

TAX INFO

Dated 14/07/2022

Latest update on GST Law: Assessment order cannot be passed without issuing SCN under Section 73 or 74 of CGST Act, 2017 as given by Madras High Court.

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Name of Petitioner	M/s.Anantham Retail Private Limited
Name of Respondent	State Tax Officer
Court	Madras High Court
Date of Judgement	20.06.2022
Appeal No.	Writ Petition Nos.11376, 11384 and 11410 of 2022

Brief Facts of the Case Law:

The Officers from the State Tax Department conducted inspection under Section 67 of the TNGST Act in the three showrooms of the petitioner from 14.09.2021 to 16.09.2021. During the course of surprise inspection, the inspection team had found certain irregularities in the transactions of the dealers and on the strength of that, show cause notice was issued to the dealer to explain the issue with documentary evidences. The Department had issued communication in Form DRC-01A in terms of Rule 142(1A) of the TNGST Rules, 2017, all dated **06.12.2021**, for the years 2019-20, 2020-21 and 2021-22, pointing out the defects involving tax liabilities and for non-maintenance of accounts. The petitioner requested 30 days' time to submit their response to the above said communication, vide letter dated 22.12.2021. Thereafter, the Department vide letter dated 28.12.2021, had directed the petitioner to appear for a personal hearing. The petitioner, vide letter dated 03.01.2022, replied in Part-B of Form DRC-01A stating that the liability to tax as stated in subject intimation as well as the quantification are not agreeable as the same are not correct on facts and law. Vide letter dated 11.01.2022, a final opportunity of personal hearing was provided and the petitioner was directed to appear for the same on 24.01.2022. The authorised representative (Chartered Accountant) appeared before the respondent Office on 24.01.2022 and explained that personal hearing cannot be initiated at this stage of adjudication proceedings and reiterated the petitioner's stand that, the liability of tax and quantification are not agreeable. The impugned order dated 31.01.2022 was passed which is not proper and is in gross violation of principles of natural justice. The Department vide Form GST DRC-09, directed the Branch Manager of Axis Bank, to recover the amount due from the petitioner consequent to the impugned order.

Contention of the Applicant:

The inspection and investigation have been conducted by different officers in a wrong manner, resulting in misunderstanding of facts and misinterpretation of provisions, misapplication of tariff and exemption notifications. The impugned order dated 31.01.2022 has been passed in violation of principles of natural justice inasmuch as no show cause notice as envisaged in Section 73 or 74 of the TNGST/CGST Act has been issued before passing the order, there is unfairness, unreasonableness in the action of the Department.

Contention of the Department:

The burden of proof is lying with the dealers as per the provisions of the TNGST Act, 2017. The dealer has to satisfy the assessing authority that there is no evasion of tax on the part of the dealer. The notice was issued in accordance with the Act and the Rules. Based on the defects pointed out during the course of surprise inspection, the notice was properly served on the dealers and then, personal hearing notice was also

given, which was also properly served on the dealers and finally, considering the objections filed by the dealers, orders were passed, which are in accordance with law and without deviating the principles of natural justice. During investigation, certain defects were pointed out based on the business transactions and hence, notice was issued to the dealers. On receipt of the notice, the dealers have requested time for filing objections and however, the dealers were given an opportunity of personal hearing on 28.12.2021 (personal hearing on 03.01.2022) and on 11.01.2022 (personal hearing on 24.01.2022) and requested to appear in person with the documentary proof in support of their claims. The petitioner's authorized representative appeared, made objections. Since their objections were not convincing and not acceptable, there is no other option to confirm the proposals already made in the notice dated 06.12.2021 and orders were passed on 31.01.2022, levying tax, interest and penalty. The said order is a detailed one, giving sequence and also giving reasons for levying tax, interest and penalty.

The petitioner did not raise any objection to the inspection carried out from 14.09.2021 to 16.09.2021 and also agreed to the defects pointed out during the course of inspection and had paid an amount of Rs.89,52,450/- and therefore, the objections at this stage, are only an afterthought and hence, not acceptable. Accordingly, the Department proceeded to pass the order, confirming the proposals in the notice dated 06.12.2021

Decision of the Court:

Though the petitioner had sent their objections and their authorized representative/Chartered Accountant appeared before the Department, but they were unable to give proper explanation with supporting documents. It is seen that after issuance of notice in Form DRC-01A, **dated 06.12.2021**, the Department has issued Form GST DRC-01A. If the petitioner has got any objection and not paid tax as ascertained, **a show cause notice has to be issued under Section 74(1) of the TNGST Act and after receiving objections, giving personal hearing, the assessment order ought to have been finalised. In this case, procedure was not followed.** It is also seen that following the impugned order, the respondent vide Form GST DRC-09, issued a communication, directing the Branch Manager of Axis Bank to recover the amount due from the petitioner under Section 79 of the TNGST Act, 2017, which is not proper.

In view of the same, the assessment orders for 2019-20, 2020-21 and 2021-22 dated 31.01.2022 were quashed. The consequential recovery notice, dated 10.06.2022, issued to the Branch Manager of Axis Bank was also quashed. The Department was directed to follow the procedures prescribed under the TNGST Act and issue show cause notice and after giving an opportunity to file their objections, pass appropriate orders on merits and in accordance with law.

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