Instruction No. 01/2023-24-GST (Inv.)

F. No. GST/INV/Instructions/2023-24
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes and Customs)

New Delhi, the dated 30th March, 2024.

To

All Pr. Chief Commissioners/Chief Commissioners, CGST Zones
All Principal Director Generals/Director Generals under CBIC
All Pr. Commissioners/Commissioners, CX & CGST Commissionerates
Webmaster, CBIC

Madam/Sir,

Subject: Guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers - reg.

The undersigned is directed to say that the matter of CGST field formations following a uniform procedure in undertaking enforcement activities, with or involving regular taxpayers, which incorporates aspects related to the ease of doing business, was considered by Board.

2. Keeping relevant aspects in view, the Board has desired that the following guidelines, henceforth, should be followed in the CGST Zones while engaging in investigation, subject to legal provisions or instructions issued on this behalf:

(a) Within the allocated jurisdiction of Commissionerate under notification No. 2/2017-Central Tax dated 19.06.2017, the (Pr.) Commissioner shall be responsible for developing and approving any intelligence, conducting search, and completing investigation in a case and the relevant subsequent action, including in the divisional formations, etc.

Any information or intelligence which pertains to another CGST field formation, that may have been generated /collected /received /recorded by such field formation (or even developed in the course of an investigation, including with respect to end-availer(s) of ITC), shall be forwarded by the (Pr.) Commissioner to the concerned CGST field formation or DGGI, as the case may be.

(b) Each investigation must be initiated only after the approval of the (Pr.) Commissioner, except in the following situations where the prior written approval of the zonal (Pr.) Chief Commissioner shall be required if investigation is to be initiated and action to be taken in a case falling under any of the following four categories, namely case involving –

i. matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST; or
ii. big industrial house and major multinational corporations; or
iii. sensitive matters or matters with national implications; or
iv. matters which are already before GST Council.

In all of above four categories of cases, the concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders. The implications / impact of such matter should be studied so as to have adequate justification for initiating investigation and taking action.

(c) The fact of initiation of inquiry, if any, already on same subject matter with respect to the same taxpayer/GSTIN by another investigating office or tax administration must be ascertained for purposes of obtaining approval to initiate investigation. The position must be placed before the authority who is to approve initiation of investigation.

(d) There may be a situation where it comes to the Commissionerate's notice that either the DGGI or the State GST department is also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters. The (Pr.) Commissioner must engage in dialogue with the other investigating office(s) to consider the feasibility of only one of the offices pursuing all these subject matters with respect to the taxpayer, and the other offices consolidating their material with that office. If this outcome is not feasible, the reasons therefor should be confirmed on file by such (Pr.) Commissioner.

(e) There may be the situation where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction, and the issue is relevant to some or all of that taxpayers' GSTINs registered (under the same PAN) in multiple jurisdictions. If the matter also falls in the charter of DGGI and is not such that DGGI avoids taking up (as it is more appropriately in the purview of return scrutiny or audit etc), then the (Pr.) Commissioner shall expeditiously make a self-contained reference to its zonal (Pr.) Chief Commissioner who shall request the Pr. DG, DGGI to take up the matter in accordance with DGGI guidelines.

(f) There may be the situation where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction, and the issue is relevant to other taxpayers' GSTINs registered (under multiple PANs) across various CGST jurisdictions. In this scenario, the (Pr.) Commissioner shall within 30 days of initiation of investigation take either of the following two actions with the approval of zonal (Pr.) Chief Commissioner –

i. If description of GSTINs or similar entity types involved (or likely to be involved) across various jurisdictions related to the issue or topic is available, the self-contained reference be shared with each concerned Zone or all the Zones.
ii. In other situations, Pr. DG DGGI shall be requested to issue suitable alert.

(g) The scenario may arise in a CGST Zone where an issue investigated by one of the (Pr.) Commissioners is based on an interpretation of CGST Act/ Rules, notifications, circulars etc, and it is in the direction of proposing non-payment or short payment of tax, however, the background is that the taxpayer(s) is/are following, or have followed, a prevalent trade practice based on particular interpretation on that issue in the sector/industry. This scenario results in more than one interpretation and likelihood of litigation, change in practice etc.

