

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on: 06/11/2019****Judgment Delivered on : 20/11/2019****Writ Petition (T) No. 77 of 2019**

Sri Ravi Agarwal S/o Late Sri Om Prakash Gupta Aged About 38 years who is a citizen of India, Proprietor of M/s Yamuna Trading Corporation, a proprietorship firm of Hindu Undivided Family, having its Registered Office At 2nd Floor, Office No. 26. Saurya Arade, Samvat Sikhar, Rajbandha Maidan, Raipur, Chhattisgarh. 492001 and Resident of Flat No. 28/601, Ashoka Ratan, Vidhan Sabha Road, Post Office and Police Station Sankar Nagar, Town And District Raipur Chhattisgarh.

**---- Petitioner****Versus**

1. Union of India Secretary, Through the Secretary, Department of Revenue, Ministry Of Finance, Post Office / Police Station North Block, Parliament Street, New Delhi - 110001.
2. Central Board of Indirect Taxes and Customs, (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
4. The Goods and Service Tax Council (GST Council), Through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi - 110001.
5. Directorate General of Goods and Service Tax Intelligence, West Block - 8, Wing - VI, R. K. Puram, New Delhi - 110066.
6. Senior Intelligence Officer Directorate General of Goods and Service Tax Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> / 3<sup>rd</sup> Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand - 831001.

**---- Respondent****Writ Petition (T) No. 78 of 2019**

Sri Pankaj Agarwal S/o Sri Pramod Agarwal Aged About 40 Years who is a citizen of India, Sole Proprietor of M/s SKP & Sons, Having Its Registered Office At Sidara Complex, Shop No. 10, Behind Axis Bank, Sapat Road, Vasant Vihar, Bilaspur,

Chhattisgarh- 495006 and R/o Flat No. 107, Block -A, Wing- C, Sristhi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, Post Office and Police Station- Telibandha , Town and District Raipur Chhattisgarh.

---- **Petitioner**

**Versus**

1. Union of India Through The Secretary, Department of Revenue, Ministry of Finance, PO / PS- North Block, Parliament Street, New Delhi- 110001.
2. Central Board of Indirect Taxes And Customs (Formerly known as Central Board of Excise and Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly Known As Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001.
4. The Goods and Service Tax Council (GST Council) Through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001
5. Directorate General of Goods and Service Tax Intelligence West Block -8, Wing -VI, RK Puram, New Delhi- 110066.
6. Senior Intelligence Officer Directorate General of Goods and Service Tax Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand- 831001.

---- **Respondent**

**Writ Petition (T) No. 79 of 2019**

Sri Ravi Agarwal S/o Late Shri Om Prakash Gupta Aged About 38 Years who is a citizen of India, Sole Proprietor Of M/s Ganga Metals, having its Registered Office At 2nd Floor, Office No. 26. Saurya Arade, Samvat Sikhar, Rajbandha Maidan, Raipur, Chhattisgarh. 492001 and Resident of Flat No. 28/601, Ashoka Ratan, Vidhan Sabha Road, Post Office And Police Station Sankar Nagar, Town And District- Raipur, Chhattisgarh.

---- **Petitioner**

**Versus**

1. Union of India Secretary, Through The Secretary, Department of Revenue, Ministry of Finance, Post Office / Police Station North Block, Parliament Street, New Delhi - 110001.
2. Central Board of Indirect Taxes And Customs (Formerly known as Central Board of Excise And Customs), Govt. of India, Ministry of

Finance, Department Of Revenue, North Block, New Delhi - 110001

3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly Known as Central Board of Excise And Customs), Govt. of India, Ministry of Finance, Department, Of Revenue, North Block, New Delhi - 110001.
4. The Goods And Service Tax Council (GST Council), Through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi - 110001.
5. Directorate General of Goods and Service Tax Intelligence West Block - 8, Wing - VI, R. K. Puram, New Delhi - 110066.
6. Senior Intelligence Officer Directorate General of Goods And Service Tax Intelligence, Regional Unit, Jamshedpur, 2nd / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand - 831001.

---- Respondent

**Writ Petition (T) No. 80 of 2019**

1. M/s Mangal Commercial Pvt. Ltd A Company Incorporated Under, The Companies Act, 1956 Having Its Registered Office At 205, 2nd Floor, Block 9, D.B. City Corporate Park Near Dainik Bhaskar, Press, Rajbandha, Maidan, Raipur, Chhattisgarh-492001, and Place of Business At 806 and 807, 8th Floor, Babylon Tower, VIP Chowk Raipur, Chhattisgarh Represented Through Its Director Shri Pankaj Agrawal S/o Shri Pramod Agrawal Aged About 40years
2. Shri Pankaj Agrawal Director, and Shareholder of M/s Mangal Commercial Pvt. Ltd. Aged About 40 Years, R/o Flat No. 107, Block-A, Wing- C, Srithi Palazzo, St. Xaviers School Road, Near Akansha School , Avanti Vihar, Post Office and Police Station- Telibandha, Town and District Raipur Chhattisgarh, who is a citizen of India.
3. Smt. Suman Agrawal W/o Sri Pankaj Agrawal Aged About 36 Years Director And Shareholder Of M/s Mangal Commercial Pvt.Ltd. R/o of Flat No. 107, Block -A, Wing- C, Srithi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, Post Office and Police Station- Telibandha, Town and District Raipur Chhattisgarh, who is a citizen of India.

