

Revenue Department cannot pass ex-parte rectification order u/s 161 of the CGST Act

The Hon'ble Madras High Court in *M/s. Vadivel Pyro Works v. The State Tax Officer [W.P No. 11143 of 2023 dated July 26, 2023]* set aside demand raised by the Revenue Department on the ground that rectification order under section 161 of the Central Goods and Services Tax Act ("**the CGST Act**") was passed without giving opportunity of being heard to the assessee.

Facts:

M/s. Vadivel Pyro Works ("**the Petitioner**") is the manufacturer cum trader of fireworks and was regularly filing GST returns, discharges appropriate taxes, avails the ITC in terms of Section 16 of the Tamil Nadu Goods and Services Tax Act ("**the TNGST Act**").

Revenue Department ("**Respondent**") conducted statutory audit which was duly replied by the Petitioner through counter affidavit. The copy of audit report was given to the Petitioner and directed to submit objections if any. The Petitioner submitted the objections on January 24, 2022 without any supporting records.

On the basis of the audit report, the Respondent issued a Show Cause Notice dated August 25, 2022 ("**the SCN**"), in Form GST DRC 01 followed by Notice in ASMT-10 dated June 23, 2022 and Form DRC 01A, dated July 27, 2022, demanding GST on certain inward supplies from the Petitioner.

Thereafter, the Adjudicating Authority vide the order dated November 10, 2022 ("**the Impugned Order**") confirmed the demand of tax along with interest and penalty which was more than INR 1 Crore, the order was later rectified by the order dated November 30, 2022.

Aggrieved by the Impugned Order the Petitioner filed rectification application under section 161 of the CGST Act for rectification of the assessment order.

The Petitioner sought adjournment on November 10, 2022 and on the same day the Respondent passed the assessment order without considering the adjournment letter.

Aggrieved by the orders, the Petitioner filed the writ before the Hon'ble Madras High Court and contended that principle of natural justice was not followed by the Respondent.

Issue:

Whether the Revenue Department can pass rectification order under Section 161 of the CGST Act without providing opportunity of being heard to the Petitioner?

Held:

The Hon'ble Madras High Court in ***W.P No. 11143 of 2023*** held as under:

- Held that, before passing the order under section 161 of the CGST Act, the Respondent should have to followed the proviso and granted personal hearing to the Petitioner. Therefore, while passing the rectification order there was a violation of principle of natural justice.
- Directed the Petitioner to pay INR 1 Lakh for each year, in the interest of justice.
- Set aside the Impugned order and remanded the matter to the Respondent for re-assessment due to discrepancies mentioned in ASMT-10 and in DRC-01.

Relevant Provision:

Section 161 of the CGST Act

Rectification of errors apparent on the face of record

161. Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other

document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

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

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