

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 1st December, 2021
Date of Decision: January 11, 2022

+ **CONT.CAS(C) 751/2021 & CM No.35806/2021**

M/S. INDO INTERNATIONAL TOBACCO LTD. ... Petitioner
Through Mr.S.Ganesh, Sr. Adv. with
Mrs.Anjali J. Manish,
Mr.Priyadarshi Manish,
Ms.Kinjal Shrivastava, Advs.
versus

SHRI VIVEK PRASAD, ADDITIONAL DIRECTOR
GENERAL, DGGI & ORS. Respondents
Through Mr.N.Venkataraman, ASG with
Mr.Ravi Prakash, CGSC,
Mr.Chandrashekhar, Ms.Shruti
Shivkumar, Mr.Ram Narayan
and Ms.Mallika Joshi,
Advocates

+ **W.P.(C) 2420/2021**

M/S INDO INTERNATIONAL TOBACCO PVT. LTD
..... Petitioner
Through Mr.S.Ganesh, Sr. Adv. with
Mrs.Anjali J. Manish,
Mr.Priyadarshi Manish,
Ms.Kinjal Srivastava, Advs.
versus

ADDITIONAL DIRECTOR GENERAL, DIRECTORATE
GENERAL OF GOODS AND SERVICE TAX
INTELLIGENCE & ORS. Respondents
Through Mr.N.Venkataraman, ASG with
Mr.Ravi Prakash, CGSC,
Mr.Chandrashekhar, Ms.Shruti

Shivkumar, Mr.Ram Narayan
and Ms.Mallika Joshi,
Advocates

+ **W.P.(C) 4036/2021 & CM 12202/2021**

M/S. SSM EXPORTS Petitioner
Through Mrs.Anjali J. Manish,
Mr.Priyadarshi Manish,
Ms.Kinjal Srivastava, Advs
versus

COMMISSIONER OF CENTRAL EXCISE AND SERVICE
TAX AND CGST DELHI WEST. & ORS. Respondents
Through Mr.N.Venkataraman, ASG with
Mr.Ravi Prakash, CGSC,
Mr.Chandrashekhar, Ms.Shruti
Shivkumar, Mr.Ram Narayan
and Ms.Mallika Joshi,
Advocates
Mr.Anurag Ojha, SPC for R-4.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The above two writ petition(s), being W.P.(C) 2420 of 2021 and W.P.(C) 4036 of 2021, raise a common question of law and are premised on the Circular, bearing D.O. F. No. CBEC/20/43/01/2017-GST (Pt.), dated 05.10.2018, issued by the Central Board of Excise and Customs, New Delhi (hereinafter referred to as the 'CBEC'), and are therefore, being considered and disposed of by this common judgment.

W.P.(C) 2420/2021

2. In W.P.(C) 2420 of 2021, it is the case of the petitioner that it is engaged in the manufacturing and supply of tobacco products. It obtained GST Registration on 21.10.2019 from the jurisdictional Office situated at Gautam Buddh Nagar, Uttar Pradesh, as the petitioner's firm was registered and had its principal place of business within the jurisdiction of the said Commissionerate.

3. The petitioner commenced its commercial operations in the month of December 2019.

4. On 19.03.2020, a search was carried out at the petitioner's premises by the CGST Officers from Gautam Buddh Nagar. The petitioner alleges that no shortcomings were noticed in the said search operation. Thereafter, a Show Cause Notice dated 20.04.2020 was issued by the Assistant Commissioner, Central Tax Division-I, Gautam Buddh Nagar, Uttar Pradesh, calling upon the petitioner to show cause why its refund claim, filed for the month of February 2020 under Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), be not rejected and the alleged inadmissible credit amounting to ₹18,26,78,282/- (Rupees eighteen crore twenty-six lakh seventy-eight thousand two hundred eighty-two) be not recovered from the petitioner.

5. The Assistant Commissioner, Gautam Buddh Nagar, further, vide its order dated 11.05.2020 passed under Section 83 of the CGST Act called upon the ICICI Bank, where the petitioner maintained its bank account, to supply the KYC documents along with the details of

the banking transactions. It was further directed that the bank account of the petitioner shall remain provisionally attached and no debit shall be allowed to be made from the said account without prior permission of the Department.

6. Thereafter, summons dated 05.06.2020 under Section 70 of the CGST Act was issued to the petitioner calling upon the petitioner to produce various documents.

7. The petitioner claims that as its refund was not released and the bank account of the petitioner remained attached in spite of various representations, the petitioner filed two writ petitions, being Civil Writ Petition No(s). 461 of 2020 and 462 of 2020, before the Hon'ble High Court of Allahabad, wherein notice was issued in the petitions and pleadings therein were directed to be completed. However, during the pendency of the above petitions, another search was carried out at the premises of the petitioner by the Officers of the CGST, Gautam Buddh Nagar, on 07.10.2020. On 24.11.2020, yet another summons under Section 70 of the CGST Act were issued to the petitioner, again calling upon the petitioner to produce certain documents.

8. The petitioner claims that on 01.12.2020, the Directorate General of the Goods & Services Tax Intelligence (hereinafter referred to as the 'DGGI'), Regional Office, Kanpur, carried out yet another search operation on the premises of the petitioner. The said search operation was authorised by the Joint Director, DGGI, Lucknow Zonal Unit, Lucknow.

9. Thereafter, on 14.01.2021, the Officers of the DGGI, Delhi Zone Unit (in short, 'DZU'), conducted a search on the premises of

the petitioner pursuant to the authorisation granted by the Additional Director, DGGI, DZU, on 13.01.2021. Summons dated 16.01.2021 were also issued by the Senior Intelligence Officer, DGGI, DZU, to the proprietor of the petitioner.

10. The CGST Commissionerate, Gautam Buddh Nagar, also issued summons on 01.02.2021 to the petitioner.

11. On 04.02.2021, the DGGI, Ghaziabad, also searched the premises of the petitioner.

12. The premises of the petitioner was again searched on 13.02.2021 by the DGGI, Ahmedabad Zonal Unit (in short, 'AZU').

13. Being aggrieved of such multiple search operations and summons being issued, the petitioner has filed the present writ petition.