---- Petitioner

**Versus**

1. Union of India Through The Secretary, Department of Revenue, Ministry of Finance, PO / P S- North Block , Parliament Street, New Delhi- 110001.

2. Central Board of Indirect Taxes And Customs (Formerly Known As Central Board of Excise And Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001
3. The Commissioner Central Board of Indirect Taxes And Customs (Formerly Known As Central Board of Excise And Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001
4. The Goods And Service Tax Council (GST Council ) Through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
5. Directorate General of Goods And Service Tax Intelligence West Block -8, Wing -Vi, R. K.Puram, New Delhi- 110066.
6. Senior Intelligence Officer Directorate General of Goods and Service Tax Intelligence , Regional Unit, Jamshedpur, 2nd 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur , Jharkhand- 831001
7. Superintendent (Prev.) O/o The Principal Commissioner, Central Goods, And Service Tax And Central Excise Central Gst Building Dhamtari, Road, Tikrapara, Raipur, Chhattisgarh

---- Respondent

**Writ Petition (T) No. 81 of 2019**

1. M/s Salasar Tradeco Pvt. Ltd. A Company Incorporated Under, The Companies Act, 1956 Having Its Registered Office At Salasar House, Behind Saran Cycle Industries Seepat Road, Surya Vihar, Bilaspur, Chhattisgarh -492001, And Place Of Business At 806 And 807, 8th Floor, Babylon Tower, VIP Chowk Raipur, Chhattisgarh Represented through its Director Shri Pradeep Agrawal S/o Shri Pramod Agrawal Aged About 42years
2. Sri Pradeep Agrawal Aged About 42 Years Director and Shareholder of M/s Salasar Tradeco Pvt. Ltd. R/o Salasar House, Behind Saran Cycle Industries Seepat Road, Post Office and Police Station Lingiyadih, Town and District Bilaspur Chhattisgarh who is a citizen of India.
3. Sri Pramod Agarawal Aged About 62 Years Director and Shareholder of M/s Salasar Tradeco Pvt Ltd. R/o Salasar House, Behind Saran Cycle Industries Seepat Road, Post Office And Police Station Lingiyadih, Town and District Bilaspur Chhattisgarh. who is a citizen of India.

---- Petitioner

**Versus**

1. Union of India Through The Secretary, Department of Revenue, Ministry of Finance, PO / P S- North Block , Parliament Street, New Delhi- 110001.
2. Central Board of Indirect Taxes and Customs (Formerly Known as Central Board of Excise And Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly Known As Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001.
4. The Goods and Service Tax Council (GST Council) Through the Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
5. Directorate General of Goods and Service Tax Intelligence West Block -8, Wing -Vi, R. K.Puram, New Delhi- 110066.
6. Senior Intelligence Officer, Directorate General of Goods And Service Tax Intelligence, Regional Unit, Jamshedpur, 2<sup>nd</sup> / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur , Jharkhand- 831001.

---- Respondent

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For Petitioners	: Shri Kartik Kurmy, Shri Dharmesh Shrivastava and Shri Rajesh Sharma, Advocates for the Appellant.
For Respondent/Union of India	: Shri B. Gopa Kumar, Assistant Solicitor General
For Respondent-Central Board of Indirect Taxes and Customs	: Shri Maneesh Sharma, Advocate.

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**C.A.V. Judgment**

**Per P.R. Ramachandra Menon, Chief Justice**

1. Constitutional validity of Annexure P-1 Circular dated 05.07.2017 issued by the Central Board of Indirect Taxes & Customs, assigning functions of 'Proper Officer' under the Central Goods and Services Tax Act, 2017

(*hereinafter referred to as 'the CGST Act'*) and Annexure P-2 Gazette Notification dated 01.07.2017 are put to challenge in these writ petitions. The consequential steps pursued by the 6<sup>th</sup> Respondent, in the State of Jharkhand, in exercise of the power of 'Proper Officer' stated as conferred as per Annexure P-1 and P-2 and in issuing summons to the Petitioners instructing to appear to take statements/to adduce evidence in connection with the alleged incriminating circumstances, despite the fact that the place of registration of the Petitioners is within the State of Chhattisgarh, are also sought to be interdicted, as incidental relief.

