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Section 74 Demand Set Aside Where Turnover Appears Prima Facie Below GST Registration Threshold and Opportunity of Hearing Denied

The Hon'ble Madras High Court in *M/s. Abirami Agro Agencies v. The State Tax Officer & Ors. [W.P. No. 18444 of 2026 and W.M.P. Nos. 19783, 19785 & 19786 of 2026 dated June 04, 2026]* set aside the order raising tax and penalty under Section 74 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) and remanded the matter for fresh consideration, holding that the impugned order was passed without granting an opportunity of hearing to the Assessee and that the turnover recorded by the GST authorities appeared *prima facie* to be below the threshold prescribed for registration under the GST law.

Facts:

M/s. Abirami Agro Agencies (“**the Petitioner**”), a proprietorship concern based in Erode, Tamil Nadu, was issued an order in Form GST DRC-07 vide Reference No. ZD3310231594191 dated October 26, 2023 (“**the Impugned Order**”) by the State Tax Officer, Bhavani Circle (“**the Respondent**”), raising a demand of tax and penalty aggregating to Rs. 94,425.40 under Section 74 of the CGST Act.

The Petitioner contended that its aggregate turnover was below the threshold limit of Rs. 20 lakhs prescribed for registration under the GST law and, therefore, the very invocation of Section 74 and the consequent demand were unwarranted. The Petitioner further pointed out that an amount of approximately Rs. 86,037 had already been recovered by the Department against the total demand of Rs. 94,425.40, and undertook to discharge the balance liability as a condition for remand.

Aggrieved by the Impugned Order, which was passed without affording any opportunity of personal hearing and which also resulted in attachment of the Petitioner's bank account maintained with Tamilnadu Mercantile Bank Limited, the Petitioner approached the Hon'ble

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Madras High Court by way of the present writ petition under Article 226 of the Constitution of India seeking a writ of *certiorari* to quash the Impugned Order.

Issue:

Whether a demand of tax and penalty under Section 74 of the CGST Act can be sustained where the Assessee's turnover appears *prima facie* to be below the threshold limit prescribed for registration under the GST law and the order has been passed without affording the Assessee an opportunity of hearing?

Held:

The Hon'ble Madras High Court in ***W.P. No. 18444 of 2026 and W.M.P. Nos. 19783, 19785 & 19786 of 2026*** held as under:

- Observed that, the Impugned Order had been issued without hearing the Petitioner, which constituted a clear breach of the principles of natural justice.
- Noted that, on a perusal of the records available with the GST authorities, the turnover of the Petitioner appeared *prima facie* to be below the threshold limit prescribed for registration under the GST law, lending support to the Petitioner's contention that invocation of Section 74 was unwarranted.
- Noted that, an amount of Rs. 86,037 had already been recovered against the total demand of Rs. 94,425.40, and that the Petitioner had voluntarily undertaken, by way of an endorsement on the bundle, to pay the balance tax liability as a condition for remand.
- Held that, the matter warranted reconsideration and, subject to fulfilment of the condition of payment of the balance amount, the Impugned Order was set aside.

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- Directed that, the Respondent shall issue a fresh order within a period of three months from the date of fulfilment of the said condition, after providing a reasonable opportunity of hearing to the Petitioner, and further directed that the attachment, if any, of the Petitioner's bank account maintained with the third Respondent bank shall stand raised consequent upon the setting aside of the Impugned Order.
- Hence, **the matter was remanded back to the assessing officer for fresh adjudication in accordance with law.**

Our Comments:

Section 22(1) of the CGST Act provides that every supplier shall be liable to be registered under the said Act in the State or Union territory from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees (Rs. 20 lakhs), subject to the higher threshold of Rs. 40 lakhs for exclusive suppliers of goods in specified States by virtue of ***Notification No. 10/2019-Central Tax dated March 07, 2019.*** Where the aggregate turnover of a person does not exceed the prescribed threshold, the requirement of registration does not arise and, consequently, the question of levy of tax or invocation of penal provisions under Section 74 of the CGST Act, on the assumption of an existing registration obligation, does not arise.

Section 74 of the CGST Act empowers the proper officer to determine tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilised by reason of fraud, wilful misstatement, or suppression of facts, and to impose tax along with interest and penalty. However, the exercise of such power is conditioned upon (i) the existence of a tax liability and (ii) strict compliance with the principles of natural justice as mandated by Section 75(4) of the CGST Act, which provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

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The present judgment reinforces two well-settled propositions of GST jurisprudence. **First**, an order passed without affording a personal hearing, where an adverse decision is contemplated, is liable to be set aside as being violative of Section 75(4) of the CGST Act and the principles of natural justice. **Second**, where the aggregate turnover of the taxpayer is prima facie below the statutory threshold for registration, the very foundation for invoking Section 74 stands eroded, and the proper officer is duty-bound to examine such a contention before passing any demand order.

This view is consistent with the consistent line of judicial precedents. The Hon'ble Madras High Court itself, in *Tvl. SKMP Engineering Constructions v. The Deputy State Tax Officer-2 [W.P. No. 9522 of 2024 dated April 17, 2024]*, *M/s. Rainbow Stones Private Limited v. The Assistant Commissioner (ST) [W.P. No. 11783 of 2024 dated May 02, 2024]* and *K. Balakrishnan, Balu Cables v. The Assistant Commissioner of GST & Central Excise [W.P. No. 10433 of 2024 dated April 24, 2024]*, has consistently set aside ex parte assessment and demand orders passed without granting an opportunity of personal hearing and has remanded the matters for fresh adjudication, often subject to a pre-deposit condition. Similarly, the Hon'ble Allahabad High Court in *M/s. Mohini Traders v. State of U.P. [Writ Tax No. 551 of 2023 dated May 03, 2023]* held that personal hearing under Section 75(4) of the CGST Act is mandatory whenever any adverse order is contemplated, irrespective of whether the assessee has specifically sought such hearing.

On the question of turnover-based registration threshold, the Hon'ble Madras High Court in *Tvl. Jeyalakshmi Store v. The Commissioner of Commercial Taxes [W.P. No. 36531 of 2023 dated December 22, 2023]* has likewise interfered with demand orders where the turnover recorded by the Department did not, on the face of the record, justify the invocation of registration-based liability provisions. The present ruling, therefore, fits squarely within this consistent jurisprudential approach.

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From a compliance perspective, taxpayers facing demand orders under Section 74 must promptly examine (i) whether the show cause notice and order have been preceded by a valid opportunity of hearing as mandated by Section 75(4); (ii) whether the aggregate turnover, as reflected in the books of accounts and the GST returns, in fact crosses the registration threshold; and (iii) whether any recovery has been effected, including through bank attachment under Section 79 of the CGST Act, in which case the writ jurisdiction of the High Court may be invoked for lifting of such attachment upon the impugned order being set aside, as has been done in the present case. The Revenue, on its part, would do well to ensure that demand orders, particularly those invoking the extended period and higher penalty under Section 74, are passed only after due verification of the underlying turnover and strict adherence to the procedural safeguards built into the GST framework.

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