



Tax alert: Supreme Court holds that issuance of summons cannot be regarded as 'initiation of any proceedings' under GST law

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The Supreme Court (SC) has held that the issuance of a summons does not constitute "initiation of any proceedings" under the GST law. It has provided guidelines to be followed by taxpayers and tax authorities to avoid overlapping inquiries or investigations on the "same subject matter" and avoid duplication of proceedings.

In a nutshell



The issue for consideration before the SC was whether 'issuance of summons' can be regarded as "initiation of any proceedings", thereby barring an inquiry by another tax authority on the same subject matter for which SCN has already been issued.



The SC has observed that summons is merely a step during investigation and cannot be regarded as "initiation of any proceedings". Also, proceedings are initiated only when a SCN is issued.



The SC has also provided guidelines to be followed by taxpayers and tax authorities to avoid overlapping inquiries or investigations on the same subject matter and to also avoid duplication of proceedings.



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Background

- The petitioner¹ is a public limited company, registered with the Delhi GST authorities and is engaged in the business of providing security services.
- The petitioner was served with a Show Cause Notice (SCN) by the state GST authorities in November 2024, for the tax period April 2020 to March 2021 on the grounds that (i) net tax under-declared due to reconciliation issue between turnover disclosed and information from e-way bill; (ii) excess claim of input tax credit (ITC).
- Thereafter, in January 2025, search was conducted at the registered premises of the petitioner by the central GST authorities. Electronic gadgets and documents were seized, and summons were issued to the four directors of the petitioner company requiring them to produce documents.
- The petitioner submitted a letter to the central GST authorities stating that, investigation on similar grounds has been carried out by the state tax officer and sought release of the seized electronic devices and documents.
- Thereafter, the petitioner approached the Delhi High Court (HC) contending that an investigation had already been made in respect of the same issue by the state tax officer and hence the central tax officer does not have the jurisdiction under GST law in terms of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ('CGST Act').
- As per the said provision, where a state tax officer has initiated "any proceedings" on a subject matter, no proceedings shall be initiated by a central tax officer on the same subject matter or vice versa.
- Dismissing the writ petition, the HC held that the expression "any proceeding" cannot be construed to include a search or investigation, which is only a precursor to formal proceedings. It distinguished such summons from assessment, noting that summons are primarily intended to elicit information; the intent of the statute is to prevent parallel proceedings relating to assessment.
- Aggrieved, the petitioner filed a petition before the SC challenging the HC order and prayed that the summons issued by the Central officer be declared as having been issued without jurisdiction.
- The issue for consideration before the SC was whether issuance of summons amounts to an "initiation of proceedings" in respect of the "same subject matter" for the purposes of the GST law.

Observation of the Supreme Court

- The SC referred to the decisions of various HCs and the different opinions that have been expressed on the scope of the phrase "initiation of proceedings".
- The conflicting HC judgments primarily revolve around whether the issuance of summons constitutes "initiation of proceedings" and how "subject matter" should be interpreted. Some HCs² have held that the issuance of summons does not mean initiation of proceedings. Other HCs³ have interpreted "proceedings" more broadly, sometimes including audits, inquiries or investigations.
- Regarding issuance of summons vis-à-vis "initiation of any proceedings", the SC observed that
 - Issuing summons is merely a step during investigation and does not constitute "proceedings".

¹ M/s. Armour Security (India) Ltd. v. Commissioner 2025-VIL-63-SC

² G.K. Trading v. Union of India & Ors., 2020 SCC OnLine All 1907 - 2021-VIL-12-ALH, Kuppan Gounder P.G. Natarajan v. Directorate General of GST Intelligence 2021 SCC OnLine Mad 17053 - 2021-VIL-652-MAD, K.T. Saidalavi v. State Tax Officer 2024 SCC OnLine Ker 5674 - 2024-VIL-1130-KER, Rais Khan v. Add. Commissioner, Enforcement 2024-VIL-264-RAJ

³ M/s. R.P. Buildcon Pvt. Ltd. v. Superintendent, CGST & CX 2022-VIL-682-Cal, Tvl. Metal Trade Incorporation v. Special Secretary 2023-VIL-182-MAD, Vivek Narsaria v. State of Jharkhand 2024 SCC OnLine Jhar 50 - 2024-VIL-48-JHR

- At the stage of summons, the Department still retains the discretion to not initiate any proceedings and hence cannot be considered as the “initiation of proceedings”.
- The expression "initiation of any proceedings" under Section 6(2) of the CGST Act refers to the formal commencement of adjudicatory proceedings by way of issuance of a SCN.
 - Section 6(2) of CGST Act serves two purposes:
 - To insulate taxpayers from the prospect of facing proceedings by more than one authority for the same subject matter; and
 - To vest in the officers to render a comprehensive order thereby avoiding multiplicity of proceedings.
- SC held that the expression "subject matter" refers to any tax liability, deficiency, or obligation arising from any particular contravention which the Department seeks to assess or recover.
- Proceedings are initiated when a SCN is issued with regard to a subject matter.
- The SC further held that the subject matter is "same" if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts, and secondly, if the demand or relief sought is identical.
- The SC emphasized that the term "inquiry" and "proceedings" covered in different provisions of the GST law are not synonymous.
- The SC has laid down the following guidelines to be followed in cases where, after the commencement of an inquiry or investigation by one authority, another inquiry or investigation on the same subject matter is initiated by a different authority:
 - **Compliance with summons or SCN:** Assessee must cooperate and comply with summons as issuance of a summons does not automatically indicate that proceedings have been initiated.
 - **Notification of overlapping inquiries:** In case of overlapping enquiries, the assessee must inform the authority that has initiated the subsequent inquiry or investigation in writing.
 - **Verification of claims:** The veracity of the assessee's claim should be verified by the respective tax authorities to prevent duplication and ensure optimal utilization of the department's time, effort, and resources.
 - **Intimation of distinct subject matters:** If there is no overlap, the tax authorities must immediately send an intimation in writing, along with the reasons and a specification of the distinct subject matters to the assessee, continuing the inquiry / investigation.
 - **Overlap found during enquiry:** While continuing enquiry / investigation, if an overlap is found, one of the authorities will continue the investigation based on mutual decision of the authorities and all relevant materials should be transferred to such authority. In absence of decision, the authority that initiated the inquiry first should proceed. Courts can also order transfer of the inquiry to that authority.
 - **Recourse for non-compliance:** If it is found that the authorities are not complying with these guidelines, the taxable person can file a writ petition before the concerned HC under Article 226 of the Constitution of India.
- Regarding **tax administration**, the SC has held that –
 - Any action arising from the audit of accounts or detailed scrutiny of returns must be initiated by the tax administration to which the taxpayer is assigned.
 - Intelligence based enforcement action can be initiated by any one of the central or the state tax administrations despite the taxpayer having been assigned to the other administration.
 - Parallel proceedings should not be initiated by other tax administration when one of the tax

administrations has already initiated intelligence-based enforcement action.

Deloitte comments

The SC judgement addresses the conflicting HC judgments regarding inclusion of summons within the ambit of "initiation of proceedings". It resolves the conflict by concluding that summons cannot be considered as "initiation of proceedings" and that "proceedings" begin with the issuance of a SCN. Taxpayers are advised to comply with summons and notices while ensuring that any overlap in inquiries is promptly communicated to the authorities as per the guidelines outlined by the SC.



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