2. The basic challenge is with reference to the alleged lack of power of the 2<sup>nd</sup> Respondent for issuing Annexure P-2 Notification purported to be in exercise of Section 3(2), read with Section 5 of the CGST Act; as the said power is exclusively vested upon the Central Government and not the 2<sup>nd</sup> Respondent/Board. It is further pointed out that, the appointment of 'Proper Officer' as envisaged under the statute can be effected only by the 'Commissioner in the Board' {as evident from sub-section (2) of Section 168 of the CGST Act} and further that, it can only be done by way of a Notification in the official gazette as envisaged under Section 167 of the CGST Act. Annexure P-1 is only a Circular and there is not a gazette notification. It is the further case of the Petitioners, that the 2<sup>nd</sup> Respondent/Board, as per Annexure P-2 has identified multiple authorities to act as Central Tax Officers under the CGST Act and they are exercising the powers of 'Proper Officer' with reference to Annexure P-1 and P-2; by virtue of which the Petitioners are

being harassed and they have to appear before different Officers placed in different states, which is totally alien to the scheme of the statute. The Petitioners are required to have registration only in the 'place of supply' as envisaged under Section 22 of the CGST Act and hence, it can only be in Chhattisgarh, contend the Petitioners. It is also pointed out that the scheme of the CGST Act is 'One Assessee, One Subject Matter, One Officer' and not 'One Assessee, One Subject Matter and Different Officers'; which otherwise would lead to chaos and is contrary to the law declared by the Apex Court in ***Commissioner of Customs v. Syed Ali and Another***, (2011) 3 SCC 537.

3. Writ Petition (T) No. 77 of 2019 is stated as the lead case and the parties and proceedings are referred to as given therein, except where it is separately referred to.

4. We have heard Shri Shri Kartik Kurmy, Shri Dharmesh Shrivastava and Shri Rajesh Sharma, learned counsel representing the respective Petitioners, Shri B. Gopa Kumar, learned Assistant Solicitor General representing the Central Government and Shri Maneesh Sharma, the learned counsel representing the Central Board of Indirect Taxes & Customs, at length on different dates including the hearings held on 16.10.2019, 22.10.2019 and 06.11.2019.

5. The Petitioners are doing business, in respect of which tax is payable under the CGST Act and the allied enactments. It is stated that the Petitioners were effecting the supplies to the various States in the country

from the place of business situated in the State of Chhattisgarh. It is also stated that the Petitioners do not have any place of business in any other States, that they do not have any place of residence in such States and as such, by virtue of the mandate under Section 22 read with Section 25 of the CGST Act, the Petitioners have registered themselves under the CGST Act in the State of Chhattisgarh. It is further pointed out that the Petitioners have been filing returns, also satisfying the tax payable under the statute without fail.

6. On 02.11.2018, in exercise of the powers under Section 76 of the CGST Act, a search and seizure operation was carried out by the authorities under the Directorate General of Goods and Service Tax Intelligence, Jamshedpur, Jharkhand in the office and residential premise of the Petitioner {in Writ Petition (T) No. 77 of 2019} in the State of Chhattisgarh. It is stated that no incriminating documents were found or seized. After conducting the search and seizure as above, the Petitioner was served with summons issued on various dates by the 6<sup>th</sup> Respondent in the purported exercise of powers conferred under Annexure P-2 Notification dated 01.07.2017 and Annexure P-1 Circular dated 05.07.2017 as 'Proper Officer' within the meaning of Section 2(91), read with Section 70 of the CGST Act; requiring the Petitioner to appear in person with all the relevant documents before the 6<sup>th</sup> Respondent on the dates mentioned therein. It is stated that Annexure P-4 summons was issued on 02.11.2018 in response to which Annexure P-5 reply was submitted on 19.11.2019, also questioning the authority of the 6<sup>th</sup>

Respondent to have intervened and to issue the summons. A series of further summons and replies followed as evident from Annexure P-6/P-7, P-8/P-9 and such other proceedings. The Petitioner thereafter approached the High Court of Jharkhand at Ranchi by filing Writ Petition (Cr) No. 419 of 2019 and connected cases. The prayers raised in the said writ petition were as given below:

"a) to show cause as to how and under what authority of law, the Petitioner was assaulted during the course of search & seizure operation dated 02.11.2018, carried out by the raiding team of Respondent No. 3 at the business premises of the Petitioner.

b) directing upon the Respondents to carry out the investigation in accordance with law by strictly adhering to the provisions as contained in Central Goods and Service Tax Act, 2017 read with the provisions of Code of Criminal Procedure, 1973.

c) holding and declaring that the provisions of Central Goods & Service Tax Act, 2017 does not authorise the officers of the Respondent No. 3 to call the assesseees/witnesses/purported to be accused, for giving statement under Section 70 of the Act in any enquiry/investigation and arrest them on purported allegation of evasion of tax or contravention of the provisions of the Act.