In such cases, it is desirable that the zonal (Pr.) Chief Commissioner make a self-contained reference to the relevant policy wing of the Board i.e. the GST Policy or TRU. The endeavor, to make such reference before concluding investigation, and as much in advance, as is feasible, of the earliest due date for issuing of show cause notice, may be useful in promoting uniformity or avoiding litigation if the matter, after being processed, is amongst those that also gets placed before the GST Council.

(h) In initiating investigation with respect to a listed company or PSU or Corporation or Govt Dept./agency or an Authority established by law, or seeking details (that are record-based and/or are reflected in statutory books of account or filings) from them, the practice to be adopted by the CGST field formation should be of initially addressing official letters (instead of summons) to the designated officer of such entity (detailing the reasons for investigation, and the legal provisions therefor) and requesting the submission of the relevant specified details in a reasonable time period which should be mentioned in the letter. Divergence from this practice at the initial stage must be backed by written reasons.

(i) In such a letter issued for seeking information/documents from regular taxpayer, the reference can be to inquiry "with respect to" or "in connection with" that entity. Further, the letter/summons should disclose the specific nature of the inquiry being initiated/undertaken. The vague (or general) expressions such as that the officer is making inquiry in connection with "GST enquiry" or "evasion of GST" or "GST evasion" etc. must not be mentioned.

(j) Information available digitally/online on GST portal should not be called for under letter/summons from a regular taxpayer. Further, a letter or summons should not be used as a means to seek information filled in formats or proforma (specified by investigation).

(k) The summons in conduct of investigation must not convey requests outside the scope defined for a summons. In the case of GST, the scope of summons is in the wording of section 70 of CGST Act, 2017. Addressing letter/summons with context or content akin to a fishing inquiry is not acceptable.

(l) If a taxpayer has utilized ITC towards payment of GST on its outward supplies, it is not acceptable to seek via summons/letter aspects such as - *'please clarify whether ITC availed and utilized was proper."*

(m) In issuing summons, the norm shall be of prior reasoned approval (of officer not below Dy/Asst. Commissioner level) of the content of the summons to be printed by the summoning officer, including in terms of what is being sought and the time frame to be provided being reasonable for its compliance.

(n) Where, for strictly operational reasons, it is not possible to obtain such prior written permission, the approval by such an officer can be verbal, however this all must be confirmed in writing at the earliest opportunity.

(o) Before summoning any information or documents from a regular taxpayer, the relevancy and propriety of what is being sought must be recorded (on e-file), ensuring that it is holistic and result of preparation, and also so as not to have repeated issuance of summons or seeking piecemeal information.

(p) Scanned copy of a statement (recorded under summons) be uploaded in the same e-office file in which approval was obtained to issue summons. Outcome of search/inspection conducted, including panchnama (if any), be also so uploaded. The e-file should be submitted for information to Addl./Jt. Commissioner in not more than 4 working days from date of statement, completion of search/inspection.

(q1) An investigation initiated must reach the earliest conclusion which is not more than one year. It is not necessary to keep investigation pending till limitation in law approaches. Show cause notice should not be delayed after conclusion of investigation. The closure report consequent to the appropriate payment of government dues by the person concerned should also not be delayed and should have a brief self- explanatory narration of the issue and the period involved. Expeditious actions without delay at these stages are part of preventive vigilance ensuring that no room remains for malpractices.

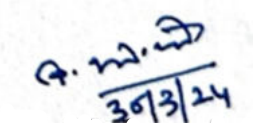
(q2) Conclusion of investigation may also take the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated.

Grievance redressal

3. The (Pr.) Commissioner is to be proactive in a manner that prevents complaints from arising in respect of the investigation and related work being undertaken within the jurisdiction.

The Addl./Jt. Commissioner in-charge of investigation is the Grievance Officer whom taxpayers may approach (through letter, email or by appointment) with grievance, if any, related to an ongoing investigation, for appropriate redress. In case the reasonable grievance persists, the (Pr.) Commissioner may consider meeting, by appointment, the taxpayer.

Yours faithfully,



(Vijay Mohan Jain)
Commissioner,
GST-Investigation, CBIC