W.P.(C) 4036/2021

14. In W.P.(C) 4036 of 2021, the petitioner contends that it is a proprietorship firm and is engaged in the manufacturing of flavouring compound under the brand 'SSM Super Strong'; 'SSM Super'; 'QM-1000'; 'QM-500'; flavoured tobacco extract under the brand 'Azeem'; flavoured tobacco under the brand 'TBH-300'; 'TBH-341'; 'Revelry-25'; and 'Frolic-25'. The petitioner's firm is registered with the GST Department, South Delhi Commissionerate.

15. On 04.09.2019, the Officers from the Anti-Evasion, CGST, Delhi East and South Commissionerate, carried out the search operation at the premises of the petitioner. The search warrant dated 04.09.2019 had been issued by the Joint Commissioner (AE), CGST, Delhi East Commissionerate.

16. On 27.09.2021, yet another search operation was carried out at the premises of the petitioner by the Additional Assistant Director, DGGI, AZU, under the authorisation dated 25.09.2019 issued by the Joint Director, DGGI, AZU. On 27.09.2019, summons were also issued by the DGGI, AZU, to the proprietor of the petitioner to appear before it on 30.09.2019. As the petitioner could not appear on the said date, another summons dated 15.10.2019 were issued by the DGGI, AZU, to the proprietor of the petitioner to appear before it on 31.10.2019.

17. The summons dated 28.11.2019 were then issued by the CGST Office, Delhi West, calling upon the Head (Manufacturing & Processing) of the petitioner to appear on 04.11.2019, which was not possible, the date already having passed.

18. Yet another summons dated 14.02.2020 were issued by the Superintendent Central Tax, New Delhi, to the proprietor of the petitioner to appear before it on 20.02.2020.

19. On 18.12.2020, the DGGI, AZU, again issued summons to the petitioner to appear before it on 07.01.2021.

20. The petitioner's firm registration was also cancelled on 01.03.2021.

21. Aggrieved of such repeated summons being issued by multiple agencies, the petitioner has filed the present writ petition.

PETITIONER(S) SUBMISSIONS:

22. Mr. S. Ganesh, the learned senior counsel appearing for the petitioner in W.P.(C) 2420 of 2021 and Mrs. Anjali J. Manish, the learned counsel appearing for the petitioner in W.P.(C) 4036 of 2021,

submit that issuance of such multiple summons to the petitioner(s) by multiple agencies is violative of the mandate of Section 6(2)(b) of the CGST Act and as also the Circular dated 05.10.2018 issued by the CBEC. They submit that the jurisdictional Commissionerate(s) of the petitioners, being situated at Gautam Buddh Nagar and South Delhi, respectively, having initiated proceedings against the petitioners, no other Officer of the CGST has jurisdiction to proceed against the petitioners. They submit that it is only the jurisdictional Commissionerate that has the jurisdiction to carry out the entire process of investigation, including the issuance of Show Cause Notices, adjudications, recovery, et cetera. In this regard, they place reliance on the judgment/order of the High Court of Gujarat, in ***Bhawani Textiles v. Additional Director General***, 2020 (35) G.S.T.L. 36 (Guj.); and judgment/order dated 27.12.2019, titled ***Sureshbhai Gadhecha Proprietor of M/s Anmol Traders v. State of Gujarat***, passed in R/Special Civil Application No. 23279 of 2019.

23. They submit that the Circular dated 05.10.2018, having been issued under Section 168 of the CGST Act, is binding on the Department. In support of their submissions, they place reliance on the following judgments:

- a. ***Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam***; (2003) 5 SCC 528;
- b. ***Commissioner of Customs v. Indian Oil Corporation Ltd. & Anr.***, (2004) 3 SCC 488;
- c. ***Collector of Central Excise, Vadodara v. Dhiren Chemical Industries***, (2002) 10 SCC 64;

- d. UCO Bank, Calcutta v. Commissioner of Income Tax, W.B.*, (1999) 4 SCC 599; and
- e. Catholic Syrian Bank Ltd. v. Commissioner of Income Tax, Thrissur*, (2012) 3 SCC 784.

24. The learned senior counsel for the petitioners submits that the CGST Act does not, anywhere, refer to ‘investigation’ or to the Officers who are authorised or empowered to carry out a particular investigation. The powers under the CGST Act are conferred only on ‘proper officer’ defined under Section 2(91) of the CGST Act. Placing reliance on Section 6(1) of the CGST, he submits that the Officers appointed by the State Government are also ‘proper officers’ for the purpose of the CGST Act and, therefore, exercise all powers under the CGST Act as well. He submits that Section 6(2) of the CGST Act makes it clear that if the SGST Officer of the State Government has already initiated proceedings, then the CGST Officers cannot exercise any power on the same subject matter, which is intelligence-based enforcement action on the entire taxpayers’ base irrespective of the administrative assignment of the taxpayer to any authority, and to the entire value-chain of the particular taxpayer.

25. The learned senior counsel for the petitioner further submits that the Gautam Buddh Nagar Commissionerate had issued four Show Cause Notices to the petitioner raising numerous issues. It has raised issues with respect to the suppliers who are outside Gautam Buddh Nagar. One of the Show Cause Notices has even been adjudicated. He submits that in view of Section 6(2)(b) of the CGST Act and the

Circular dated 05.10.2018, it would only be the Gautam Buddh Nagar Commissionerate who would be empowered to complete the entire process of investigation, issuance of Show Cause Notice, adjudication, recovery, filing of the appeal, et cetera. He submits that there would, in fact, be a prohibition against the GST Intelligence Officers of AZU from carrying out this entire process in view of the Circular dated 05.10.2018.

26. Mrs. Anjali J. Manish, the learned counsel appearing for the petitioner in W.P.(C) 4036 of 2021 adopts the above arguments of Mr. Ganesh.