AND

Pending final hearing of this application, the Respondents be restrained from taking any nature of coercive action as against the petitioner.

AND/OR

Pass such direction(s) or order(s) as Your Lordships may deem just and proper for imparting complete and substantial justice to the Petitioner."

7. The contesting Respondents filed detailed counter-affidavit pointing out that to destabilize the economy, some shell companies have been formed and some unscrupulous firms have claimed illegal Input Tax Credit by issuing fake and forged invoice without actual supply of goods and services and

without payment of GST to the Government. Various fraudulent supplies with multi-State network have been identified by the Intelligence Agencies and some of such firms were registered in the State of Jharkhand. In the above background, it was contended that testimony of the Petitioner was necessary to verify the genuineness of transactions in question; adding that the investigation had revealed fake transactions to the tune of Rs. 400 Crores and whether the Petitioners were connected in any manner with such transactions directly or indirectly, could be ascertained only after they appeared before the Investigating Officer (Senior Intelligence Officer). It was also asserted that the apprehension of arrest in terms of Section 69 of the CGST Act was quite unfounded, as the provision mandated that the competent authority would order arrest only after having 'reasons to believe'; which would be developed only on the basis of an investigation conducted at various ends and collecting evidence in the course of investigation. It was also made clear that, it was a task which was being undertaken with due responsibility and all the persons summoned under Section 70 of the CGST Act for tendering their statements would not be arrested; whereas only such person against whom materials have been collected in the investigation would be caused to be arrested, if there was 'reason to believe' of their involvement. It was accordingly, that the matter was finalised by the learned Single Judge of the Jharkhand High Court as per Annexure P-10 common judgment dated 04/21.02.2019, whereby the Petitioners were directed to appear before the Investigating Officer/Senior Intelligence Officer who had issued the summons as and when called, however, observing that they shall

not be arrested on the 'first day' when they appear before him, also adding that the Senior Intelligence Officer shall act fairly, demonstrating such fairness in his action. After finalisation of the writ petitions as above, a fresh summons was issued on 29.03.2019 (Annexure P-11) asking the Petitioners to appear in person on 10.04.2019. This time, instead of complying with the said instruction or causing the same to be challenged before the High Court at Jharkhand, the Petitioners approached this Court by filing the above writ petitions challenging the proceedings as above, with reference to the absence of power, jurisdiction and competence of the 6<sup>th</sup> Respondent; simultaneously challenging Annexure P-1 Circular and Annexure P-2 Notification, to act as 'Proper Officer' as mentioned above.

8. A reply has been filed on behalf of the Respondents-Department through the Assistant Solicitor General of India, pointing out that the Government of India has introduced a new levy of Goods and Service Tax w.e.f 01.07.2017 with a vision and mission of "One Nation, One Tax, One Market", implemented as part of new Indirect Tax Policy, in public interest, by subsuming various earlier indirect levies such as Central Excise Duty, Service Tax, VAT etc; expecting that goods and services would be cheaper and beneficial to the common man. With the introduction of new levy of GST, the following legislations were also passed by the Parliament to meet the goal:

- i. The Central Goods and Service Tax Act, 2017;
- ii. State Goods and Service Tax Acts of States and Union of India;

- iii. Union Territories Goods & Service Tax Act, 2017;
- iv. Integrated Goods and Services Tax Act, 2017; and
- v. The Goods and Services Tax (Compensations to State) Act, 2017

However, with an intent to rupture the national economy, persons with vested interest have created a host of unscrupulous firms and shell companies and such firms/companies indulged in issuance of fake and forged invoices, without actual supply of underlying goods and services and without payment of GST to the Government Exchequer, but with an intent to claim illegal Input Tax Credit.

9. With regard to the legal aspect, it is pointed out that Annexure P-1 Circular and Annexure P-2 Notification have been issued by the competent authorities in conformity with the relevant provisions of law and the challenge raised is quite unfounded. The activities are stated as being investigated by the Directorate General of Goods & Service Tax Intelligence, regarding the racket of creating bogus entities and originating irregular and inadmissible Input Tax Credit through such bogus entities and passing it on to various registered suppliers. It was revealed that the Petitioners had also received such irregular Input Tax Credits originating from the State of Jharkhand and State of Chhattisgarh. The investigation in the matter is being conducted by the Directorate General of Goods & Service Tax Intelligence, Jamshedpur Regional Unit, which indicated that the Petitioners are engaged in circular transactions of fake invoices issued in the names of bogus entities without actually receiving or supplying any goods, with a deliberate intent to defraud

