

## Chapter 2

# Administration

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- 3. Officers under this Act**
- 4. Appointment of officers**
- 5. Powers of officers**
- 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances**

### Statutory Provision

#### **3. Officers under this Act**

*The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely: —*

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,*
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,*
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,*
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,*
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,*
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and*
- (i) any other class of officers as it may deem fit:*

*Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.*

#### **3.1 Introduction**

The CGST Act confers powers for performing various statutory functions on

various officers. Officers who are to discharge these functions derive their power and authority from section 3. It is therefore necessary for the efficient administration of the law that often Authority be conferred on designated persons who will be the incumbents occupying positions identified in the law as being the authorized persons to discharge the said functions.

### 3.2 Analysis

Specific categories of officers have been named in this section whose appointment requires notification by the Government. Notifications issued under this section do not require to be laid before Parliament as 'laying before Parliament' is a requirement limited only to exemption notifications and not designating officers under section 3. Central Excise Act had been amended perhaps to align itself in the administrative framework in view of the imminent introduction of GST. Accordingly, Officers under the Central Excise Act are deemed to be officers appointed under this act.

Also, Government has notified a post of Joint Commissioner (Appeals). This is significant because there are three ranks of officers of Central Tax who will operate as First Appellate Authority and pecuniary limits may be prescribed for each. Second Appellate Authority will continue to be the Tribunal.

### Statutory Provision

#### 4. Appointment of Officers

- (1) *The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.*
- (2) *Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.*

#### 4.1 Introduction

All statutory functions cannot be performed by executive officers. There is a necessity to appoint administrative staff to assist executive officers.

#### 4.2 Analysis

The power to appoint executive officers remains with the Government but the authority to appoint administrative staff is left to the Board – Central Board of Indirect Taxes and Customs constituted (erstwhile Central Board of Excise &

Customs) under the Central Boards of Revenue Act, 1963. The administrative staff make up the entire working team of 'field formations'. While the authority to appoint administrative staff is vested with the Board, express provision is made to permit officers under section 3 to appoint, for the purposes of Central Tax, certain administrative staff.

This provision ensures an executive order issued by (say) Principal Chief Commissioner or Principal Director-General or any subordinate officer to immediately confer the status of administrative staff to the erstwhile field formations for the purposes of Central Tax.

### Statutory Provision

#### 5. Powers of Officers

- (1) *Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*
- (2) *An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.*
- (3) *The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.*
- (4) *Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.*

#### 5.1 Introduction

*Delgatus potest non delegare* – the delegate must exercise the power conferred and not sub-delegate. While this is true on the principle of construction of statutes, the very law that creates the power also empowers creation of exception to this principle.

#### 5.2 Analysis

An officer duly appointed under this Act needs to be supplied with guidance as regards the manner of exercise of his authority including the boundaries for the same.

Apart from the boundaries laid down, very interestingly power of sub-delegation is conferred on officers of Central Tax. Please note in the event of

sub-delegation, the duty to provide superintendence is implicit. While sub-delegation appears to subvert the course of administrative power, in the wisdom of the lawmaker the liberty to sub-delegate can at least be enabled in such a historical and hard-to-amend legislation. It would be interesting to see how this power would be exercised without causing too much dilution and subversion. All the administrative flexibility provided or at least enabled have been wisely limited to executive officers and not to appellate authorities.

It is also of interest to note that superior Officers can discharge duties assigned to subordinate officers. For this reason, taxpayers are welcome to include superior officers when any 'demand for justice' is being made before the Proper Officer for failure to operate within the limits of authority vested in various provisions.

Passion to protect interests of Revenue does not authorise the proper officer to bypass procedures laid down for the implementation of the law. Reference may be had to ICAI's Handbook on Inspection, Search, Seizure and Arrest to gain an insight into nature of these procedures and the rights that accrue to taxpayers when they are misapplied.

**Statutory Provision****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 subsection (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.*

**6.1 Introduction**

With the similarity of the taxing base, it is necessary to develop a mechanism to avoid duplication of tax administration by officers of Central Tax and by officers of State /UT Tax.

**6.2 Analysis**

For the purposes of administration of this Act, it is permitted to authorise officers of State/UT Tax to simultaneously also be the officer of Central Tax. It is interesting to note that officers of State/UT Tax do not relinquish their authority but accept additional authority as officers of Central Tax. However, to do so requires the recommendations of the Council and adherence to the conditions that the Government may impose in this regard.

