



Lawgics

By Nidhi, Advocate



Judgment No.: 047
Dt.: 11-01-2024



<https://chat.whatsapp.com/Te4VxuhvToe76Us7e5>

**CLICK TO JOIN
WHATSAPP GROUP**

Judgment Deals With

Section/Rule	Section 73/ Section 74
Authority	Delhi High Court
Case Name	M/s. Aasanvish Technology Pvt Ltd & Ors. VS Directorate General Of GST Intelligence, Delhi Zonal Unit & Ors.
Dated	24 th November, 2023

Brief Facts:

The petitioner has filed present petition impugning a Show Cause Notice (SCN) dated 15.09.2023, raising several objections.

Contention of the Petitioner:

The impugned SCN is ex-facie erroneous as it seeks to fasten a liability for the period when the petitioner was not active. The Directors of the petitioner were in detention, and therefore, no business was carried out.

The impugned SCN is based on the premise that the petitioner is involved in providing service of online gaming. However, the petitioner does not have any wherewithal to provide any such services, and therefore, the assumption is ex-facie incorrect.

Although the impugned SCN is issued by the Additional Director, Directorate General of GST Intelligence, Delhi Zonal Unit, however, the same is required to be adjudicated by the Additional / Joint Commissioner of Central Tax, Thane. The petitioner states that the said officer is not a proper officer and is not authorised to adjudicate the said Show Cause Notice.

A plain reading of the impugned SCN indicates that it relates to the petitioner's GSTIN-36AAQCA0322AIZA, which is in respect of the petitioner's principal place of business located in Hyderabad, Telangana. However, the impugned SCN is required to be adjudicated by an officer in Thane. Although, the petitioner also has a separate registration for a place of business in Thane, the impugned SCN does not relate to the business carried out from the said place of business.

Contention of the Department:

A number of show cause notices have been issued in connected matter. One of the said show cause notices is in respect of an entity registered in Thane.

The paragraph 7.1 of the Circular dated 09.02.2018 as amended by the Circular dated 12.03.2022, reads as under: *"In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. **Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice, falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax."***

In terms of the said Circular, the matter for adjudication can be placed before an officer, who exercises jurisdiction in respect of the noticees (where multiple notices have been issued), in whose case the maximum demand has been raised.

In the present case, multiple notices have been issued and the maximum demand is proposed to be raised under the notice issued to the entity which is registered in Thane. Therefore, the Additional / Joint Commissioner of Central Tax, Thane would have jurisdiction to adjudicate the said notice.

Findings & Decision of the Court:

It is true that multiple notices have been issued and the highest demand is covered under notice issued to entity which is registered in Thane. Thus, paragraph 7.1 of the Circular dated 09.02.2018 amended by the Circular dated 12.03.2022, would clearly be applicable.

The other contentions in this petition were not examined since the matter is at the show cause notice stage, and the petitioner is not precluded from raising such contentions in response to the impugned SCN.

The concerned officer is required to consider all contentions and defences raised by the petitioner. And, if he does not accept any of them, he is required to pass a speaking order.