the Government exchequer and colluding with others for the same. It is further pointed out that the Petitioners paid only scant regards to the summons issued under Section 70 of the CGST Act and have not co-operated with the Department to complete the investigation. In spite of specific directions given by the High Court of Jharkhand at Ranchi, as per Annexure P-10, no appearance was made by the Petitioner in response to the Annexure P-11 summons. After evading the process, they have surfaced before this Court challenging the circular/notification/summons. It is asserted that the officers of the Directorate General of Goods & Service Tax Intelligence were appointed as 'Proper Officers' as per Annexure P-2 Notification dated 01.07.2017 and the said 'Proper Officers' were assigned the functions vide Annexure P-1 circular dated 05.07.2017. It is further stated that Annexure P-2 Notification has been validly published in the official gazette as defined under Section 2(80) of the CGST Act and that the assignment of functions to the 'Proper Officer' under section 2(91), as per the Circular, does not envisage publication in the official gazette.

10. With regard to the challenge raised by the Petitioners against Annexure P-2 notification issued under Section 3, read with Section 5 of the CGST Act, it is stated as issued only after approval of the Union Finance Minister (obtained on 17.06.2017) as contained in the relevant file and it was published in the official gazette. As such, the appointment of the Officers of the Directorate General of Goods & Service Tax Intelligence was done by the Central Government as required under Section 3 of the CGST Act. It was in

the said circumstances, that the above 'Proper Officers' were assigned the functions as per Annexure P-1 Circular dated 05.07.2017 by the competent authority and therefore, the said officers of the Directorate General of Goods & Service Tax Intelligence, being 'Proper Officers' can also perform all the relevant functions as assigned to them. The Respondents also assert that the Petitioners are habitual offenders and the instant investigation is related to the losses made by them to the Government Exchequer to the tune of Rs. 101 Crores (approximately) by originating and availing inadmissible Input Tax Credit through a web of bogus entities created, operated and managed by the Petitioners.

11. The Petitioners have filed a rejoinder virtually reiterating the pleadings as taken in the writ petition with reference to the relevant provisions of the statute, also pointing out that approval by the Union Finance Minister to have issued Annexure P-2 notification will not convert its status as having issued by the 'Government', as envisaged under Section 3 of the CGST Act, but for having issued by the 2<sup>nd</sup> Respondent/Board and hence all further proceedings are *per se* wrong and illegal in all respects. A copy of the original notification bearing No. 2/2017-Central Tax, dated 19.06.2017 (stated as having issued by the Central Board of Excise & Customs) appointing the officers mentioned at '(a) to (k)' therein and the Central Tax Officers subordinate to them as Central Tax Officers vesting them with all the powers under the CGST Act and the Integrated Goods and Service Tax Act, 2017 (*for short 'the IGST Act'*) and the Rules made therein with reference to the

rules specified in the tables therein, has also been produced alongwith the rejoinder, besides producing copies of various summonses and replies issued on different dates, collectively as Annexure P-12, P-13 and P-14.

12. The learned counsel for the Petitioners assert that the power to appoint 'Proper Officer' defined under Section 2(91) of the CGST Act is exclusively conferred upon the 'Government' and it shall only be by notification as envisaged under Section 3 of the Act. The 'Government' means the Central Government as defined under Section 2(53) of the CGST Act, and 'notification' is as defined under Section 2(80) of the CGST Act; which means, a notification published in the official gazette. Reference is made to Section 3(39) of the General Clauses Act, 1897 as well.

13. The question whether publication in the gazette is mandatory or directory, when such a stipulation is contained in the statute, had come up for consideration before the Apex Court and as per the ruling reported in ***ITC Bhadrachalam Paper Boards v. Mandal Revenue Officer, A.P.*** {(1996) 6 SCC 634}, it has been held that, when the mode of publication is specified, it is a mandatory requirement. The learned counsel further submits that when the manner to act is provided, it shall be done only in that manner and no other manner, as held in ***A.K. Roy and Another v. State of Punjab and Others*** reported in (1986) 4 SCC 326. Since no gazette notification has been issued appointing 'Proper Officers' and since Annexure P-2 Notification is issued only by the 2<sup>nd</sup> Respondent "Board" as defined under Section 2(16) of the CGST Act and not by the 'Government' as defined under Section 2(53) of

the CGST Act, it is not a valid notification to confer power upon the officers mentioned therein, in terms of Section 3 of the CGST Act.