RESPONDENTS SUBMISSIONS:

27. On the other hand, Mr. N. Venkataraman, the learned Additional Solicitor General of India, placing reliance on the judgment dated 13.09.2021 of the Supreme Court in *Union of India v. VKC Footsteps India Pvt. Ltd.*, 2021 SCC OnLine SC 706, submits that the GST is a watershed moment in the evolution of cooperative federalism. Its success depends on harmony as its source and foundation. He submits that the CGST Act; the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the 'IGST Act'); the various States' Goods and Services Act (hereinafter referred to as the 'SGST Act'); and the Union Territory Goods and Services Tax Act, 2017 (hereinafter referred to as the 'UTGST Act') have all been passed as a virtual replica of each other for carrying out a uniform harmonised pattern. He submits that Section 6 of the CGST Act carries forward the same intention, with the 'proper officer' issuing an

order under one Act being empowered to issue an order under the other Act as well.

28. He submits that in terms of Section(s) 3 and 5 of the CGST Act and the SGST Act, the Central Government and the State Governments have issued notifications empowering the 'proper officers'. By the Notification No. 02 of 2017 dated 19.06.2017, issued by the CBEC, various Central Tax Officers have been appointed vesting them with jurisdiction on specified territories. They therefore, exercise limited territorial jurisdiction. Whereas, vide Notification No. 14 of 2017 dated 01.07.2017, the CBEC has appointed the Central Tax Officers with All India jurisdiction. Similarly, the State Tax Officers have been appointed by the respective State Governments giving limited territorial jurisdictions to the State Tax Officers or vesting them with jurisdiction over the whole State. As an example, he has referred to the Notification dated 23.06.2017, issued by the Government of Maharashtra, separately empowering the State Tax Officers with limited territorial jurisdictions and those having jurisdiction over the whole State.

29. Placing reliance on the above Notifications, the learned ASG submits that the all-India jurisdiction can be exercised only by a 'proper officer' appointed as a Central Tax Officer under Notification No. 14 of 2017 and no one else. He submits that, therefore, once the proceedings have a PAN India influence and involvement of more than one Commissionerate, it is only the Central Tax Officers having all-India jurisdiction, in terms of the Notification No. 14 of 2017, who are empowered to carry out the investigation.

30. Referring to Section 6(2)(b) of the CGST Act, the learned ASG, submits that the same will have the full play if the proceedings do not transgress the territorial jurisdiction, whereas in a case where the subject matter is of all-India jurisdiction, then only the Officers appointed under Notification No. 14 of 2017 dated 01.07.2017 can exercise power under Section 6(2)(b) of the CGST Act and the rest have to keep away as they do not possess all-India jurisdiction. In this regard, he places reliance on the judgment of this Court, in *National Building Construction Company Ltd. v. Union of India & Ors.*, 2018 SCC OnLine Del 12397.

31. On facts, in W.P.(C) 2420 of 2021, the learned ASG has placed reliance on the following chart from the common additional-affidavit filed by respondent no(s). 1, 3, 4, 5 to 7 and 9, which is reproduced herein-below:

<i>S. No.</i>	<i>Name of authority who conducted search</i>	<i>Date of search</i>	<i>Scope of investigation</i>
1.	State GST, Gautam Buddha Nagar, Uttar Pradesh	31.01.2020	Several discrepancies noticed during survey on 31.01.2020 and accordingly Show Cause Notice in Form DRC-01 dated 03.04.2021 covering a period of Jan'20 to Mar'20 was issued. (Annexed as Annexure- 'B')
2.	CGST, Gautam Buddha Nagar Commissionerate	19.03.2020	Reference received from Chief Commissioner Office Meerut indicated contravention of provisions of Notification No. 04/2017 (Rate) dated 28.06.2017 by certain firms including M/s Mridul Tobie Inc. and during the search it was revealed that they are

			<p>claiming refund of accumulated ITC/cess on account of export. Accordingly, searches were conducted at the premises of Jeevantara and others, indicated to be fake firms. These firms were found to be issuing fake/bogus invoices without supply of goods for passing on fraudulent ITC. M/s Mridul Tobie Inc. is one of the recipient of such fake ITC generated from such fake firms, who are found to have claimed fraudulent refund of accumulated ITC on account of such fake supplies. Accordingly, investigation against them were initiated for the specific issue of filing of fraudulent refund claims.</p>
3.	CGST, Gautam Buddha Nagar Commissionerate	07.10.2020	<p>M/s Commodities Intertrade-GSTIN 9AFTP2263G1ZE had applied for refund of Rs. 96,12,360/- against export of services which was deviating from their normal trade business, before the CGST, Noida Commissionerate. The service was shown to have been procured from M/s Mridul Tobie Inc by M/s Commodities Inter-trade. Accordingly, the CGST Noida commissionerate has requested the GBN Commissionerate to verify the facts in this regard. In pursuance to the same the CGST GBN Commissionerate conducted the search at the premises of M/s Mridul Tobie Inc. It is pertinent to mention that later on M/s Commodities Intertrade has reversed the entire ITC amount of Rs. 96,12,360/- vide DRC -03 dated 27.01.2021. Thus, this search was conducted at the premises of M/s Mridul Tobie Inc only with</p>

Signature Not Verified

 Digitally Signed
 By: SHALOO PATRA
 Signing Date: 13.01.2022

			reference to the refund claimed by M/s Commodities Inter-trade, on the strength of the invoice issued by M/s Mridul Tobies Inc.
4.	DGGI, Regional Unit, Kanpur (Under DGGI, Lucknow Zonal Unit)	01.12.2020	DGGI, Lucknow Zonal Unit, was investigating case against Agra based exporter M/s Snuff Exim Pvt. Ltd. for claiming refund of accumulated ITC obtained through fraudulent means. During the investigation it was found that M/s Mridul Tobie Inc was prominent supplier to the said firm. Accordingly, follow-up search was conducted at the premises of M/s Mridul Tobie Inc. by DGGI, Kanpur Regional Unit as per the directions of DGGI, Lucknow Zonal Unit.
5.	DGGI, Delhi Zonal Unit	14.01.2021	Search conducted at the premises of M/s Shalimar Traders indicated, it to be a fake firm. The firm is found to be issuing fake/bogus invoices without supply of goods for passing on fraudulent ITC. M/s Mridul Tobie Inc. is one of the recipient of such fake ITC generated from the said firm. Accordingly, investigation against them were initiated for the limited issue of availment of fraudulent ITC of Rs. 5.03 crores on the basis of fake invoices issued by M/s Shalimar Traders.
6.	DGGI, Regional Unit, Ghaziabad (Under DGGI, Meerut Zonal Unit)	04.02.2021	DGGI, Agra Regional Unit, was investigating case against M/s Panchtatva Enterprise which had shown procurement of goods from M/s Snuff Exim Pvt. Ltd. and M/s Pandokhar Food LLP., Noida. These two firms had further shown the procurement of goods from M/s Mridul Tobie Inc. Accordingly, follow-up search was conducted at the premises of M/s Mridul Tobie

