

Court No. - 3**Case :-** WRIT TAX No. - 1169 of 2021**Petitioner :-** Ajay Verma**Respondent :-** Union Of India And 5 Others**Counsel for Petitioner :-** Mahima Jaiswal, Saurabh Sharma**Counsel for Respondent :-** A.S.G.I., C.S.C., Krishna Ji Shukla

Hon'ble Surya Prakash Kesarwani, J.**Hon'ble Jayant Banerji, J.**

1. Heard Sri Shambhu Chopra, learned Senior Advocate, assisted by Mahima Jaiswal and Sri Saurabh Sharma, learned counsel for the petitioner, Sri B.P. Singh Kachhawah, learned Standing Counsel for the respondent nos. 3,4 and 6 and Sri Krishna Ji Shukla, learned counsel for the respondent nos. 1 and 5.

FACTS

2. Briefly stated facts of the present case are that the petitioner claims to be engaged in the business of lubricants after obtaining registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') and the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'UPGST Act'). According to the petitioner as per division of work his case for the tax period 2017-18 (July, 2017 to March, 2018) was assigned to the Officer of Central Tax (hereinafter referred to as 'the Central Officer') but the show cause notice dated 25.6.2021 for assessment under section 73 of CGST Act/UPGST Act was issued by the Officer of the State Tax (hereinafter referred to as 'the State Officer') i.e. Dy. Commissioner, Commercial Tax Saharanpur, Sector 10, Saharanpur (B), Uttar Pradesh. The petitioner submitted reply to the show cause notice **but did not raise any objection** as to the jurisdiction on the ground of assignment of the case to Central Officer. The proper officer under the Act completed the assessment proceedings and passed the assessment order under section 73 of the UPGST Act/CGST Act dated 9.8.2021 for the tax period July, 2017 to March, 2018. Aggrieved the aforesaid assessment order dated 9.8.2021 the petitioner has filed the present writ petition praying to quash the show cause notice (DRC-01) dated 25.6.2021 issued by the State Officer i.e. the respondent no. 4 and the assessment order dated 9.8.2021 passed by the respondent no. 4.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. (i) Learned counsel for the petitioner submits that the impugned show cause notice and the impugned assessment order are without jurisdiction inasmuch as pursuant to the decision of the GST Council vide Agenda item no. 28 of the Minutes of the IX GST Council Meeting dated 16.1.2017, the designated committee passed the order no. 04/2018 dated 12.9.2018 issued by the Commissioner of Commercial Tax, Uttar Pradesh providing for single interface under the Act and whereby the petitioner i.e. taxpayer was assigned to the Central Government Officer. Therefore, the show cause notices issued by the State Officer i.e. the respondent no. 4 and the impugned assessment order passed by him both are without jurisdiction and, therefore, deserve to be quashed.
- (ii) Even though the petitioner has not raised any objection as to the jurisdiction before the proper officer who issued the impugned show cause notice and passed the impugned assessment order, yet objection as to the jurisdiction can be well entertained in writ petition inasmuch as the question of jurisdiction goes to very root of the matter and renders the impugned show cause notice and the impugned assessment order to be null and void being without jurisdiction.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

4. Learned counsel for the respondents have supported the impugned show cause notice and the impugned orders.

DISCUSSION AND FINDINGS

5. Relevant provisions for the purposes of the controversy involved in the present writ petition are the provisions of Section 2(21), Section 2(91), Section 6 and Section 9 of the CGST Act/UPGST Act, which reproduced below:

Central Goods and Services Tax Act, 2017

2(21) “central tax” means the central goods and services tax levied under section 9;

2(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

Uttar Pradesh Goods and Services Tax Act, 2017

2(21). “central tax” means the central goods and services tax levied under section 9 of the Central Goods and Services Tax Act (Act No. 12 of 2017);

2 (91). “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner;

Board;

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.