14. With reference to the mandate of Section 6 of the CGST Act, the learned counsel submits that the course pursued by the Respondents seeking to appoint so many persons as per Annexure P-2 with jurisdiction all over the territory of India is totally alien to the scheme of the statute. It is contented that though under Section 6 of the Act, Officers of the State, Tax or Union Territory Tax could be authorised to act as 'Proper Officer' in certain circumstances under Section 6(2)(b) of the CGST Act, it is specifically mentioned that, if the proceedings are being initiated by one officer, the other officer concerned who is to exercise the function under the CGST Act cannot proceed on the same subject; which highlights the importance of the scheme-“One Assessee, One Officer”; which otherwise will lead to harassment of the Assesseees. The multiplicity of officers has always been deprecated by Courts. Reference is made to the law declared by a learned Single Judge of the Kerala High Court, reported in ***P. Sivaramakrishnan v. State of Kerala*** [1995] 99 STC 473 (Ker) and a Division Bench of the Delhi High Court reported in ***Mangali Impex v. Union of India***, {(2016) 335 ELT 605 (Del)}. It was pointed out that the above principle was explained in crystal-clear terms by the Apex Court in ***Syed Ali*** (supra) with regard to the appointment of 'Proper Officer'.

15. The learned counsel pointed out that the only provision to delegate the power is under Section 167 of the CGST Act, which can only be by

notification in the gazette. The power to issue instructions/directions in the form of circulars for the purposes specified is under Section 168(1) of the said Act. It is made clear in Section 168(2) of the CGST Act that the Commissioner mentioned under Section 2(91), sub section (3) of Section 5 and Section 167 of the CGST Act shall mean a Commissioner or Joint Secretary posted in the Board. The above requirements are stated as not satisfied while issuing Annexure P-1 Circular or Annexure P-2 Notification, moreso when (Annexure P-1 circular is not a gazette publication and further when Annexure P-2 Notification is not issued by Government, but by the Board. In other words, according to the Petitioners, power can be assigned to the Proper Officers appointed by the 'Commissioner in the Board', by notification in the gazette and further that the notification under Section 3 shall be by the Government, and nobody else.

16. In support of various contentions raised, the learned counsel for the Petitioners sought to place reliance on:

- ***Novva Ads v. Secretary, Department of Municipal Administration and Water Supply & another***, (2008) 8 SCC 42, to the effect that subordinate legislation cannot go beyond the primary legislation and if there is a conflict, primary legislation shall prevail.
- ***Additional District Magistrate (Rev.) Delhi Admn. v. Siri Ram***, (2000) 5 SCC 451, to the effect that Rules cannot go against the provisions in the Act;

- ***Assam & Co. Ltd. & Another v. State of Assam & Others***, (2001) 4 SCC 202, to the effect that Rules cannot override the provisions in the Act, asserting that the delegatee cannot jump over the delegator;
- ***Union of India & Others v. S. Srinivasan***, (2012) 7 SCC 683, to the effect that, if the Rules supplant any provisions or if there is no power, it will be ultra vires;
- ***State of T.N. & Another v. P. Krishnamurthy & Others***, (2006) 4 SCC 517, with regard to the presumption of constitutionality of the subordinate legislation, where burden is on the person who attacks it.

17. According to Shri Maneesh Sharma, the learned Counsel representing the second Respondent-Board, the idea and understanding of the Petitioners that there has to be a notification in the gazette for appointment of 'Proper Officer' is not correct and that notification in the gazette is only envisaged for the purpose of 'delegation of powers' and not for appointment of 'Proper Officer'. It is pointed out that as per Annexure P-2 Notification in the gazette, the Central Tax Officers have been identified and appointed to be the 'Proper Officer' and the functions have been assigned to those concerned as per the Annexure P-1 Circular based on Annexure P-2 Notification. According to the learned Counsel, Section 167 of the CGST Act is not at all attracted to the case in hand and as per Annexure P-2 Notification, the officers of the Directorate of Goods & Service Tax

Intelligence have been appointed as Central Tax Officers, equivalent to the rank mentioned therein, with the powers attached. As per Annexure P-1 Circular dated 05.07.2017, the officers mentioned in Annexure P-2 Notification became 'Proper Officers' as appointed by the competent authority and hence, the challenge is without any valid footing. With regard to the contention as to the plurality of Proper Officers, it is pointed out that the Petitioners are doing business all over India and if they are doing any mischief in different parts of India, the Proper Officer of that area will have to deal with it, wherever it is committed. The learned counsel further submits that 'Proper Officer' defined under Section 2(34) of the Customs Act is different from the 'Proper Officer' envisaged under the CGST Act and that the provisions are not analogous; by virtue of which the law declared by the Supreme Court in **Syed Ali** (supra) is not applicable. In the said case, a particular officer was not assigned the functions of 'Proper Officer' and hence, it was challenged by way of appropriate proceedings, ultimately leading to the judgment cited supra. Here, the 'Proper Officers' defined under Section 2(91) of the CGST Act are assigned functions as per Annexure P-1 circular dated 05.07.2017, conferring such powers and authority to those persons who are already identified and notified as 'Central Tax Officers' as per Annexure P-2 Notification dated 01.07.2017. This being so, the dictum laid down in **Syed Ali** (supra) is not at all applicable. It is further pointed out that the plea as to the 'multiplicity of proceedings' is having no relevance to the case in hand, insofar as it is not connected with any 'assessment', but in respect of investigation into the mischief / misdeed stated as committed at different

places. It is also pointed out that no summons have been issued in respect of the same transaction by two different authorities/Proper Officers, and if at all any such instance is involved, it is always open for the Petitioners to have it pointed out before the 'second officer' who has initiated the subsequent proceeding in respect of the same cause of action/transaction, if it is pending before any other officer. This being the position, there is no violation of Article 14 or any other provision of the Constitution of India, submits the learned counsel.