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 13.01.2022

			<i>Inc by the officers of DGGI, Ghaziabad Regional Unit, under request of DGGI, Agra Regional Unit.</i>
7.	DGGI, Ahmedabad Zonal Unit	13.02.2021	<p><i>During investigation of certain non-existent/non-functional firms, viz. (1) Garuda Enterprise (GSTN- 06DWAPK4510C1Z6) (2) Shiva Enterprise (GSTN- 07BBHPS6200B1Z1) (3) Tirupati Exports (GSTN- 09CCIPP4229C1ZL) (4) Paria Trading (GSTN- 07AYGPH3832B1ZV) (5) Balaji Exports (GSTN- 09FDZPP5520H1ZT) (6) Royal Trading, Alwar (GSTN- 08DWAPK4510C1Z2) (7) Mahadev World Trade, Alwar (GSTN- 08CAJPK8236P1ZX) etc. were identified by the DGGI, Ahmedabad Zonal Unit. It was found that “Smoking mixture for pipes and cigarettes” was one of the major items shown as supplied in the paper transactions by the non-existent entities. The subject goods “Smoking Mixture for pipes and cigarettes”, a tobacco product falling under CTH 24031910, is highly sensitive from tax evasion angle as it is subject to GST @ 28% and Compensation Cess @ 290% (Total 318%) and any fictitious paper transaction in “Smoking Mixture” is highly rewarding for availment of ITC unlawfully. The evidences available on record indicated a deeprooted conspiracy by some persons who were the masterminds behind this modus operandi to defraud the public exchequer. Investigations also revealed that the petitioner firm M/s Mridul Tobie Inc, Noida is</i></p>

Signature Not Verified

 Digitally Signed
 By: SHALOO PATRA
 Signing Date: 13.01.2022

			<p>also one of the beneficiaries of fake ITC generated in the name of some of the non-existent entities by paper transactions without corresponding supply of goods, including "smoking mixture for pipes and cigarettes". Further, investigation also includes the issue of Overvaluation and Misclassification of the product by M/s Mridul Tobie Inc.</p> <p>Remarks: During search operation, it was observed that the goods seized by the DGGI, Delhi Zonal Unit under panchanama dated 14.01.2021 were not available at the premises. This search was conducted by DGGI, Ahmedabad Zonal Unit with the help of DGGI, Delhi Zonal Unit so the officers of Delhi Zonal Unit were also present during the said search.</p>
8.	M/s Mridul Tobie Inc.	19.02.2021	Filed WP No. 2420 of 2021
9.	DGGI, Delhi Zonal Unit	25.02.2021	<p>This second Search was conducted by DGGI, Delhi Zonal unit to verify the fact of non-availability of seized goods in the premises of M/s Mridul Tobie Inc., as noticed and recorded under the panchanama dated 13.02.2021 drawn by the officers of DGGI, Ahmedabad Zonal Unit. During the course of this search, it was confirmed that M/s Mridul Tobie Inc., had infact illicitly disposed off the goods seized under panchnama dated 14.01.2021. And in order to cover up their ill legal act they had replaced the goods with other illicitly procured goods. Accordingly, the goods available as replacement of the seized goods</p>

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 13.01.2022

			<i>were also seized by the DGGI, Delhi Zonal Unit on 25.02.2021.</i>
10.	<i>DGGI, Ahmedabad Zonal Unit</i>	<i>15.03.2021</i>	<i>Search at the residential premise of Shri Vipin Sharma, Proprietor of M/s Mridul Tobie Inc. was conducted. However, the said premises was found locked and accordingly, the said premise was sealed under panchanama dated 15.03.2021.</i>
11.	<i>DGGI, Ahmedabad Zonal Unit</i>	<i>16.03.2021</i>	<i>On receipt of the request letter from Shri Vipin Sharma, the residence was desealed and searched in the presence of representative of Shri Vipin Sharma and several incriminating documents were recovered. On completion of the search the keys were handed over to the said representative.</i>
12.	<i>M/s Mridul Tobie Inc.</i>	<i>16.03.2021</i>	<i>Filed CM no. 10506 of 2021 in WP No. 2420 of 2021.</i>
13.	<i>CGST, Gautam Buddha Nagar Commissionerate</i>	<i>17.03.2021</i>	<i>Issued the Show Cause Notice No C.No. IV (9)AE/GBN/51/2018/Pt-V dated 17.03.2021, in respect of seizure effected by DGGI, Delhi Zonal Unit, in pursuance of the Interim Order dated 17.03.2021 passed by Hon'ble Delhi High Court in CM No. 10506 of 2021. (Annexed as Annexure-'C')</i>

END QUOTE

32. The learned ASG submits that in the present case there appears to be a fake Input Tax Credit (hereinafter referred to as the 'ITC') scam perpetuated by various entities spread across the country and involves the misuse of ITC of more than ₹300 crore (Rupees three hundred crore). The same required a thorough investigation by a specialised investigating agency having all-India jurisdiction. As

multiple agencies had conducted search operations at the premises of the petitioner, the DGGI, AZU, vide letter dated 01.03.2021, had requested all the concerned formations of the DGGI to transfer the investigation to the DGGI, AZU. The CGST, Gautam Buddh Nagar Commissionerate was also requested, vide letter dated 30.03.2021, to transfer its investigation to the DGGI, AZU. In response to the said request, the investigation being carried out by different CGST formations have been transferred to the DGGI, AZU. In this regard, he has referred to the details provided in the form of a table in the additional-affidavit, which is reproduced herein-below:

<i>Sr. No.</i>	<i>Name of the office</i>	<i>Referral Letter No.</i>	<i>Date</i>	<i>Remarks</i>
1	DGGI, Ahmedabad Zonal Unit	DGGI/AZU/Gr- 'A'/12(4)513/2020-21 Annexed as Exhibit-II	01.03.2021	DGGI, Ahmedabad Zonal Unit vide its letter dated 01.03.2021 had requested DGGI, Delhi Zonal Unit and DGGI, Lucknow Zonal Unit to transfer the investigation being conducted by them against M/s Mridul Tobie Inc.
2	DGGI, Lucknow Zonal Unit	DGGI/ARU/Gr 'A' /Pa nch/04/2021 Annexed as Exhibit-III A & III B	09.03.2021 & 30.07.2021	In reply to the letter of DGGI, Ahmedabad Zonal Unit dated 01.03.2021, DGGI Lucknow Zonal Unit vide

				<p><i>their letter dated 09.03.2021 & 30.07.2021 have transferred all the documents related to investigation of M/s Mridul Tobie Inc. To DGGI, Ahmedabad Zonal Unit for taking further necessary action. Therefore, at present, DGGI, Lucknow Zonal unit is not pursuing any investigation against M/s Mridul Tobie Inc.</i></p>
3	DGGI, Delhi Zonal Unit	F. No. DZU/INV/H/GST/06/2021 dated 16.03.2021 Annexed as Exhibit-IV	16.03.2021	<p><i>In response to the letter issued by DGGI, Ahmedabad Zonal Unit dated 30.03.2021, Delhi Zonal Unit of DGGI vide their letter dated 16.03.2021 have transferred the investigation against M/s Mridul Tobie Inc. To DGGI, Ahmedabad Zonal Unit and stated that they will not pursue further in the matter either investigation related to fraudulent availment of ITC or seizure of</i></p>

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 13.01.2022

				goods or any other matter, including follow up action required, if any, in the case of M/s Mridul Tobie Inc. And M/s Shalimar Trades.
4	DGGI, Ahmedabad Zonal Unit	DGGI/AZU/Gr-'A'/12(4)513/2020-21 Annexed as Exhibit-V	30.03.2021	DGGI, Ahmedabad Zonal Unit vide its letter dated 30.03.2021 had proposed to consolidate all the investigations being carried out by the concerned Zonal units of DGGI and CGST, Gautam Buddha Nagar Commissionerate at DGGI Ahmedabad Zonal Unit to redress the grievance raised by M/s Mridul Tobie Inc. In the W.P. 2420 of 2021 filed before the Hon'ble High Court of Delhi.
5	DGGI, Meerut Zonal Unit	DGGI/MeZU/Misc-Sharing/190/2019-20 dated 30.03.2021 Annexed as Exhibit-VI	30.03.2021	DGGI, Meerut Zonal Unit vide their letter dated 30.03.2021 informed that they have not initiated any separate investigation against M/s

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 13.01.2022

				<i>Mridul Tobie Inc. And the search was conducted only in relation to the request to DGGI, Lucknow Zonal Unit. Presently, no investigation against M/s Mridul Tobie Inc. Is pending with DGGI, Meerut Zonal Unit.</i>
6	<i>CGST, Gautam Buddha Nagar Commissionerate</i>	<i>C.No. IV(9)AE/GBN/51/2018/Pt-V dated 01.04.2021 Annexed as Exhibit-VII</i>	<i>01.04.2021</i>	<i>In response to the letter issued by DGGI, Ahmedabad Zonal Unit dated 30.03.2021, CGST, Gautam Buddha Nagar Commissionerate vide their letter dated 01.04.2021 have shown their inability to conduct investigation against M/s Mridul Tobie Inc., as its buyers and suppliers are located beyond their jurisdictions. Therefore, for the comprehensive investigation against M/s Mridul Tobie Inc. In respect of all the aspects, viz. Availment of</i>

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 13.01.2022

				<i>ineligible ITC, valuation, business model etc. They have requested DGGI, AHMEDABAD ZONAL UNIT to conduct the investigation against M/s Mridul Tobie Inc.</i>
--	--	--	--	---

33. He submits that insofar as the issue of refund and freezing of the bank accounts is concerned, the CGST, Gautam Buddh Nagar Commissionerate, shall continue with the said proceedings.

34. As far as the W.P.(C) 4036 of 2021 is concerned, the learned ASG has drawn our attention to the short counter-affidavit filed by the respondent no. 1 – the Commissioner, Delhi West; and the common counter-affidavit filed by the respondent no(s). 2, 5 and 6 – the Officers of DGGI, AZU, to contend that the DGGI, AZU, had received intelligence that certain entities based in Delhi-NCR region of Domestic Tariff Area had shown supply of low-value tobacco and tobacco-related products to certain Special Economic Zone Units in Kandla Special Economic Zone at highly overvalued rates so as to avail ineligible refund of the ITC. Based on this information, search operations were carried out at various locations, including the petitioner. He further submits that the Deputy Commissioner, CGST Delhi, East Commissionerate, vide letter dated 27.05.2021, has categorically stated that they are not investigating any case against the

petitioner. Similarly, the Joint Commissioner, CGST Delhi, South Commissionerate, vide letter dated 31.05.2021, has also informed that no investigation file in respect of the petitioner is being dealt with by them. As far as the CGST Delhi, West Commissionerate is concerned, its investigation was against one M/s Pawanputra Exim India. It was not carrying out any independent inquiry against the petitioner. In any case, vide letter dated 13.08.2020, it has transferred its investigation against M/s Pawanputra Exim to the DGGI, AZU.

35. The learned ASG, on the basis of the above facts, submits that in any case, the grievances of the petitioners that multiple agencies have carried out search operations and are carrying out investigation against the petitioners now stand addressed with the centralisation of investigation with DGGI, AZU, and the petitioners cannot have any grievance to the same.

