

TAX INFO

Dated: 11.10.2020

Latest update on GST Law: Information regarding **GSTR-1 Return filing amounts to determination of tax** based on the **Judgement issued by Madhya Pradesh High Court**

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GSTR-1 Return filing amounts to determination of tax

Name of Petitioner	Kabeer Reality Private Limited
Name of Respondent	Union of India
Name of Court	HC-Madhya Pradesh
Appeal Number	Writ Petition No. 15645/2019
Date of Judgement	22/11/2019

Facts of the Case:

Petitioner is an owner of commercial building and is having various tenants in respect of the building in question. The petitioner / Company is carrying on business of renting immovable property and also provides allied services. Petitioner is aggrieved by the notice passed by the Deputy Commissioner, CGST & Central Excise, Division – V, Indore, under Section 79 (1)(c) of the Act of 2017 initiating recovery against them in respect of a sum of Rs.44,43,804/- on account of tax, cess, interest etc. payable under the provisions of Section 79 of the Act of 2017. The petitioner / Company has submitted a reply on 15.07.2019 and its grievance is that the notice / order dated 08.07.2019 is per se illegal and has been issued contrary to the statutory provisions as contained under the Act of 2017.

Contention of Petitioner:

It has been stated that respondent has not followed the prescribed procedure relating to demand and recovery, as provided under the Act of 2017. It has also been contended that without determination of tax payable by taxable person, no recovery could have been initiated under Section 79 (1)(c) of the Act of 2017. Petitioner also states that no opportunity of hearing was provided to the petitioner before passing the impugned order / notice, the rent cannot be adjusted towards tax dues and a prayer has been made for quashment of the impugned order / notice dated 08.07.2019.

Reply of Respondents:

The Range Officer, vide letter dated 19.07.2018, has requested the petitioner to file GST Return and to deposit the GST dues with Government Exchequer and the total tax liability worked out was Rs.44,43,804/- + interest upto 02/2019 amounting to Rs.5,70,546/-. As the tax dues was not paid and no reply was filed, the Department has left with no other option except to recover the GST arrears under Section 79 of the Act of 2017.

The respondents have further stated that the petitioner, right from the day one, has not filed a single GSTR-3B Return nor GSTR-1 for the period w.e.f. 07/2017 to 03/2018 (has filed GSTR-1 only for the period 04/2018 to 05/2019), and therefore, the respondents were left with no other choice except to recover the amount of GST by invoking Section 79 (1)(c) of the Act of 2017. The respondents have further stated that they have issued notice under Section 79 (1)(c) of the Act of 2017 to four tenants only and petitioner instead of depositing GST dues, served a legal notice to the Department, which was properly replied by the Department on 30.07.2019

Ruling:

The tax is being recovered from the petitioner after following due process of law. The petitioner cannot escape his liability of payment of GST under Act of 2017, especially when he has filed GSTR-1 and has quantified the tax payable by him while submitting the GSTR-1.

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