18. Shri B. Gopa Kumar, the learned Assistant Solicitor General makes submissions in tune with the averments made in the reply statement referring to the genesis of the statute and the scope of supply under Section 7, with eligibility to get Input Tax Credit under Section 16. The learned counsel submits that under the earlier taxation system, it was more with reference to 'manufacture', whereas, under the new Act, it is on the basis of 'supply'. Unless one actually pays tax, there is no question of any Input Tax Credit. In the instant case, shell companies/firms are created with bogus intent and forged bills/invoices are created without actually paying any tax, just to claim the benefit of Input Tax Credit, defrauding the Revenue. It is also pointed out that despite the repeated summons issued to the Petitioners, they have not appeared before the competent authority or produced relevant documents and have only pursued some protracting tactics by submitting evasive replies even questioning the authority of the 6<sup>th</sup> Respondent who issued the summons.

19. The learned Assistant Solicitor General further submits that the Government has decided to confer power upon the Intelligence Officers and such others in the relevant notification and in turn, conferring powers upon them to act as 'Proper Officers' in terms of Section 2(91) of the Act: This is with a specific intent that the mischief, if committed anywhere in India should be possible to be detected, pursuing effective action against the wrong doers. It is also asserted that, it is not in relation to the 'assessment' proceedings, which will be pursued by the Assessing Authority having the jurisdiction in place of registration. Such Assessing Officer at Raipur, as in the case of Petitioners, cannot go to other states in connection with the mischief / misdeed being done or perpetuated in relation to the various transactions as aforesaid. It is for carrying out the said task and to give effect to the provisions of the statute, that the Intelligence Wing itself has been created with Specialized Audit Wing. The learned counsel also submits that the disputed proceedings herein are not with respect to any assessment but with regard to the various incriminating circumstances in relation to the transactions brought to light in the State of Jharkhand, in turn leading to issuance of summons by the 6<sup>th</sup> Respondent.

20. As made out in the pleadings and pointed out during the course of arguments, the challenge is mainly on three counts. **Firstly**, that the power of appointment under Section 3 of the CGST Act is vested exclusively upon the Government and not on the 2<sup>nd</sup> Respondent/Board and as such, Annexure P-2 Notification is bad. **Secondly**, that the Notification (Annexure P-2) issued in

exercise of the powers under Section 3, read with Section 5 of the CGST Act and Section 3 of the IGST Act, admittedly has been issued by the 2<sup>nd</sup> Respondent/Board and not by the Government, who alone is the competent authority to issue such appointment order. **Thirdly**, since no notification has been issued by the Government, but for Annexure P-2 issued by the Board, it is not a valid notification to be acted upon, and as such, Annexure P-1 order dated 05.07.2017 assigning the functions of 'Proper Officer' as specified therein, in exercise of power under Section 2(91) of the CGST Act, read with Section 20 of the IGST Act and subject to Section 5(2) of the CGST Act, assigning such powers by the 2<sup>nd</sup> Respondent/Board, is not correct or sustainable.

21. After the final hearing held on 16.10.2019, the matter was taken up reserving judgment. Later, in the course of working up the position with reference to the relevant provisions of law and the notifications, this Court came across a '**corrigendum notification**' dated **29.07.2019** published in the official gazette, which is to the following effect:

“MINISTRY OF FINANCE  
(Department of Revenue)  
(CENTRALBOARD OF INDIRECT TAXES AND CUSTOMS)  
CORRIGENDUM

New Delhi, the 29<sup>th</sup> July, 2019

G.S.R. 532(E). - In the notification of the Government of India, in the Ministry of Finance, Department of Revenue No. 02/2017-Central Tax, dated the 19<sup>th</sup> June 2017, published in the Gazette of India, Extraordinary, Part II, Section , Sub-section (I), vide number G.S.R. 609(E), dated the 19<sup>th</sup> June 2017, in English version in page 22, in line 3, for “the Central Board of Excise and Customs” read “the Government”.