9. Levy and collection.

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty

6 Authorisation of officers of Central Tax as proper Officer in certain circumstances

(1) Without prejudice to the provisions of this Act, 2017 the officers appointed under the Central 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 Central Goods and Services Tax Act 2017, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act, 2017 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 Central Goods and Services Tax Act, 2017.

9. Levy and collection.

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Uttar Pradesh goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not

per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: PROVIDED that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in

exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in

the taxable territory shall be liable to pay tax:

PROVIDED FURTHER that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

6. The “Goods and Service Tax Council” (for short GST Council) took a decision vide minutes of the **IX GST Council meeting held on 16.1.2017 (Agenda item no. 28)** in respect of **cross empowerment** to ensure single interface under the GST Act, as under:

“28. After further discussion, the Council agreed to the decisions as recorded below in respect of cross-empowerment to ensure single interface under GST.

*i. There shall be a **division of taxpayers** between the Central and the State tax administrations **for all administrative purposes;***

*ii. Of the total number of taxpayers **below** Rs. 1.5 crore turnover, all administrative control over **90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;***

*iii. In respect of the total number of taxpayers **above** Rs.1.5 crore turnover, all administrative control shall be divided equally in the ratio of **50% each for the Central and the State tax administration;***

*iv. The **division of taxpayers** in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;*

v. The new registrants shall be initially divided one each between the Central and the State tax administration and at the end of the year, once the turnover of such new registrants was ascertained, those units with turnover below Rs.1.5 crore shall be divided in the ratio of 90% for the State tax administration and 10% for the Central tax administration and those units above the turnover of Rs.1.5 crore shall be divided in the ratio of 50% each for the State and the Central tax administration;

vi. The division of the taxpayers may be switched between the Centre and the States at such interval as may be decided by the Council;

vii. The above arrangement shall be reviewed by the Council from time to time;

*viii. **Both** the Central and the State tax administration shall have the power to take **intelligence-based enforcement action in respect of the entire value chain;***

ix. Powers under the IGST Act shall be cross-empowered to the State tax administration on the same basis as under the CGST and the SGST Acts either under law or under Article 258 of the Constitution but with the exception that

he Central tax administration shall alone have the power to adjudicate a case where the disputed issue relates to place of supply, or when an affected State requests that the case be adjudicated by the CGST authority and for such issues of export and import as may be discussed in the Law Committee of officers and brought back to the Council for decision;

x. The territorial water within the twelve nautical miles shall be treated as the territory of the Union of India unless the Hon'ble Supreme Court decides otherwise in the ongoing litigation on the issue but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the States."

7. Pursuant to the aforesaid decision of the GST Council, a circular no. 01/2017 dated 20.9.2017 (F no. 166/cross empowerment/GST/2017) was issued by the GST Council, New Delhi providing that the State Level Committee comprising Chief Commissioner/Commissioner Commercial Taxes of respective States and jurisdictional Central Tax Chief Commissioners/Commissioners are already in place for effective coordination between the Centre and State and the said Committee may take necessary steps **for division of taxpayers** in each State.
8. Pursuant to the aforesaid circular the Committee constituted for the State of Uttar Pradesh passed order No. 04/2018 dated 12.9.2018 assigning the taxpayers registered in the State of U.P. in terms of the aforequoted decision of the GST Council.
9. It is admitted fact that the taxpayer i.e. the petitioner has been assigned to the Central Officer whereas the impugned show cause notice was issued by the State Officer i.e. the respondent no. 4 (Dy. Commissioner, Commercial Tax Saharanpur, Sector 10, Saharanpur (B), Uttar Pradesh) before whom, despite show cause notice, the petitioner did not raise any objection as to the jurisdiction and instead participated in the proceedings and submitted to his jurisdiction. Thereafter the respondent no. 4 passed the impugned assessment order creating certain demand against the petitioner. **It is thereafter that the petitioner filed the present writ petition and challenged the show cause notice and the assessment order solely on the ground that it is without jurisdiction.**
10. The word "Central Tax" has been defined under section 2(21) of the CGST Act/UPGST Act to mean that the Central Goods and Service Tax levied under section 9. The word "proper officer" has been defined under section 2(91) of the CGST Act/UPGST Act. Section 6 (1) of the CGST Act starts with a non obstante clause and provides that the officer appointed under the State Goods and Service Tax Act (for short SGST Act) or the Union Territory Goods and Service Act (for short UTGST Act) are authorized to be the proper officer for

