

**Revenue department cannot initiate assessment proceedings once moratorium order has been passed by NCLAT**

The Hon'ble Madras High Court in *Tvl. ITNL-KMB (J.V.) v. The Deputy Commissioner of (ST), [W.P. Nos.2850 and 2852 of 2023 and W.M.P. Nos.2968 and 2973 of 2023 dated February 3, 2023]* quashed the assessment order and the consequential recovery notice issued by the Revenue Department on the grounds that no opportunity of hearing was afforded to the assessee and contentions of the assessee were also not considered, thus the same was a violation of the principles of natural justice. Remanded the matter back to the Revenue Department for fresh consideration in accordance with the law after providing the opportunity of hearing to the Petitioner.

**Facts:**

Tvl. ITNL-KMB (J.V.) (“**the Petitioner**”) has challenged the Assessment Order dated May 30, 2022 (“**the Impugned Order**”) and the consequential recovery notice dated November 30, 2022 (“**the Impugned Notice**”) issued by the Revenue Department (“**the Respondent**”) on the grounds that the Impugned Order has been passed erroneously by total non-application of mind as a moratorium order dated October 15, 2018, has been issued by the National Company Law Appellate Tribunal (“**the NCLAT**”) under Section 241 read with Section 242 of the Companies Act, 2013 (“**the Companies Act**”). The Petitioner had replied to the Impugned Notice wherein it had submitted that Assessment proceedings couldn't be proceeded with once a moratorium order has been passed by the NCLAT under the Companies Act, as such moratorium order is similar to the moratorium issued under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). However, the Respondent has not considered such reply.

Being aggrieved, this petition has been filed.

The Petitioner contended that no personal hearing was afforded to it as per the provisions of Section 75(4) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”). Further, the Impugned Order is violative of the principles of natural justice.

The Respondent contended that the Petitioner has an alternative statutory remedy available; thus, the petition is not maintainable. Further, a moratorium order passed by the NCLAT under the Companies Act could not be equated with a moratorium order passed under the IBC.

**Issue:**

Whether not granting the opportunity of hearing violative of principles of natural justice?

**Held:**

The Hon’ble Madras High Court in ***W.P. Nos .2850 and 2852 of 2023 and W.M.P. Nos. 2968 and 2973 of 2023*** held as under:

- Observed that, no personal hearing was afforded to the Petitioner despite its request.
- Analysed Section 75(4) of the CGST Act and noted that opportunity of hearing must be granted to the Petitioner once a request for the same has been made.
- Stated that, the moratorium order issued by the NCLAT under Section 241 read with Section 242 of the Companies Act, is similar to the moratorium issued under Section 14 of the IBC.
- Held that, as no personal hearing was afforded to the Petitioner and the contentions of the Petitioner had not been considered by the Respondent while passing the Impugned Order, there was a violation of the principles of natural justice.
- Quashed the Impugned Order and the Impugned Notice.
- Remanded the matter back to the Respondent for fresh consideration on merits and in accordance with the law after providing the opportunity of hearing to the Petitioner within 12 weeks.

## **Relevant Provisions**

### **Section 75 (4) of the CGST Act:**

*“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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