[F.No. 349/52/2017-GST]  
RUCHI BISHT, Under Secretary

CORRIGENDUM

New Delhi, the 29<sup>th</sup> July, 2019

G.S.R. 533(E).- In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 14/2017-Central Tax, dated the 01<sup>st</sup> July 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (I) vide number G.S.R. 818 (E), dated the 01<sup>st</sup> July, 2017, in English version, in page 2, in line 3, for "the Central Board of Excise and Customs" read "the Government".

[F.No. 349/52/2017-GST]  
RUCHI BISHT, Under Secretary"

22. The above notification clearly reveals that there was an inadvertent mistake in having issued the original notification dated 19.06.2017 and the subsequent Annexure P-2 Notification dated 01.07.2017, wrongly mentioning it as having issued by the 'Board', instead of stating as issued by the "Government", and hence, it was corrected accordingly. Since this was definitely to cut the roots of the case filed by the Petitioners, this Court found it appropriate to cause the matter to be listed for consideration again. Accordingly, it was listed on 22.10.2019 and the parties were heard again. The course and conduct of the parties on both the sides in not bringing the relevant 'corrigendum notification' dated 29.07.2019 to the notice of this Court was deprecated and an opportunity was given to make appropriate submissions, after calling for the remarks/explanation from both the sides. When the matter came up for further consideration on 06.11.2019, the learned counsel appearing for the Petitioners expressed sincere regrets as to the serious lapses; and so was done by the learned Assistant Solicitor

General, as well as by the learned counsel representing the 2<sup>nd</sup> Respondent/Board. It was pointed out by the learned Assistant Solicitor General that the Principal Commissioner, on realizing the mistake, has filed an affidavit dated 25.10.2019 tendering 'unconditional apology' and confirmed that the corrigendum notification dated 29.07.2017 governs the field. Similar submission was made by the learned counsel representing the 2<sup>nd</sup> Respondent/Board as well and expressed regrets on the omission in pointing out the correct position when the matter was heard on the previous occasion.

23. Taking note of the fact that there was nothing intentional on the part of the learned counsel for the Petitioners, the learned Assistant Solicitor General or the learned counsel representing the 2<sup>nd</sup> Respondent/Board in relation to the omission in bringing the 'corrigendum notification' dated 29.07.2017 to the notice of the Court, though it was a serious lapse on the part of the parties concerned, no further steps were decided to be pursued.

24. In view of the turn of events, it is quite evident that the mistake which appeared in Annexure P-2 Notification dated 01.07.2017 and the previous notification dated 19.06.2017 showing them as issued by the 'Board' stands corrected, as having issued by the "Government". The notification having already been published in the official gazette as stated in Section 2(80) of the CGST Act read with Section 3(39) of the General Clauses Act, 1897, the appointment effected in the said notification, in exercise of powers under Section 3, read with Section 5 of the CGST Act and Section 3 of the IGST Act, 2017 has been issued by the 'Government', with whom the

exclusive power is vested in this regard. By virtue of the aforesaid notification issued by the Government, all the officers in the Directorate General of Goods & Services Tax Intelligence, Directorate General of Goods and Services Tax and the Directorate General of Audit, as specified in Column No. 2 of the table given therein, came to be appointed as 'Central Tax Officers', investing all the powers upon them under the CGST Act, 2017, the IGST Act, 2017 and the Rules made thereunder throughout the country of India, as are exercisable by the Central Tax Officers of the corresponding rank as specified in Column No. 3 of the said table. It was based on the said proceedings, that Annexure P-1 Circular was issued by the Board, assigning the functions of 'Proper Officer' upon the Officers mentioned in column No. 2 of the table therein, with the functions as the 'Proper Officer' in relation to the various Sections of the CGST Act, 2017 or the Rules made thereunder given in the corresponding entry of Column No. 3 of the table. It is relevant to note that the Petitioners have not raised any challenge against the 'Corrigendum Notification' bearing No. GSR 532 (E) and GSR 533(E), both dated 29.07.2019, published in the Gazette of India the same day, nor have raised any challenge with regard to any statutory provisions. The version of the Respondents on all the points raised, including as to the necessity to appoint 'Proper Officers' conferring power through out the territory of India for the specific purposes made out, stands upheld. The contention/challenge raised by the Petitioners, to the contrary, stands repelled.

25. In the above facts and circumstances, we find that the challenge raised against Annexure P-1 Circular and Annexure P-2 Notification with

reference to the competence of the issuing authority and the manner of issuance does not hold any water at all. In the said context, there is no relevance for the various judgments cited on the part of the Petitioners as to the nature of publication to be effected and they are not attracted to the case in hand.

The writ petitions are devoid of any merit and they are dismissed accordingly. No costs.

Sd/-  
(P.R. Ramachandra Menon)  
**CHIEF JUSTICE**

Sd/-  
(Parth Prateem Sahu)  
**JUDGE**