

No recovery proceedings shall be initiated within three months following the issuance of an Order

The Hon'ble Madras High Court in the case of *Tvl. Cargotec India (P.) Ltd. v. Assistant Commissioner (ST) [Writ Petitioner No. 13104 of 2023 dated April 23, 2024]* allowed the writ petition and held that no recovery measures shall be undertaken by the GST Authorities for a period of three months from the date of such order as per the proviso to Section 78 of the Central Goods and Services Tax, 2017 (**"the CGST Act"**) provided the GST Authority satisfies in writing.

Facts:

M/s Tvl. Cargotec India (P.) Ltd. (**"the Petitioner"**) was served an Assessment Order dated December 28, 2022 (**"the Impugned Order"**), by the Assistant Commissioner (**"the Respondent"**). The Petitioner lodged an appeal on April 06, 2023. However, recovery proceedings were initiated before the expiry of the three months and the amount was debited from the Petitioner's Electronic Cash and Credit Ledger in February 2023.

Hence, aggrieved by the circumstances the Petitioner filed a writ petition seeking a direction for recredit or refund of the amounts recovered pursuant to the Impugned Order pertaining to Assessment Years 2017-2018, 2018-2019, and 2019-2020.

Issue:

Whether recovery proceedings can be initiated within three months following the issuance of the Order?

Held:

The Hon'ble Madras High Court in *Writ Petitioner No. 13104 of 2023* held as under:

- Observed that, the proviso to Section 78 of the Tamil Nadu Goods and Services Tax Act, 2017 (“the TNGST Act”), may be invoked only if the proper officer records in writing the reason as to why he considers it expedient in the interest of the revenue to require the taxable person to make payment even before the expiry of the prescribed three-month period. In the case in hand, no material was placed on record to justify invoking the proviso to Section 78 CGST Act.
- Held that, the Respondents either refund the recovered amount or recredit the same to the Petitioner’s Electronic Cash or Credit Ledgers, as the case may be, within one month from the date of receipt of the copy of the said Order because the Respondents failed to satisfactorily explain the recourse to the proviso to Section 78 of the CGST Act. Hence, the writ petition was allowed.

Our Comment:

Section 78 of the CGST Act talks about ‘Initiation of recovery proceedings’. It states that any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated. Provided, the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

[CLICK HERE FOR OFFICIAL JUDGMENT COPY](#)

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

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader’s personal non-commercial use. It does not constitute professional advice or recommendation of firm.

Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.