FINDINGS OF COURT:

36. We have considered the submissions made by the learned counsels for the respective parties.

37. As stated by the Supreme Court in *VKC Footsteps India Pvt. Ltd.* (supra), the One Hundred and First Amendment to the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') is a watershed moment in the evolution of cooperative federalism. Its aim is to remove the cascading effect of taxes and provide for a common national market for goods and services. Article 246A of the Constitution has brought about a significant change in the legislative framework with respect to the power to make laws apropos the goods and services. The Parliament and every State Legislature

now have the power to make laws with respect to the GST imposed by the Union or by the States, subject to the exclusive power vested with the Parliament to make laws with respect to the GST where the supply of goods or services, or both, takes place in the course of inter-State trade or commerce. Article 246A of the Constitution is reproduced herein-below:

“Article 246A. Special provision with respect to goods and services tax.— (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.— The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

38. The Supreme Court in **VKC Footsteps India Pvt. Ltd.** (supra) highlighted the changes brought about by Article 246A of the Constitution, in the following words:

“34. Article 246A has brought about several changes in the constitutional scheme:

- (i) Firstly, Article 246A defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to travel to the Seventh Schedule;**
- (ii) Secondly, the provisions of Article 246A are available both to Parliament and the State**

legislatures, save and except for the exclusive power of Parliament to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce; and
(iii) Thirdly, Article 246A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. Concurrence, which operated within the fold of the Concurrent List, was regulated by Article 254.”

39. The other significant change is brought by the One Hundred and First Amendment to the Constitution is the composition of the Goods and Services Tax Council (hereinafter referred to as the ‘GST Council’). Sub-clause (2) of Article 279A of the Constitution sets out the composition of the GST Council, as under:

“279A. Goods and Services Tax Council.—

xxxxx

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister... Chairperson;

(b) the Union Minister of State in Charge of Revenue or Finance... Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government... Members.”

40. Sub-clause (6) of Article 279A of the Constitution highlights the objects of the Amendment, wherein it provides that the GST Council shall be guided by the need for a harmonised structure of the

GST and the development of a harmonised national market for the goods and services.

41. The Supreme Court in **VKC Footsteps India Pvt. Ltd.** (supra) captured the object of Article 279A of the Constitution, as under:

“39. Article 279A(6) indicates that in the discharge of its functions, the GST Council is to be guided by the need for a harmonised structure of goods and services tax and the development of a harmonised national market for goods and services. This emphasis on harmony is crucial to co-operative federalism. It underscores that in a federal arrangement where the States and Union are converging together for the first time to adopt the same event for taxation, both sets of partners must be guided by the over-arching need to preserve harmony. Harmony postulates balance, an acceptance of mutual co-existence. Clauses (7) to (11) of Article 279A contain provisions for quorum, procedure and voting. Clause (9) is a clear indicator of the absence of supremacy either of the Union or the States. Under sub clause (a) of Clause 9, the vote of the Union Government is to have a weightage of one-third of the total votes cast, while the votes of all the State Governments together are to have a weightage of two-thirds of the total votes cast. Every decision of the Council is to be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. The principle of harmony does not postulate exact coincidence in all points of comparison or reference. Harmony is a postulate of cooperative federalism and is founded on the principle of mutual coexistence, deference and equality of the coexisting units.”

42. Exercising power under Article 246A of the Constitution, the CGST Act, UGST Act and the IGST Act have been promulgated by

the Parliament. We are informed that various State Governments have also promulgated the SGST Act, provisions of which are almost *pari materia* to the CGST Act.

43. Various powers, like under Section 67 (Power of inspection, search and seizure); Section 70 (power to summon persons to give evidence and produce documents); Section 73 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts); and Section 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 wilful misstatement or suppression of facts) etcetera, have been bestowed by the CGST Act on the ‘proper officer’. Similar vesting of power is made in favour of “proper officer” under the SGST Act(s).

44. ‘Proper Officer’ is defined in Section 2 (91) of the CGST Act, as under:

“(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;”

45. Section(s) 3 and 4 of the CGST Act provides for the classes of Officers that may be appointed by the Government and/or by the Central Board of Indirect Taxes and Customs (hereinafter referred to as the ‘CBIC’).

46. Section 5 of the CGST Act *inter alia* states that the Officers of the Central Tax may exercise the powers and discharge the duties conferred upon them under the CGST Act.

47. In exercise of power under Section 3 read with Section 5 of the CGST Act and Section 3 of the IGST Act, the CBEC has, vide Notification No. 2/2017 dated 19.06.2017, empowered a number of Officers with limited territorial jurisdiction over various areas of the country.

48. By the Notification No. 14/2017 dated 01.07.2017, the CBEC has appointed the Officers in the Directorate General of Goods and Services Tax Intelligence (DGGI), Director General of Goods and Service Tax (DGGST), and Director General of Audit (DG Audit) as the Central Tax Officers and conferred on them the powers extended throughout the territory of India.

49. Therefore, by way of the above two Notifications, there are Central Tax Officers who are empowered to exercise all-India jurisdiction and those who enjoy the limited territorial jurisdiction.

50. We are informed that similarly, various State Governments have issued Notification under *pari materia* provisions of the SGST Act(s), empowering the State Tax Officers to exercise powers over limited territorial jurisdiction within the State and those having powers throughout the territory of the States.

51. This leads to a situation where for an entity/taxpayer in a particular jurisdictional area, let's say Gautam Buddh Nagar, there would be a Central Tax Officer having territorial jurisdiction and there would also be a State Tax Officer having territorial jurisdiction. There

would also be a Central Tax Officer who would have jurisdiction over such an entity as such officer exercises pan-India jurisdiction

52. We are further informed that for administrative purposes, a taxpayer in a particular area is assigned to the Central Tax Officer or the State Tax Officers exercising jurisdiction over that particular area. For example, in the W.P.(C) 2420 of 2021, the petitioner has been assigned the SGST Commissionerate of Gautam Buddh Nagar, while in W.P.(C) 4036 of 2021, the petitioner has been assigned to SGST Commissionerate, South Delhi.

53. There would, however, also be a Central Tax Officer having territorial jurisdiction over the area where the taxable entity is located. There would also be a transaction having both CGST as also SGST component/implication.

54. To achieve the goal of harmonized goods and service tax structure and in the spirit of cooperative federalism, Section 6(1) of the CGST Act and *pari materia* provisions in the SGST Act provide for cross-empowerment of the Central Tax Officers and the State Tax Officers.