In order to establish non-overlap of administrative power, it is provided that an

officer in respect of central tax is required to duly exercise his authority even in respect of State/UT Tax where the executive action is in respect of the same taxing base. In so doing, the officer of central tax is required to intimate the officer of State/UT Tax in respect of all his actions. Further administrative power invoked by the officer of the State/UT Tax in any proceeding, will preclude officer of Central Tax from exercising any administrative power in respect of transactions covered by the said proceedings. Care must be taken not to bar Officers from prosecuting different transactions. E.g., State Tax Officer may undertake audit under section 65 and at the same time, Central Tax Officer may initiate proceedings under

section 67, both in respect of the same taxpayer. E.g. State Tax Officer may undertake inquiry in respect of supplies omitted to be reported causing evasion of tax and at the same time, Central Tax Officers may undertake inquiry in respect of inadmissible credits availed by the same taxpayer based on DGARM reports about involvement in fictitious supplies (also called 'circular trading'). It takes great discernment to locate overlap of the same occupied field by both departments. Merely because Officers from one department are 'engaged' with taxpayer in any proceedings, does not operate as a bar on Officers on the other department to 'engage' with the same taxpayer.

The officer who has exercised administrative power in any proceeding will continue to be the forum to entertain appeal, rectification or revision in respect of that matter until it is concluded. Surely, this will not result in competition for tax administration enable clear and unambiguous jurisdiction in respect of each proceeding. Industry will closely examine who will exercise administrative power without causing duplication in appearing before tax administration for GST compliance.

Please note that this provision enabling mutual allocation of administrative power between officers of central tax and officers of State/UT Tax opens with the words "*Without prejudice ....*". As such the provisions conferring power to officers of central tax will not be in derogation of the provisions enabling its mutual allocation. In other words, there may be duplication of powers in respect of same taxable persons or same issues involving said taxable persons but not simultaneous exercise of these powers over the same matter so as to cause parallel proceedings. The role of the Council in guiding such mutual allocation is paramount as also the conditions that the Government is authorised to impose in such an exercise.

It is very important to examine in every GST proceeding whether the officer initiating the said proceedings is vested with the authority so to do. It is not uncommon that officers are conferred the authority after they have initiated

any proceedings. In such a situation, the entire proceedings become illegal and in certain cases cannot be restarted due to supervening circumstances or actions taken.

Acquiescence is an important topic to familiarize ourselves with. It is one where a person who may be aware or unaware of the lack of authority but submits to proceedings initiated and encourages Revenue to proceed with it, is treated to have acquiesced to those proceedings and is barred from objecting to it long after both sides have travelled down the path in those proceedings admitting that it to be legal and valid. Such acquiescence robs the right of the person to subsequently question the lack of authority. A hot contest is on the question of whether acquiescence can furnish legality to a patently illegal action. Tax administration will, however, claim it to be so. This itself requires a careful consideration of the scope of authority being exercised and it does good to raise objections on this issue, if it exists, at the earliest opportunity.

A wonderful instance is found in *Juhi Industries (P) Ltd. v. State of JH & Ors. WP(T) 1991/2021*, where notice was quashed even though taxpayer had acquiesced to proceedings under replying to notice and even sought rectification under section 161. A word of caution, this decision did not make specific reference to section 160(2), but it must be considered that High Courts are not limited by statutory prescription when entertaining Petition under

Article 226 and 227 and 'moulding relief' to avoid subversion of justice.

Please note the notifications and circulars (listed later) must be carefully studied to understand the scope and extent as well as limits to the powers conferred. The general rule in section 5(2) that – a superior Officer is empowered to exercise authority vested with the subordinate – does not hold good in all instances. The notification granting the said power must be examined if the powers are conferred on 'an Officer of certain rank' or 'Officers below the rank'.

The notifications under section 3 and 5 of the CGST Act (listed later) further detailed in the circulars specifying internal allocation of powers. There are yet other sections where the Officers are not notified such as Revisional Authority, Appellate Authority, etc. Care should be taken in considering the limits of authority vested under the Act so as not to contaminate proceedings undertaken in the absence of lawful authority.