the purposes of this Act, subject to such condition as the Government shall, on the recommendations of the Council, by notification, specify. **Section 6(2)(a) of the CGST Act mandates** that where any proper officer under the CGST Act issues an order, he shall also issue an order under the SGST Act or the UTGST Act as authorized under those Acts, as the case may be, **under intimation to the jurisdictional officer of the State tax or the Union territory Tax.** **Clause (2) of sub section (2) of Section 6 of the CGST Act/UPGST Act mandates that where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject-matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject-matter.**

11. Section 6(1) of the UPGST Act also starts with non obstante clause and provides that officers appointed under the CGST Act are authorized 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. Clause (a) of sub-Section (2) of Section 6 of the UPGST Act provides that where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, 2017 as authorized by the said Act under intimation to the jurisdictional officer of central tax. **Clause (b) of sub-Section (2) of Section 6 of the UPGST Act provides that where a proper officer under the CGST Act has initiated any proceeding on a subject matter, no proceeding shall be initiated by the proper officer under the UPGST Act on the same subject matter.**
12. From bare perusal of Section 6 of the CGST Act and the UPGST Act it is clear that a proper officer under the UPGST Act is also a proper officer under the CGST Act within his territorial jurisdiction. Likewise a proper officer appointed under the CGST Act is also the proper officer under the UPGST Act within his territorial jurisdiction. So as to avoid possibility of conflicting orders, an in built provision in both the CGST Act and UPGST Act has been made in Section 6 that when a proper officer under the CGST Act passes an order, he shall intimate it to the jurisdictional officer under the State Act or the Union territory Act and likewise when a proper officer under the UPGST Act passes an order, he shall intimate it to the jurisdictional officer of Central Tax. Thus a cross empowerment with sufficient provision to remove the possibility of conflicting orders has been provided under the CGST Act and UPGST Act.
13. From the scheme of the Act, as briefly discussed above, it is clear that the proper officer as defined under the CGST Act and UPGST Act, both are

proper officers within their territorial jurisdiction and have been conferred with jurisdiction and powers under both the Acts to exercise their jurisdiction as proper officers subject to a rider that if an order is issued by a proper officer under the State Act or the Union territory Act on a subject matter then on the same subject matter, order shall not be passed by a proper officer under the CGST Act and vice versa and the orders so passed shall be intimated to the other jurisdictional officer under the other Act.

14. Since proper officers under both the Acts have been empowered to exercise powers within their territorial jurisdiction and since both the set of officers i.e. under the CGST Act and UPGST Act are authorized to pass assessment orders, therefore, there arose necessity for division of work between two sets of officers, i.e. under CGST Act and UPGST Act having same territorial jurisdiction. Consequently, the GST Council evolved the formula in its IXth Meeting held on 16.01.2017 for division of work between two sets of proper officers which has been reproduced above, and consequent thereto the Committee constituted at the State level has distributed and assigned taxpayers for the purposes of assessment to both sets of proper officers.
15. **Thus the proper officer under the CGST Act and the proper officer under the UPGST Act, both are jurisdictional proper officers and have jurisdiction to pass assessment order with respect to an assessee within their territorial jurisdiction but for administrative purposes the order no. 04/2018 dated 12.9.2018 was issued by the Commissioner of Commercial Tax, U.P. in terms of the Agenda item no. 28 of the Minutes of the IX GST Council meeting dated 16.1.2017 and circular no. 01/2017 of the GST Council dated 29.1.2017.**
16. In terms of the aforesaid order no. 04/2018 dated 12.9.2021 issued by the Commissioner, Commercial Tax, Uttar Pradesh and the Chief Commissioner of Central Tax, Meerut Zone, Lucknow, the assessment of petitioner under the Act was assigned to the Central Officer and not to the respondent no. 4. **However, the respondent no. 4 took up the matter and issued the impugned show cause notice dated 25.6.2021 which was replied by the petitioner without raising any objection as to jurisdiction on account of assignment of case to the Central Officer. It was also not brought to the notice of the respondent no. 4 by the petitioner that his case is assigned to a Central Officer. Instead, the petitioner participated in the assessment proceeding and the assessing officer i.e. the proper officer (respondent No.4) has passed the impugned assessment order dated 9.8.2021, which can be said**

