

Demand order passed without considering the reply to the SCN is not sustainable

The Hon'ble Madras Court in ***M/s. Engineering Aids v. State Tax Officer and Ors. [W.P. No.28124 of 2022 dated February 15, 2023]*** has quashed the demand order passed by the Revenue Department, on the grounds that the reply filed by the assessee to the Show Cause Notice ("**SCN**") was not considered even though the same was received by the Revenue Department. Remanded the matter back for fresh consideration on merits and in accordance with the law. Further, directed the Revenue Department to pass final orders, after adhering to the principles of natural justice and providing the opportunity of hearing to assessee.

Facts:

This petition has been filed by M/s. Engineering Aids ("**the Petitioner**") challenging the summary order in **Form GST DRC-07** dated April 5, 2022 ("**the Impugned Order**") passed by the Revenue Department ("**the Respondent**") under Section 74 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") for demand and recovery of tax, on the grounds of violation of principles of natural justice, contending that only the Impugned Order was served and not the detailed order nor has it been uploaded on the GST portal. Further, the reply in **Form GST DRC-06** dated February 25, 2022 ("**the Reply**") to the SCN issued in **Form GST DRC-01** dated February 17, 2022 ("**the SCN**") was not considered by the Respondent while passing the Impugned Order.

Issue:

Whether the Impugned Order can be passed without considering the Reply to the SCN?

Held:

The Hon'ble Madras High Court in ***W.P. No.28124 of 2022*** held as under:

- Noted that, the Petitioner has also filed **Form GST DRC-06**, dated February 25, 2022 which confirms that the Reply sent by the Petitioner was received by the Respondent.
- Observed that, there was no reference of the Reply in the Impugned Order and the Reply was not considered by the Respondent while passing the Impugned Order.
- Held that, the respondents have not considered the Reply even though the same was received by them hence the Impugned Order has to be quashed.
- Quashed the Impugned Order.
- Remanded the matter back to the Respondent for fresh consideration on merits and in accordance with the law.
- Directed the Respondent to pass final orders within 12 weeks, after adhering to the principles of natural justice and providing the opportunity of hearing to the Petitioner.

(Author can be reached at info@a2ztaxcorp.com)

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