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Recent Guidelines from DGGI & CBIC on GST Investigations to Enhance 'Ease-of-Business'

Recent guidelines from DGGI¹ & CBIC on investigations under GST to enhance 'ease-of-business'

INTRODUCTION

As we approach the seventh year of implementation of the Goods and Services Tax (GST) regime in India, it is clear that its introduction has largely been a success across various parameters.

However, one oft-repeated criticism has been against frequent high-pitched, aggressive tax investigations, coupled with frequent cases of multiplicity of investigations by various authorities on same/overlapping issues across various States. From time-to-time, taxpayers have made representations concerning departmental conduct in investigations and summons and have frequently sought judicial review against high-handed actions by GST/DGGSTI officials in this regard.

In the last week, the Central Board of Indirect Taxes and Customs (CBIC) *vide* Instruction No. 01/2023-24-GST (Inv.) dated 30 March 2024 (CBIC Guidelines) has published detailed guidelines and directions to GST officers across the country concerning the conduct of investigations of "regular taxpayers", with a view to facilitate ease of doing business. It is expected that State GST authorities would also adopt these CBIC Guidelines.

It is pertinent to note that this CBIC Instruction is largely similar to the guidelines issued by the DGGI *vide* internal letter F.No.DGGI/17/2023-INV-O/o Pr DG-DGGI-HQ-DELHI-Part(1)/ dated 08 February 2024 (DGGI Guidelines) for regulating investigations by the DGGI. The DGGI

Guidelines are a result of the deliberations in the DGGI's Annual Conference on 28-29 November 2023 aimed at setting out specific guidelines for investigations with an underlying aim to facilitate the ease of doing business.

Together, the CBIC and DGGI Guidelines are expected to create a comprehensive framework to rein in instances of abuse of power by investigating GST officers and mitigate instances of taxpayer harassment irrespective of whether the investigation in question is being undertaken by DGGI or any other GST officer.

Before going into the key pointers emerging from these CBIC and DGGI Guidelines, it is pertinent to understand the developments leading to these guidelines.

LEAD UP TO THE DGGI AND CBIC GUIDELINES:

While powers of investigation under GST are generally wide, the courts have repeatedly stepped in to protect taxpayers from undue hardship.

In the past, the Karnataka High Court has deprecated the actions of GST authorities undertaking investigations late in the night and observed these should be undertaken during business hours.² Further, the Bombay High Court has held that summons should be issued only as a measure of last resort and not where taxpayers have demonstrated a willingness to co-operate.³

Similarly, requesting continuous presence of the taxpayer;⁴ using coercive methods during the summons process;⁵ issuance of further summons (rather than request letters)

¹ DGGI stands for '**Directorate General of Goods & Services Tax Intelligence**' – a federal intelligence organization functioning under the Central Board of Indirect Taxes & Customs (CBIC), Ministry of Finance, entrusted with the task of collection and dissemination of intelligence relating to evasion of GST as well as undertaking multi-jurisdictional investigations.

² *Bundl Technologies Private Limited v Union of India* [2021 SCC OnLine Kar 14702].

³ *FSM Education Private Limited v Union of India* [Writ Petition Number 30974 of 2021] dated 10 January 2022.

⁴ *Rakesh Janghu v Union of India* [2024 (80) G. S. T. L. 393 (P & H)].

⁵ *Anup Dalmia, Nisha Dalmia v Superintendent of GST* [2022 (64) G. S. T. L. 420 (Madras)].

despite taxpayers' cooperation;⁶ summons not containing document identification number (DIN) and not specifying who is required to appear;⁷ keeping the taxpayer in custody indefinitely;⁸ issuance of summons despite depositing the due tax amount;⁹ and insistence on personal appearances of senior executives like Managing Directors¹⁰ have been held to be illegal by various High Courts. In addition, where amounts are paid by taxpayers during the course of summons/ investigations, Courts have directed such amount to be refunded as they cannot be treated to be voluntary.

The DGGI and CBIC Guidelines build upon the foregoing directions of High Courts – the key pointers emerging from them are encapsulated below.

THE DGGI AND CBIC GUIDELINES – KEY POINTS:

With an intent to provide requisite procedural safeguards, these guidelines provide for a gamut of aspects to be borne in mind while issuance of summons and conduct of investigations.