to be contributory error of jurisdiction. The GST Act came into force from 01.07.2017. Prior to it the petitioner was registered under the U.P. VAT Act and was carrying on business in partnership. But he migrated as proprietary concern under the GST Act and carried the entire stock of the partnership firm as on 30.06.2017 to the proprietary concern. Neither on issuance of notice nor during the course of assessment proceedings, did the petitioner inform the respondent No.4 that his case was assigned to a Central Officer. After the assessment order dated 09.08.2021 was passed by the respondent No.4, it came to notice that the case was assigned to a Central Officer. Hence, the respondent No.4 wrote letters to the Central Officer who informed vide letters dated 22.11.2021 and 03.12.2021 that as per Act the proceedings shall be completed by the officer who initiated it, i.e. by the respondent No.4.

17. Thus, the question involved in the present case is not as to the inherent lack of jurisdiction instead but the question is as to **whether the impugned show cause notice and the assessment order issued by the respondent No.4 are without jurisdiction due to assignment of the assessee to the Central Officer?** A further question would be as to **whether the impugned show cause notice or the assessment order would become void *ab initio* on account of non assignment of the case to the respondent no. 4 even when the petitioner submitted to the jurisdiction of the respondent no. 4 and participated in the proceeding without raising any objection as to the jurisdiction?**
18. Sub section (91) of Section 2 and Section 6 of the CGST Act/UPGST Act read with the minutes of the meeting of the GST Council dated 16.1.2017 agenda Item no. 28 and the order no. 04/2018 dated 12.9.2018 jointly issued by the State and Central authorities, leads to an irresistible conclusion that **proper officer under the UPGST Act and proper officer under the CGST Act both have jurisdiction over assessee falling within their territorial jurisdiction but for administrative convenience, assignment of taxpayers have been made by the designated committee at the State level.**
19. Thus, a **proper officer under the UPGST Act/CGST Act has inherent jurisdiction over assessee falling within his territorial jurisdiction but that jurisdiction has to be exercised as per cases assigned by the designated committee** comprising Chief Commissioner/Commissioner, Commercial Taxes of respective States and jurisdictional Central Tax Chief Commissioners/Commissioners. In the present set of facts, the Chief Commissioner of Central Taxes, Lucknow and Meerut Zone, Lucknow and

the Commissioner of Commercial Taxes, U.P. issued the aforesaid order no. 04/2018 assigning the taxpayers to proper officers and the case of the petitioner has been assigned to the proper officer under the CGST Act i.e. Central Officer and not to the respondent no. 4.