54. Section 6 of the CGST Act is reproduced herein below:

“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;*

(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.”*

55. Sub-clause (1) of Section 6 of the CGST Act provides for the cross empowerment of the Officer appointed under the SGST Act or the UTGST Act as a ‘proper officer’ for the purpose of the CGST Act. We are informed that *pari materia* provisions of cross empowerment of the Central Tax Officer are contained in the various SGST Act(s).

56. Sub-section (2)(a) of Section 6 of the CGST Act provides that where a 'proper officer' issues an order under the CGST Act, he shall also issue an order under the SGST Act and the UTGST Act, as the case may be.

57. Sub-section 2(b) of Section 6 of the CGST Act further states that where the 'proper officer' under the SGST Act or the UTGST Act has initiated any proceedings on the subject matter, no proceedings shall be initiated by the 'proper officer' under the CGST Act on the same subject matter.

58. We are informed that similar provisions in the reverse are contained in the various SGST Act(s), with the State Tax Officer being required to pass an order under the CGST Act while passing an order under the SGST Act, and being prohibited from initiating any proceedings on the subject matter on which the Central Tax officer has already initiated some proceeding.

59. Section 6 of the CGST Act is clearly guided by the object of providing a common national market of goods and services and to eliminate the subjection of the taxpayers to multiple jurisdictions. It aims to provide protection to the taxpayers against being subjected to multiple agencies for the same set of transactions, at the same time empowering the Officers under the CGST Act or the SGST Act or the UTGST Act to pass a comprehensive order and take action, keeping in view and extending to the other Acts. There should, therefore, be only one order insofar as the tax entity is concerned.

60. To give effect to the above intent, Section 6(2)(b) of the CGST Act states that where the proper officer under the SGST Act or the

UTGST Act has initiated any proceedings on a subject matter, the Central Tax Officer shall not initiate proceedings on the same subject matter. Clearly the intent being that as the State Tax Officer is empowered to pass an order even under the CGST Act, there is no occasion for the Central Tax Officer to initiate parallel proceedings on the same subject matter.

61. As stated hereinabove, Section 6 of the CGST Act is intended to give the effect of harmonious convergence of the States and the Union for the same event for taxation.

62. The above intent is further sought to be effectuated by the Circular dated 05.10.2018 issued by the CBEC. The same reads as under:

“D.O.F.No. CBEC/20/43/01/2017-GST (Pt.)

Dated 5th October, 2018

Dear Colleague,

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 9th meeting held on 16.01.2017 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 administratively assigned to the Central tax authority.

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

With best Wishes,

Your Sincerely,

(Mahender Singh)

To

All Principal Chief Commissioners/ Chief Commissioner of Central Tax/ Principal Directors General/ Directors General”

63. The above Circular is intended to give effect to the mandate of Section 6 of the CGST Act and the *pari materia* provisions in the State Act(s). It states that the mandate of Section 6 shall apply even to the “intelligence based enforcement action”. It clarifies that the Central Tax Officers as also the State Tax Officers 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” and that the authority which initiates such action is empowered to complete the entire process of investigation, issuance of Show Cause Notice, adjudication, recover, etcetera. It further clarifies that even though the taxpayer may be administratively assigned to the other authority- State or Centre as the case maybe, the officer initiating ‘intelligence based enforcement action’ need not transfer the said case to the authority otherwise having administrative assignment over the taxpayer.

64. The above Circular is one example where Section 6 shall have its full play. In terms of Section 6(1), the State or the Central Tax Officer as the case maybe, is also authorised to act as the ‘proper officer’ for the purposes of the other Act- CGST or the SGST Act as the case maybe. Therefore, when such officer initiates ‘intelligence based enforcement action’, he acts and is empowered to so act not only under the CGST Act but also under the SGST or the UGST Act. In terms of Section 6(2)(a), he has to pass a comprehensive order, both under the CGST and the SGST/UGST Act. In terms of Section 6(2)(b), as he has initiated ‘intelligence based enforcement action’, the other jurisdiction officer must hold his hands and the officer initiating

such ‘intelligence based enforcement action’ need not transfer the case to the jurisdiction officer to whom otherwise the taxpayer is administratively assigned.

65. As noted hereinabove, it is on the basis of the above Circular that the learned senior counsel for the petitioner has vehemently submitted that as the ‘intelligence-based enforcement action’ has been initiated by the Officer of the State Tax Authorities, they are to complete the entire process of investigation and take it to its logical conclusion without transferring the same to the Central Tax Officer.

66. A bare reading of Section 6 of the CGST and the abovementioned Circular, on first blush, supports the interpretation put forth by the learned senior counsel for the petitioners. However, in our opinion, neither Section 6 of the CGST Act nor the Circular dated 05.10.2018 is intended to nor can be given an overarching effect to cover all the situations that may arise in the implementation of the CGST and the SGST Acts. The Circular cannot be extended to cover all and myriad situations that may arise in the administration and the functioning of the GST structure, now being governed by the CGST Act; the SGST Act; the UTGST Act; and the IGST Act. Section 6 of the CGST Act and the above said Circular clearly has a limited application, which is of ensuring that there is no overlapping exercise of jurisdiction by the Central and the State Tax Officers. It is to bring harmony between the Centre and the State in the implementation of the GST regime, with the two not jostling for jurisdiction over a taxpayer. It is, however, not intended to answer a situation where due to complexity or vastness of the inquiry or proceedings or involvement

of number of taxpayers or otherwise, one authority willingly cedes jurisdiction to the other which also has jurisdiction over such inquiry/proceedings/taxpayers.