The noteworthy points from a taxpayers' rights perspective are summarized below for ease of reference:

- **Prior approval for initiation of investigation** - Any investigation must be initiated after prior approval of jurisdictional Pr. Commissioner (or Pr. ADG/ADG of a Zona Unit in case of DGGI investigations). Further, for such approval, it needs to be ascertained as to whether there are similar investigations being carried out. Where similar investigations are already ongoing, the feasibility of a singular investigation ought to be explored.

Further, for the following situations, prior written approval of more senior officers,

viz. Zonal (Pr.) Chief Commissioner (DG of the relevant Sub-National Unit, in case of DGGI Guidelines) would be needed prior to initiation of investigation:

- When the investigation involves an interpretative legal issue vide which tax is being sought to be levied on any sector/commodity/ service for the first time;
- When the investigation is against *"big industrial houses and major multinational corporations"*;
- When the investigation pertains to *"sensitive matters or matters with national implications"*;
- When the investigation pertains to issues which are already before GST Council.

- **Avoiding multiplicity of investigations and proceedings** – Where a taxpayer has multiple GSTINs across jurisdictions (under same PAN), then the matter should be referred to DGGSTI. The CBIC Guidelines prescribe sharing of information by field formations of one jurisdiction with another. Within the allocated jurisdiction, the jurisdictional Commissionerate would be responsible for developing intelligence, conducting searches and completing investigations.

As a good practise, the Guidelines state that officers of a jurisdiction should refrain from initiating investigation pertaining to another unit's jurisdiction.

- **Information requisition letters as opposed to Summons** - Adopting a practice of sending official letters seeking information instead of summons for listed entities, PSUs, Government Department, etc. Further, deployment of harsh

⁶ Blue Cross Laboratories Private Limited v Union of India [Writ Petition Number 58 of 2023] dated 21 February 2023.

⁷ Eversub India Private Limited v. Union of India [Writ Petition (Civil) 11218/2022] dated 28 July 2022.

⁸ Agarwal Foundries Private Limited Rama Towers v Union of India [Writ Petition Number 28268 of 2019] dated 6 November 2020.

⁹ M/s Garg Sons Estate Promoters Private Limited v Commissioner of State Taxes & Excise [2024 (2) TMI 939].

¹⁰ M/S RCI Industries & Technologies Limited v Union of India [2020 (3) TMI 1371].

language pre-judging the issue of tax evasion must be avoided.

- **No fishing or roving enquiry** should be initiated in the guise of summons under Section 70 of the CGST Act. The relevancy and propriety of the information sought should be recorded to prevent any vague/generic demand for information.
- **Information available with the department not to be sought** - Information available digitally/online on GST portal should not be called for under letter/summons from a regular taxpayer, including in particular formats.
- **Time-bound conclusion of investigation** - An investigation initiated must be concluded within one year.
- **Issue of closure report and conclusion of investigation** - The guidelines note that often no closure report is issued and prescribe for issuance of the same. This can now be pursued strongly by taxpayers so that the same issue is not again investigated in the future. Correspondence with the GST authorities become very important.

CONCLUDING COMMENTS AND OPEN QUESTIONS

On a review of the DGGI and the CBIC Guidelines it is apparent that both are based on same principles of facilitating ease of business by establishing procedural safeguards for GST investigations and to prevent any unnecessary harassment of taxpayers.

However, it is pertinent to highlight that **the protections in the above guidelines are applicable only in respect of "regular**

taxpayers". Arguably, the foregoing benefits may not be extended to businesses/persons who were liable to register and pay GST but have not done so.

Further, **in light of these guidelines, regular correspondences and pro-active tax policy advocacy by way of filing representations with the GST authorities/GST Council is expected to become a potent tax controversy management tool** to prevent multiplicity of proceedings across jurisdictions on same issues as well as high-pitched investigations on interpretative issues/ tax positions adopted uniformly by an industry/sector.

While some of these aspects have been touched upon in earlier Instructions/ circulars of the Department, these CBIC and DGGI Guidelines explicitly set out a relatively high threshold of procedural safeguards to be heeded by GST officials in investigation proceedings. More importantly, **lapses by GST officials from these guidelines would also make such actions amenable to challenge before appropriate High Courts in writ jurisdiction, thereby empowering taxpayers.**

These guidelines ought to be welcomed with a sense of optimism that these will be followed rigorously across the country by GST officers irrespective of cadre.

One hopes that these are not the end point but merely small steps in the direction of the ultimate objective - a statutory codification of a taxpayer's bill of rights under the GST laws.

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