

# TAX INFO

*Dated 25.06.2022*

Latest update on GST Law: **Show Cause Notice is a valid communication for ITC Mismatch** as given by **Madras High Court.**

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<b>Name of Petitioner</b>	M/s. Mahendra Feeds and Foods
<b>Name of Respondent</b>	The Deputy Commissioner of GST
<b>Court</b>	Madras High Court
<b>Date of Judgement</b>	29.04.2022
<b>Appeal No.</b>	Writ Petition No.11191 of 2022

## **Brief Facts of the Case Law:**

The petitioner has availed ITC for the FY 2017-18 and 2018-19 from December 2017 to March 2019. But, according to the Revenue, the ITC claimed by the petitioner was a wrong claim because, there was a complete mismatch between the supplier and the petitioner who was in the receiving end as the supplier has not paid the tax on the outward supply. Therefore, a show cause notice was issued which was duly replied. Considering the said reply, the impugned order dated 30.03.2022 was passed by the Revenue which is challenged in the present appeal.

## **Contention of the Petitioner:**

Under Section 42(3) of the GST Act there is an obligation on the part of the Revenue to communicate to both the supplier and the dealer who received the goods by way of input supply about the mismatch of ITC that the supplying dealer has not paid the output tax at their end. Once such a communication is issued under the Rule in consonance with Section 42(3) of the Act, there must be a procedure to be followed, where some communication should have been given at the earliest point of time if at all anything to be rectified. However, since no such communication has been issued and therefore, it is a procedural violation.

## **Contention of the Revenue:**

The SCN issued to the petitioner itself is a communication within the meaning of Section 42(3) of the Act as at this juncture since mismatch was found by the Revenue, the same can be communicated only by way of SCN and if at all the petitioner wants to rectify it, by rectifying the same, reply could have been given with substantiated documents to show that the supplier has paid the tax at their end. In the absence of any such documents being produced by the petitioner to by way of reply to the SCN, it can be construed that the mismatch has not been rectified. Therefore, the ITC claimed by the petitioner was a wrong claim and accordingly the same was reversed by the Revenue.

## **Decision of the Court:**

The rectification would be possible at the hands of the petitioner who received the goods by way of input supply, at least at the time of receipt of SCN issued by the Revenue. After receipt of SCN, if at all the petitioner wants to rectify the mismatch between the petitioner and the supplying dealer, the supporting documents to substantiate that the output tax had been paid by the supplying dealer at their end should have been procured and filed along with the reply submitted by the petitioner, which they failed to do. Therefore, the technical reason that under Section 42(3) it should have been communicated at the earliest point of time and therefore the SCN cannot be treated as communication intimating the mismatch between the supplier and the petitioner cannot be accepted. Thus, the order passed by the Revenue was upheld by the court.

**Suresh Aggarwal, Advocate**

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