67. Neither Section 6 of the CGST Act nor the SGST Act nor the Circular dated 05.10.2018, therefore, apply to the fact situation presented by the two petitions before us as they do not operate and are not intended to operate in a situation where the ‘intelligence based enforcement action’ has repercussion or involvement of taxpayers beyond the territorial jurisdictional limit of the officer initiating such an action. It also does not address a situation where two or more Officers, may be Central or State or only Central or State, initiate separate ‘intelligence based enforcement action’ but having a common thread or involvement of multiple taxpayers, like a case of conspiracy. In the first case, the officer initiating the ‘intelligence based enforcement action’ cannot travel beyond his territorial jurisdiction. To strictly enforce Section 6 and the abovementioned Circular would therefore, lead to compelling such officer to restrict his investigation and findings and resultant action only to the taxpayer within his territorial jurisdiction, thereby leading to an incomplete and inconclusive investigation/action. In the abovementioned second scenario, as all officers who have initiated ‘intelligence based enforcement action’ are otherwise having jurisdiction over the taxpayer, strictly enforcing the mandate of Section 6 and the abovementioned Circular, will on the one hand subject the taxpayer to

multiple action(s) (which is completely contrary to the intent of the Act as noted hereinabove), while on the other hand lead to multiple authorities expending their time, energy and resources investigating the same 'intelligence' input, maybe even reaching to conflicting findings. It is settled principle of interpretation of statute that the court must adopt construction which will ensure smooth and harmonious working of the statute and eschew the other which will lead to absurdity or give rise to practical inconvenience or friction or confusion in the working of the system. {Refer: *State of Punjab v. Ajaib Singh & Anr.*, AI 1953 SC 10; *Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.*, AIR 1961 SC 1549}

68. As is evident from the narration given in the additional-affidavit and the counter-affidavit in the two writ petitions, various jurisdictional tax Authorities have conducted an intelligence-based investigation into the entities within their respective territorial jurisdiction. The petitioners, however, during the course of such investigation, appeared as a common link. If the strict interpretation as contended by the learned senior counsel for the petitioners is to be accepted, each of these different jurisdictional State or Central Authorities would carry out their independent investigation to their logical conclusion. This may not only make a taxpayer liable to face multiple investigations and proceedings, which is, in fact, the complaint with which the petitioners first approached this Court, but may also lead to such jurisdictional authorities reaching a contradictory conclusion on their respective investigations. It would

defeat the very object of Section 6 and the harmonious structure that the GST regime seeks to bring about.

69. In the present set of writ petitions, the respondents have explained that to bring investigation under one umbrella, the DGGI AZU sought transfer of investigations being carried out by different Commissionerate(s) to itself. This was acceded to by each Commissionerate in both the writ petitions. We have not been shown any prohibition in the CGST Act or the SGST Act to such transfer of investigation. Neither it has been contended that the DGGI, AZU, would otherwise lack jurisdiction to carry out an investigation against the petitioners. It is not denied by the petitioners that the DGGI, AZU has a pan-India jurisdiction. DGGI, AZU would, as Central Tax Officer and in compliance with the mandate of Section 6 of the CGST Act and the SGST Act, have to pass comprehensive order, both under the CGST Act as also the SGST Act.

70. We, therefore, find that the Circular dated 05.10.2018 has no application to the peculiar facts in the present set of writ petitions.

71. The judgment of the High Court of Gujarat in ***Bhawani Textile*** (supra) is also not applicable to the facts in the present set of writ petitions. In fact, the said judgment itself records and clarifies that it has not expressed any opinion on the merits of the case. We quote paragraphs no. 6 and 7 of the said judgment, as under:

“6. Thus, it appears that by way of instructions, it is clarified that if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to the State tax authority, the officers of the Central tax

authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions. In the case on hand, there is nothing on record to indicate that the officer of the Central tax authority has transferred the case of the writ applicant to any other authority of the State. However, it appears that although the action was undertaken under Section 67 of the Act by the DGGI, AZU, yet the two summons came to be issued : one by the Deputy Commissioner of State Tax and another by the DGGI, Surat.

7. We dispose of this writ application with a direction to the DGGI, AZU, Ahmedabad to look into the matter and ensure that no undue harassment is caused to the writ applicant by different authorities on the same subject matter. We clarify that we have otherwise not expressed any opinion on the merits of the case. We dispose of this writ application with the limited observations. Direct service is permitted.

(Emphasis supplied)

72. The High Court of Gujarat in the above judgment, therefore, did not have the occasion to consider the ambit and scope of the Circular dated 05.10.2018.

73. The reliance placed by the petitioners on the Order of the High Court of Gujarat, in ***Sureshbhai Gadhecha Proprietor of M/s Anmol Traders*** (supra), is ill-founded as that was only an order issuing notice on the petitions and not a judgment of the Court.

74. As far as the submissions of the learned senior counsel of the petitioners on the binding effect that the Circular dated 05.10.2018, as we have held that Circular dated 05.10.2018 is not applicable to the facts of the present set of petitions, we need not delineate on the said issue any further.

75. At this stage, however, we may note the submissions of the learned ASG to the effect that all-India jurisdiction can be exercised only by a Central Tax Officer appointed as a 'proper officer' under Notification No. 14 of 2017 dated 01.07.2017. We are not agreeable to such an argument without limitation. In the course of investigating of a tax entity, a situation may arise where the investigation may have to be carried out from entities which are not within the territorial jurisdiction of the Officer appointed under the Notification dated 19.06.2017 and/or such State Notifications appointing an Officer with the limited territorial jurisdiction. It cannot be said that in every such case, the 'proper officer' having limited territorial jurisdiction must transfer the investigation to the 'proper officer' having pan India jurisdiction. In our opinion, it would depend on the facts of each case as to whether such transfer is warranted or not. To lay down the indefeatable rule in this regard may not be feasible or advisable, and certainly not acceptable.

SUMMARY OF FINDINGS:

76. In the facts of the present case, we find that the investigations were initiated by various jurisdictional authorities against different entities. As contended by the respondents, as common thread were allegedly found in these investigations, the same have been transferred to DGGI, AZU to be brought under one umbrella. We also find that in the CGST Act there is no prohibition to such transfer. Section 6(2)(b) of the CGST Act has limited application and therefore, is not applicable to the facts of the present petitions. Similarly, the Circular

dated 05.10.2018 also has no application to the facts of the present petitions.

RELIEF:

77. In view of the above, we find no merit in the present writ petitions. The same are accordingly dismissed. There shall be no order as to costs.

CONT. CAS(C) 751/2021

78. Insofar as the Contempt Case (C) 751 of 2021 is concerned, no submissions have been made by either party before us during the course of the hearing. The same is also accordingly dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 11, 2022/P/AB