiry under GST Laws

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A judgment of the Hon'ble High Court of Allahabad has been reported in ***GK Trading Company v. UOI Ors, -*** **2021-TIOL-31-HC-All-GST**
. The judgment concerns the jurisdiction of the Central and State GST authorities to commence proceeding in the same subject matter. Section 6(2)(b) the CGST Act, 2017 provides that if the proper officer under the State Act has initiated any proceeding on a subject matter, no proceeding shall be initiated by the proper officer under the Central Act. By this judgment, the Hon'ble High Court has held that mere commencement of an inquiry under Section 70 of the Central Act would not bar such inquiry, as a proceeding for the purpose of Section 6(2)(b) ***supra***. This judgment delivered by a Division Bench of the Court requires some careful examination.

The court focuses on the phrase ***"same subject matter"*** used in Section 6(2)(b), as also on the term ***"inquiry"***
. Besides these two words and phrases, even the term ***"proceeding"***
 is not a defined term under either the State Act or under the Central Act. However, sub-section (2) of Section 70 deems an inquiry commenced under Section 70(1) as a judicial proceeding for the purpose of Sections 193 and 228 of the Indian Penal Code.

In this case, the proper officer under the UP GST Act had commenced proceeding by issuing summons in September 2020 on account some specific grounds such as, no business activity seen in the registered business premises; that credit was taken on the basis of invoices from a supplier, whose registration had been cancelled several months earlier to the date of invoice. This step was taken on the basis of a survey conducted in May 2018. Thus, there is over two years delay between the survey and summons.

Whereas, DGGI had also commenced a sweeping inquiry, by issuing summons under Section 70(1) of the Central Act, demanding production of varieties of documents starting with the date of introduction of GST itself up to July 2019, being the month in which the summons had been issued. The inquiry commenced by the DGGI has the hallmarks of a fishing expedition - get all the documents and see what dirt can be found against the assessee. At least according to the judgment, the reason for the inquiry or its subject matter are not on record.

Be that as it may, what is the difference between an inquiry and proceeding? At least, in the context of GST laws, since both are undefined terms, one should be guided by one's own experience with these tax departments. Barring cases of clandestine removal where surprise search and seizure can take place, all proceedings commence with an inquiry, which in many cases leads to issue of summons. In tax matters, a proceeding once commenced becomes a living creature and leads its own life. None dare stop it. It is indeed rare that once an inquiry is commenced, it ends at the inquiry stage itself based on the reply given by the assessee. After varying gestation period, almost every inquiry culminates into a show-cause notice usually rejecting the clarifications submitted by the assessees. Therefore, it would seem that the Hon'ble Court distinguishing between ***"inquiry"*** and ***"proceeding"*** is mere pedantry.

Besides, in view of Section 70(2) deeming that the proceeding commenced pursuant to a summons is a judicial proceeding for the purpose of IPC, there ought to have been no difficulty and treating it as ***"proceeding"***
 under the CGST Act also. This provision has been extracted in the judgment, but has not been discussed.

The Court was, perhaps, justified in being concerned whether the proceeding commenced by the DGGI was on the same subject matter. But, when an investigating agency issues summons in a wholesale manner for producing all the documents for the past two years (July 2017 to July 2019), it is submitted that the court ought to have questioned the DGGI what was their inquiry about, instead of letting off the Central GST authorities by treating their summons as ***"not a proceeding"***
for the purpose of Section 6(2)(b). The court ought to have been more anxious to protect the rights of a taxpayer than rescue a fishing

expedition by the Central GST authorities. Even though DGGI issued the summons in July 2019, as on the day of disposal of the writ petition in December 2020, DGGI had not concluded its ***"investigation"***. Even investigations involving heinous crimes do not take that long.

Ever since the idea of introduction of GST was mooted, central governments under different political dispensations, have solemnly assured the taxpayers that they would be answerable to only one authority, either the State or Central. One may see the undernoted document, wherein even now, ***"single interface"*** for the taxpayer is reiterated. [1]

But, very often, one sees the breach of solemn promise. Even now, there is no dialog between the Central and State Authorities on such issues. They work in watertight compartments. ***"We are not concerned what the other Authority is doing"*** is the attitude. One or the other authority may keep the investigation or inquiry vague, and claim that it is not the same subject matter. It does not require much intelligence for the infringing Authorities (either the State or the Central) to escape the net of Section 6(2)(b).

Governments in our country are almighty. At least in tax matters, they do not need protection. The taxpayers, as citizens of India need to be protected from the high-handedness and oppression by the Taxmen. It is rather disturbing to see that the judiciary has, perhaps, erred in not extending the statutory protection to an aggrieved taxpayer.

[The views expressed are strictly personal.]

1 https://cbic-gst.gov.in/pdf/01062019-GST-Concept-Status.pdf, visited on 21.4.2021. Para 9.4.6.1.