Reference may be had to the table below to examine the scope and extent of delegation:

Notification No. (NN)	Issued	Scope	Remarks
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	<b>under</b>		
NN-2/2017-CT dt. 19.06.2017 (As amended by NN-79/2018-CT dt. 31.12.2018, NN-4/2019-CT dt. 29.01.2019 & NN- 51/2019-CT dt. 31.10.2019, NN-02/2021-CT dt.12.01.2021, NN-02/2022-CT dt. 11.03.2022 & NN-39/2023-CT dt. 17.08.2023)	Section 3 & 5 of CGST Act and section 3 of IGST Act	Appointment of Officers and vesting with powers of administration	Table I, II, III and IV provides the territory of administration, appellate and audit powers. Table V provides power to AC/JC of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Service Tax Intelligence (DGGI).
NN-14/2017-CT dt.01.07.2017 (As amended by NN 1/2023-CT 04.01.2023)	Section 3 & 5 of CGST Act and section 3 of IGST Act	Officers of DG-GST (Intelligence), DG-GST and DG-GST (Audit)	All-India jurisdiction
NN-39/2017-CT dt. 13.10.2017 (As amended by NN10/2018-CT dt. 23.01.2018)	Section 6(1) of CGST Act	Proper officer for section 54 and 55 of the CGST Act.	Corresponding to jurisdiction of taxpayer
NN-79/2018-CT dt.31.12.2018	Section 5(1) of CGST Act	Amended NN 2/2017-CT to empower Proper Officer to exercise powers under sections 73, 74, 75 and 76	Corresponding to the territory notified under NN-2/2017- CT dt. 19.06.2017.



		of CGST Act.	
NN-4/2019-CT dt.29.01.2019	Section 3 & 5 of CGST Act and section 3 of IGST Act	Amend NN 2/2017-CT to add 'Joint Commissioner of Central Tax (Appeal)'	Corresponding to the territory notified under NN-2/2017- CT dt. 19.06.2017.
NN-11/2017-IT dt. 13.10.2017 (As amended by NN-1/2018-IT dt. 23.01.2018)	Section 4 of IGST Act	Officers empowered to sanction refund under 54 and 55 of SGST Act / UTGST Act, to also sanction refunds under section 20 of IGST Act	Cross- empowerment of State / UT officers for purposes of IGST refunds
Circular 1/1/2017 dt.26.06.2017	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 3/3/2017-GST dt. 5.07.2017 (As amended by 31/05/2018-GST dt. 09.02.2018)	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 9/9/2017-GST dt. 18.10.2017	Section 2(91) of CGST Act and section 20 of IGST Act	Proper Officer for enrolling (and rejecting) of GSTP application	

NN-05/2020-CT dt.13.01.2020	Section 2 & 5 of CGST Act	Authorising Revisional Authority	Principal Commissioner or Commissioner of CT for decisions or orders passed by Additional or Joint Commissioner of CT ; Additional or Joint Commissioner of CT for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of CT
<p><i>Appointed common adjudicating authority:</i></p> <p>(i) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of BSH Household Appliances Manufacturing (P) Ltd. <i>vide Notification No. 35/ 2023- Central Tax, dated 31.07.2023.</i></p> <p>(ii) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of United Spirits Ltd. <i>vide Notification No. 40/ 2023- Central Tax, dated 17.08.2023.</i></p> <p>(iii) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of Inkuat Infrasol (P) Ltd. <i>vide Notification No. 46/ 2023- Central Tax, dated 18.09.2023</i></p>			

Reference may also be had to *Circular 1053/2/2017-CX dated 10.03.2017 amended by Circular 1076/2/2020-CX dated 19.11.2020 and Circular 1079/3/2021-CX dated 11.11.2021* under the earlier law which lays down the entire jurisprudence on administrative discipline to be followed under carrying out administrative functions. Applicability of this Circular for GST purposes is affirmed in *NKAS Services (P) Ltd. v. State of JH & Ors. WP(T) 2444/2021*. Certain essential aspects of this administrative guidance are given in *Circular 31/5/2018-GST dated 09.02.2018* as amended by *Circular 169/1/2022-GST dated 12.03.2022*.

Administrative law states that no person is to be vested with unsupervised authority. All authority (for Executive action) flows from our Constitution. Parliament makes laws on topics permitted in the Constitution. No law can be

contrary to our Constitution (*ultra vires*). Making laws is the exclusive domain of Parliament (and Legislative Assembly of States/UTs as permitted in our Constitution). Administering or carrying out those laws is the exclusive domain of Executive or Government of the day. Interpreting those laws is the exclusive domain of Judiciary.