CONSEQUENCES OF “SUBMITTING TO THE JURISDICTION”

20. Present case is not a case of inherent lack of jurisdiction rather it is a case of error of jurisdiction on account of non allotment of case of the petitioner assessee to the respondent no. 4/State officer.
21. In the case of ***Municipal Commissioner, Kolkata and others Vs. Salil Kumar Banerji (2000) 4 SCC 108 (para 4)***, Hon'ble Supreme Court considered the validity of an order passed by a Tribunal not properly constituted. Hon'ble Supreme Court held that “...Even assuming that it ought to have consisted of three or more Members, had that objection been taken at the initial stage of the hearing of the appeal before the Tribunal, that position could have been rectified. Certainly, in circumstances such as these, the High Court ought not to have exercised its discretion in favour of the first respondent.”
22. In the case of ***Kedar Shashikant Deshpandey and others Vs. Bhor Municipal Council and others (2011) 2 SCC 654 (para 29)*** Hon'ble Supreme Court considered the principle “**submitting to the jurisdiction of the authority**” and held that “it is well settled that if a person has submitted to the jurisdiction of the authority, he cannot challenge the proceedings on the ground of lack of jurisdiction of the said authority in further appellate proceedings....”
23. In the case of ***A.R. Antulay Vs. R.S. Nayak and another (1988) 2 SCC 602 (para 234)***, a constitution Bench of Hon'ble Supreme Court held as under:

“234. In dealing with this contention, one important aspect of the concept of jurisdiction has to be borne in mind. As pointed out by Mathew J. in *Sethi vs. Kapur, (1972) 2 SCC 427*, “**the word ‘jurisdiction’ is a verbal coat of many colours.**”. It is used in a wide and broad sense while dealing with administrative or quasi-judicial tribunals and subordinate courts over which the superior courts exercise a power of judicial review and superintendence. Then it is only a question of “how much latitude the court is prepared to allow” and “there is no yardstick to determine the magnitude of the error other than the opinion of the court.” But the position is different with superior courts with unlimited jurisdiction. These are always presumed to act with jurisdiction and unless it is clearly shown that any particular order is patently one which could not, on any conceivable view of its jurisdiction, have been passed by such court, such an order can neither be ignored nor even recalled, annulled, revoked or set aside in subsequent proceedings by the same court. This distinction is well brought out in the speeches of Lord Diplock, Lord Edmund-Davies and Lord Scarman in *Re Racal Communications Ltd., [1980] 2 All E R 634*. In the interests of brevity, I

resist the temptation to quote extracts from the speeches here.”

DIFFERENCE BETWEEN INHRENT LACK OF JURISDICTION AND ERROR OF JURISDICTION

24. In the case of ***H.V. Nirmala Vs. Karnataka State Financial Corporation and others (2008) 7 SCC 639*** (paras 13 and 14), Hon'ble Supreme Court has held as under:

“13.An authority may lack inherent jurisdiction in which case the order passed would be a nullity but it may commit a jurisdictional error while exercising jurisdiction.”

14.A jurisdictional issue should be raised at the earliest possible opportunity. A disciplinary proceedings is not a judicial proceeding. It is a domestic tribunal. There exists a distinction between a domestic tribunal and a court. The appellant does not contend that any procedure in holding the enquiry has been violated or that there was no compliance with principles of natural justice.”

25. In the case of ***Central Bank of India Vs. C. Bernard (1991)1 SCC 319 (para 9)***, Hon'ble Supreme Court considered the submission that in the event the respondent succeeded in getting the order of punishment quashed on a mere technicality and that too on the contention belatedly raised before the High Court for the first time and, therefore, the High Court was in error in directing payment of all consequential benefits.; and held as under:

“We think there is merit in this contention. If the objection was raised at the earliest possible opportunity before the Enquiry Officer the appellant could have taken steps to remedy the situation by appointing a competent officer to enquire into the charges before the respondent's retirement from service.....”

26. In the case of ***Nusli Neville Wadia Vs. Ivory Properties and others (2020) 6 SCC 557*** (paras 20, 21 and 22) Hon'ble Supreme Court has explained the **meaning of the word “jurisdiction”** and distinction between **jurisdiction to entertain** and **error of exercise of jurisdiction** or **excess jurisdiction** and held as under :

“20. Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify plaintiff's right to the relief sought. If the law confers a power to render a judgment or

decree, then the court has jurisdiction. The court must have control over the subject matter, which comes within classification limits of law under which Court is established and functions.

