

Chapter 2

Administration

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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 are not required to be laid before the Parliament as 'laying before Parliament' is a requirement limited only to exemption notifications and not designating officers under section 3. Only recently, the Central Excise Act has been amended perhaps to align itself in the administrative framework in view of the introduction of GST. Accordingly, Officers under the Central Excise Act are deemed to be officers appointed under this Act.

Also, the 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. The 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 the executive officers. There is a necessity to appoint administrative staff to assist the 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 Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (Board in brief). The administrative staff make up the entire working team also called as '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, certain administrative staff for the purposes of Central Tax.

This provision enables 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 on the erstwhile field formations for 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 himself exercise the powers conferred on him and cannot sub-delegate the same. While this is true on the principles 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 provided 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. It may be noted that 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 the executive officers and not the appellate authorities.

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 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.

6.1 Introduction

With similarities in 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 be the officer of Central Tax too simultaneously . 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 avoid overlapping 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 has been invoked by the officer of the State/UT Tax in any proceeding; such action will preclude the officer of central tax from exercising any administrative power in respect of transactions covered by the said proceedings.

The officer who has exercised administrative power in any proceeding will continue to be the forum to entertain appeals, rectification or revision applications in respect of that matter until it is concluded. This will not result in competition for tax administration but 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.

It may be noted 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 no 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 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, where a person who is unaware of the lack of authority submits to the proceedings initiated is treated to have acquiesced. Such acquiescence robs the person of the right to subsequently question the lack of authority. A hot contest is on the question as to whether acquiescence can provide 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.

The notifications and circulars referred earlier must be carefully studied to understand the scope and extent as well as limits on the powers conferred. The general rule in section 5(2) that a superior office 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 sections 3 and 5 of CGST Act listed earlier are 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.

The following table summarises the scope and extent of delegation:

Notification/Circular	Issued Under	Scope	Remarks
Notification No.2/2017-CT dt. 19 Jun 2017 (amended by Notifications No. 4/2019 dt. 29 Jan 2019 & 51/2019-CT dt. 31 Oct 2019)	Sections 3 and 5 of CGST Act and section 3 of IGST Act	Appointment of Officers and vesting with powers of administration	Tables I, II, III and IV provide the territory of administration, appellate and audit powers

Notification No. 14/2017-CT dt. 1 Jul 2017	Sections 3 and 5 of CGST Act and section 3 of IGST Act	Officers of the rank of DG-GST (Intelligence), DG-GST and DG-GST (Audit)	All-India jurisdiction
Notification No. 39/2017-CT dt. 13 Oct 2017 (amended by Notification No.10/2018-CT dt. 23 Jan 2018)	Section 6(1) of CGST Act	Proper officer for sections 54 and 55	Corresponding to jurisdiction of taxpayer
Notification No. 79/2018-CT dt. 31 Dec 2018	Section 5(1) of CGST Act	Amended by Notifications No. 2/2017-CT to empower Proper Officer to exercise powers under sections 73, 74, 75 and 76 of CGST Act	Corresponding to the territory notified under 2/2017-CT
Notification No. 4/2019-CT dt. 29 Jan 2019	Sections 3 and 5 of CGST Act and section 3 of IGST Act	Amended by Notification No. 2/2017-CT to add "Joint Commissioner of Central Tax (Appeal)"	Corresponding to the territory notified under Notification No.2/2017-CT
Notification No. 11/2017-Int dt. 13 Oct 2017 (amended by Notification No.1/2018-Int. dt. 23 Jan 2018)	Section 4 of IGST Act	Officers empowered to sanction refund under sections 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 No. 1/1/2017 dt. 26 Jun 2017	Section 2(91) of CGST Act and	Declaration of Proper Officers under various provisions of the Act	

	section 20 of IGST Act		
Circular No.3/3/2017-GST dt. 5 Jul 2017 (amended by Circular No.31/05/2018-GST dt. 9 Feb 2018)	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular No.9/9/2017-GST dt. 18 Oct 2017	Section 2(91) of CGST Act and section 20 of IGST Act	Proper Officer for enrolling (and rejecting) of GSTP application	
Circular No. 05/2020-CT dt. 13 January 2020	Sections 2 and 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

Reference may also be had to *Circular 1053/2/2017-CX dated 10.03.2017* issued under the earlier law which lays down the entire jurisprudence on administrative discipline to be followed under carrying out administrative functions. Part of this administrative guidance is available in *Circular 31/5/2018-GST dated 09.02.2018*.

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 subjects 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 in the exclusive domain of Executive or Government of the day. Interpreting those laws is the exclusive domain of the 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 be 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.

Exercise of authority excessively as well as failure to exercise authority conferred are both illegal and they come under judicial review. 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 the discussion on 'judicial review' under section 63 on the remedies available.

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' enshrined 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 "I feel you are liable to pay tax, so pay immediately" approach and especially not in GST. All demands must follow the due 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 sections 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' can 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 sections 107 and 112.

An interesting provision is section 151¹ (newly substituted) 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) in certain manner. Experts opine that this is a good example of 'unguided authority' delegated by Legislature that is potentially capable of being exercised with unlimited authority and this makes the delegation 'arbitrary'. 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 was held in *Matajog Dobe v. HC Bhari AIR 1856 SC 44* 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 the nature of authority given under sections 3 to 6 of CGST Act, manner prescribed in each section for its exercise and limits on such authority.

¹ Substituted vide *Finance Act, 2021 and notified vide Notf. No. 39/2021-CT dt. 21.12.2021. Applicable w.e.f. 01.01.2022.*