

# TAX INFO

*Dated:*

Latest update on GST Law: Information regarding **Parallel proceedings of audit and investigation held valid under the GST Law** based on the **Judgement issued by Kerala High Court**.

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## **Parallel proceedings of audit and investigation held valid under the GST Law**

<b>Name of Petitioner</b>	Suresh Kumar P.P & Aboobacker Sidhique (Kerala Communications Cable Ltd.)
<b>Name of Respondent</b>	DGGI
<b>Name of Court</b>	Kerala High Court
<b>Appeal Number</b>	W.A. No. 943 of 2020
<b>Date of Judgement</b>	14/08/2020

### **Facts of the Case:**

The appellants allege that illegal proceedings were taken against them, purportedly under the CGST Act, and their residences and offices were raided, both of them kept under illegal custody and an amount of Rupees One Crore extorted from them. On the intervention of their Advocate at mid-night, they were released, allege the appellants. The appellants, in the writ petition prayed for (i) setting aside notice, requiring them to provide information issued by the Senior Intelligence Officer (SIO), (ii) invalidation of search and seizure proceedings initiated under Section 67 of the CGST Act (iii) refund of Rupees One Crore collected by the respondents, (iv) a declaration that the petitioners are not liable to pay GST on the revenue share retained by the Local Cable Operator ['LCO' for brevity] as also (v) compensation for the damage to the reputation of the petitioners and the mental agony suffered.

### **Contention of Petitioner:**

The Learned Counsel for the petitioner pointed out that under Section 65 there was an audit initiated, pending which investigation was initiated under Section 67 without any reasonable cause. Surprise raid was conducted at the offices and residences of the appellants, which commenced in the early morning and ended only at Midnight. The appellants were taken into illegal custody and not provided even basic amenities during the entire period. The appellants were also coerced into parting with Rupees One Crore.

Order of seizure is without jurisdiction for reason of the SIO, having entered into a satisfaction or rather arrived at reasons to believe that the documents annexed therein were required to be seized. Section 67 specifically mandates such reasons to believe to be entered into by an officer not below the rank of a Joint Commissioner, which the SIO is not. The summons issued against the appellants prior to the inspection, does not have the Document Identification Number, which is an imperative requirement as issued by CBIC. There is also no substantiation as to a DIN having been generated subsequently, within 15 days. It is hence contended that Section 67 proceedings initiated is invalid on the face of it and, hence, the attachment of the Bank accounts are also to be set aside. There could also be no parallel proceedings of audit and investigation. The audit initiated has to be concluded before an investigation is initiated.

### **Reply of Respondents:**

The learned Standing Counsel submits that Section 67 speaks of power of inspection, search and seizure, which is conferred on the officer not below the rank of Joint Commissioner, who has also been empowered

to authorize in writing any other officer of the Department. An authorization is available in the files with DIN and the summons issued also has been regularized with issuance of a DIN, all of which documents are produced before this Court in a sealed cover, as per the directions issued by this Court. Seizure order, for which no DIN is required since the instructions issued by the Central Board does not take in such orders issued at the time of inspection in the presence of the assessee or the persons investigated. There is no question of pre-dating or post-dating, which evil is sought to be avoided by compulsory generation of DIN in the communications addressed to any person, as distinguished from an order issued in the presence of such persons under investigation.

Section 74(1) notice, it is argued, does not require a determination of tax, since it is a mere initiation of proceedings for the purpose of determining tax not paid, short paid, etc. Section 74(5) speaks of a benefit conferred on the person who is proposed to be investigated to pay up tax on his own assessment, upon which there could be no issuance of notice under Section 74(1). Only if there is apprehension of further short fall, could there be a notice under Section 74(1), which is provided for under sub-section (7). The benefit under Section 74(5) is insofar as the person under investigation being not liable to any investigation, if the entire amounts due have been paid up and made liable to penalties only at a lesser percentage. Sections 49 and 50, it is pointed out, come under Chapter X with reference to 'Payment of Tax', which reckons voluntary payments and not determination of tax on scrutiny of returns as per Sections 73 & 74 of the CGST Act. The contention raised on Rule 87 is specifically controverted by reference to clause (c) to the proviso to sub-rule (3), which authorize any officer carrying out an investigation or enforcement activity to collect by way of cash, cheque or demand draft any amounts above Rupees Ten Lakhs. There are no parallel proceedings taken and now that the investigation under Section 67 has commenced the audit initiated would not be continued.

**Observations:**

The allegations raised of harassment and high-handedness cannot be considered in a petition under Article 226 of the Constitution. An operation carried out by a statutory authority invested with the powers of search, inspection and seizure, by reason only of such activities having been carried out in the residences and offices of any person under investigation for a long time, cannot be labeled as harassment or high-handed. Nor could the inconvenience have caused to the person under investigation, especially of remaining in the premises for the entire duration, termed to a detention pursuant to an arrest.

**Judgement:**

The Court rejected the contention of the Appellants that unless intimation is served under Rule 142 of CGST Rules, 2017 there cannot be a deposit made or taken under Section 74(5) CGST Act, 2017. Audit under Section 65 of the CGST Act, 2017 is a routine procedure to be carried out by the Commissioner which is independent of an investigation under Section 67 of the CGST Act, 2017. Held that there is no infirmity in the audit and investigation proceeding being continued simultaneously. If notice is issued before attachment, then the account holder could defeat the purpose, by withdrawing the amounts kept in such accounts. Therefore, the proceedings initiated under Section 67 of the CGST Act are not improper, illegal or that the actions projected before us were in any manner proceeded with, in an arbitrary or high-handed fashion.

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