21. The word "jurisdiction" is derived from Latin words "Juris" and "dico," meaning "I speak by the law" and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. **When there is the want of general power to act, the court has no jurisdiction.** When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.

22. **Jurisdiction to entertain is distinguished from merits, error in the exercise of jurisdiction or excess of jurisdiction."**

27. In the case of **Nusli (supra)** vide paragraph 37 Hon'ble Supreme Court explained the **difference between "existence of jurisdiction" and "exercise of jurisdiction"** and held as under :

"37. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. In case jurisdiction is exercised with material irregularity or with illegality, it would also constitute jurisdictional error. However, if a court has jurisdiction to entertain a suit but in exercise of jurisdiction, a mistake has been committed, though it would be a jurisdictional error but not lack of it. It may be a jurisdictional error open for interference in appellate or revisional jurisdiction."

28. In the case of **Hridya Narain Roy Vs. Ram Chandra Barna Sarma AIR 1921 Cal 34 (FB)** quoted with approval by Hon'ble Supreme Court in the case of **Official Trustee Vs. Sachindra Nath Chatterjee AIR 1969 SC 823** and **Nusli (supra)**, it was stated that:

"jurisdiction may be defined to be the power of a court to "hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:" in other words, by jurisdiction is meant "the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision". An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction", which has been stated to be "the power to hear and determine issues of law and fact", "the authority by which the judicial officers take cognizance of and "decide causes"; "the authority to hear and decide a legal controversy", "the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise

any judicial power over them”, “the power to hear, determine and pronounce judgment on the issues before the court”; “the power or authority which is conferred upon a court by the legislature to hear and determine causes between parties and to carry the judgments into effect”; “the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.”

29. In the case of **Nusli (supra)** Hon'ble Supreme Court vide paragraph 88 held that *“there is difference between existence of jurisdiction and exercise of jurisdiction. The existence of jurisdiction is reflected by the fact of amenabilities of the jurisdiction to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction its decision is open to attack as nullity.”*
30. From the scheme of the Act as discussed above it is evident that the respondent no. 4 being proper officer under the Act having territorial jurisdiction over the petitioner assessee is competent to exercise the powers conferred under the Act in respect of assessee, falling under his territorial jurisdiction. But as per minutes of the meeting of the G.S.T. Council and the circular issued in this regard, the distribution of work for administrative convenience was made and as per which the case of the petitioner was assigned to a central officer. Thus it is not a case that the state officer i.e. the respondent no. 4 lacks inherent jurisdiction but it is a case where the jurisdiction has been exercised by the respondent no. 4 in the absence of any objection or pointing out by the petitioner that the case has been assigned to a central officer. The jurisdiction upon a proper officer has been conferred by section 6 of the Act. Thus a proper officer has jurisdiction over the assessee for assessment falling under his territorial jurisdiction but in terms of the aforesaid work allotment order No. 04/2021 dated 12.9.2018 he was to take up those cases which have been allotted to him.
31. **Considering the facts and circumstances and discussions made above, we find that the impugned show cause notice and the impugned assessment order do not suffer from any inherent lack of jurisdiction and instead it is the result of contributory error of jurisdiction by the respondent no. 4.,** in the circumstances that the petitioner submitted to the jurisdiction of the respondent no. 4 without informing or without raising objection as to the assignment of the case to the central officer and after well participating in the assessment proceedings allowed the assessment order to be passed by the respondent no. 4. Had the petitioner objected to it at the initial stage or during the course of assessment proceedings, the position could have been rectified by the respondent no. 4 by informing the central officer to complete the

assessment proceedings.

32. For all the reasons aforesaid, the writ petition is **dismissed** leaving it open for the assessee-petitioner to challenge the impugned assessment order in appeal under section 107 of the CGST/UPGST Act.

Order Date :- 9.2.2022

o.k.

SAG
2022/04