

A fresh SCN should be issued to revise demand raised in SCN: Madras HC

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In a significant ruling, the Madras High Court in the case of ***M/s. Vela Agencies v. Assistant Commissioner, State Tax [Writ Petition No. 11030 of 2024 dated April 26, 2023]***, emphasized that any order must adhere strictly to the Show Cause Notice (SCN) initially issued. The court decreed that the demand specified in the SCN cannot be altered without issuing a new SCN, reinforcing procedural fairness and transparency in tax proceedings.

Facts:

M/s. Vela Agencies (**“the Petitioner”**) received an Intimation dated November 24, 2022. The Petitioner replied to the Intimation on December 28, 2022, by stating that the Petitioner was a distributor of M/s. Aircel Limited (Aircel) and was unable to conduct business after February 28, 2018, due to the closure of the business of Aircel.

Further, a Show Cause Notice dated December 29, 2022 (**“SCN”**), was issued to the Petitioner to show cause as to why tax liability of INR 8,27,252/- should not be imposed concerning sales suppression, which was estimated based on the Input Tax Credit (**“ITC”**) availed of by the Petitioner and contended that the Petitioner was not entitled to ITC.

However, an Order dated June 23, 2023 (**“the Impugned Order”**) was passed by the Assistant Commissioner (**“the Respondent”**) imposing the tax liability of INR 14,97,072/- and an equal amount of penalty by comparing the FORM GSTR-3B return and the FORM GSTR-2A. Further, a reversal was made of ITC from the electronic credit ledger of the Petitioner to the extent of INR 7,52,047/- on February 15, 2024.

Hence, aggrieved by the Impugned Order, the present writ petition was filed by the Petitioner.



Issue:

Whether a fresh SCN should be issued to revise the demand raised in the SCN?

Held:

The Hon'ble Madras High Court in ***Writ Petition No. 11030 of 2024*** held as under:

- Observed that, the Petitioner was called upon to show cause concerning a sum of INR 8,27,252/-, which was arrived at on an assumption that there was sales suppression. However, the Impugned Order imposed a tax liability of INR 14,97,072/- by comparing the FORM GSTR-3B return and the FORM GSTR-2A and an equal amount of penalty. The Impugned Order did not proceed based on the SCN. It was also noticeable that the Petitioner's electronic credit ledger was debited to the extent of INR 7,52,047/-. In these circumstances, the Impugned Order cannot be sustained.
- Held that, if the Respondent intended to modify the tax proposal in light of the Petitioner's reply, a fresh Show Cause Notice should have been issued. Hence, the Impugned Order was set aside by leaving it open to the Respondent to issue fresh proceedings by issuing a fresh Show Cause Notice to the Petitioner, and the present writ petition was disposed of.

Conclusion

The ruling in *M/s. Vela Agencies v. Assistant Commissioner, State Tax* underscores the necessity for tax authorities to adhere strictly to procedural norms, ensuring fairness and transparency. The decision mandates that any deviation from the original SCN must be preceded by issuing a fresh SCN, providing the assessee an opportunity to respond to the revised demands. This case sets a vital precedent, reinforcing the principles of natural justice in tax administration.

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