Law includes substantive law as well as procedural law. Both need not be contained in the same statute. Delegation is permitted only if permitted in the Act itself. Delegation cannot be abdication of role of law-making. Delegation must only to carry out the purposes of the Act. Delegate (person to whom some authority is delegated) cannot exercise authority beyond the extent it is delegated. Delegation cannot be absolute and unguided. Delegation cannot also be unsupervised. Delegation itself must be 'with limits'. There is a path that the delegate must travel and carry out duties and any deviation will come in for censure. Delegatee (person to whom some authority is delegated) cannot alter the power while exercising said power. To locate any instance of breach or alteration of the delegated power, clarity as to be 'scope' and 'limits' of the power conferred in the statute must be clearly known. Some instances are:

Section	Who can act? *	What can be done?	What are limits?
61	Superintendent	Discrepancy in returns	Nothing beyond returns
63	AC / DC	Best judgement assessment	Use of estimates allowed without compulsion to be accurate in arriving at demand
73	Superintendent	Demand to (i) challenge taxpayer's interpretation of law or (ii) canvass an alternate interpretation to the given facts	Use of estimates barred and demands not involving 'special circumstances' in section 74
74	Superintendent	Demand to (i) challenge taxpayer's interpretation of law (ii) canvass an alternate interpretation to the	Use of estimates barred and demand involving 'special circumstances'

		given facts or (iii) evasion of tax	
81	ADC / JC	Permission to 'charge or transfer' assets as not being with intention to defraud Revenue	Unlimited scope of enquiry to reach conclusion – charge or transfer not intended to defraud Revenue.

\* *Superior Officer can discharge duties assigned to subordinate Officer but not vice versa.*

Exercise of authority excessively as well as failure to exercise authority conferred are both illegal. And they come under judicial review. i.e., the Courts will interfere (not to interpret law but) to call public authority to answer for such excess or failure. Appealing before departmental authorities may not provide relief when the remedy itself lies outside the law (to quash the proceedings or question the authority exercised or failed to exercise) under which administrative departmental authorities are constituted. Refer detailed discussion on 'judicial review' in the discussion under section 63 on the remedies available from High Courts.

GST law knows no such thing as 'spot recovery', that is, recovery on the spot where the (alleged) deviation is noted. India follows the concept of 'rule of law' in our Constitution. No person can be judge, jury and executioner all by himself. It is for this reason that 'notice' is to be given to the taxable person clearly stating the 'charges'. There can be no approach based on an opinion that "*I feel you are liable to pay tax, so pay immediately*" approach, especially not in GST. All demands must follow the process of issuing notice under section 73 or 74 or 76. Only in exceptional cases, order of demand can be passed and that too has some remedy (see section 63 and 64).

Another remarkable provision is section 108 where orders passed by officer lower in rank than the Revisional Authority, in the 'interests of revenue' be overturned. This appears to be unwarranted interference by Executive Authorities to upset orders of a quasi-judicial Authority. The remedy of departmental appeal is anyway available under section 107 and 112.

An interesting provision is <sup>1</sup>[section 151] which permits Commissioner, or any officer authorized to (i) direct any person (ii) to furnish information relating to 'any' matter (iii) within a certain time and (iv) in a certain form and (v) a certain manner. Experts opine that this is a good example of 'unguided

<sup>1</sup> *Substituted vide The Finance Act, 2021 through Nottf. No. 39/2021-CT dt. 21.12.2021. Applicable w.e.f. 01.01.2022.*

authority' delegated by Legislature that is potentially capable of being exercised with unlimited authority and this makes the delegation 'arbitrary'. Reference may also be had to discussion under section 151. It is not necessary that there must be some action taken by the delegate for it to be 'arbitrary' when the provision stands without any guidance or limits or methods or structure. That is sufficient for the provision to be violative of the requirements of valid delegation by Legislature to the Executive. Also, it is important to note that such sweeping power is left in the hands of the Commissioner to ensure it is exercised with discretion. It is held in *Matajog Dobe v. HC Bhari AIR 1956 SC 44* where it is stated that "*A discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official*".

Reference to any good publication on 'administrative law' can provide much needed insight into nature of authority given under section 3 to 6 of CGST Act, manner prescribed in each section for its exercise and limits to such authority.