



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**Dated: 01.07.2022**

**CORAM:**

**THE HON'BLE Dr.JUSTICE ANITA SUMANTH**

**W.P. No.13374 of 2019**  
**and WMP No.13487 of 2019**

Rohit Goel

.. Petitioner

**Vs.**

1. The Additional Director General,  
The Directorate General of Goods and Services Tax  
Intelligence, Coimbatore Zonal Unit,  
No.155-1, Lakshmanan Street,  
Behind Ukkadam Bus Stand,  
Ukkadam, Coimbatore – 641 001.

2. The Senior Intelligence Officer,  
Office of the Deputy Director,  
Directorate General of Goods and Services Tax  
Intelligence, Hosur Regional Unit,  
222/1A1, SRM Tower, Near RC Church,  
Outer Ring Road, Shanthi Nagar,  
Hosur – 635 109.

3. The Senior Intelligence Officer,  
Directorate General of GST Intelligence,  
Bengaluru Zonal Unit, Bengaluru.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India



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praying to Writ of Mandamus directing the respondents to refund the amount of Rs.9.39 lacs collected from the petitioner's residence on 14.3.2019 in the absence of an opportunity by way of show cause notice and orders of assessment passed under the provisions of the Goods and Services Tax Act, 2017 despite the direction of the Hon'ble Madras High Court in the judgment reported in (1992) 87 STC 513 in the case of Hotel Blue Nile V. State of Tamil Nadu and others.

For Petitioner : Mr.P.Rajkumar  
For Respondents : Mr.V.Sundareswaran  
Senior Panel Counsel

### **ORDER**

The petitioner has sought a mandamus for a direction to the respondents to refund an amount of Rs.9.39 lakhs collected from his residence on 14.03.2019. At the time when the Writ Petition was filed, proceedings were at a nascent stage, and no show cause notice or order of assessment had been passed.

2. Simultaneous with this Writ Petition, the company in which the petitioner is a Director had filed Writ Petitions in W.P.Nos.33864, 13289 and 13281 of 2019, seeking a mandamus in the former two and certiorarified mandamus in the third Writ Petition. The mandamus was sought in regard to a direction to the respondents to initiate proceedings for



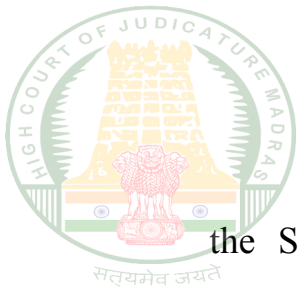
assessment under Section 73/74 of the Central Goods and Services Tax Act, 2017 (in short 'Act') as well as refund of amount collected from the

company in the course of the proceedings for investigation. The certiorari related to an order passed in relation to an attachment of bank account of the company even pending proceedings.

3. The Writ Petitions were disposed by way of a common order on 06.01.2020, wherein, in conclusion, the respondents were directed to complete the assessments within a time frame fixed and as far as the refund was concerned, the same was held to be subject to the anticipated assessment.

4. The revenue appears to have filed Writ Appeals as against the aforesaid order in W.A.Nos.170 and 172 of 2020, wherein, order dated 06.01.2020 was confirmed except to extend the time limit for completion of the proceedings. The Division Bench, at paragraph 5 of order dated 13.10.2020 extended the time frame fixed already, by three months from date of their order.

5. Contempt Petitions came to be filed by the petitioner alleging non-compliance with the timelines as set out by the Division Bench in which sub-applications were filed by the respondents. The Contempt Petitions and



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the Sub-Applications were disposed together by a Division bench on 25.02.2022, wherein, the Bench was of the view that there was no wilful non-compliance of the timelines laid down, but that the delay had been occasioned on account of the conditions caused by the Covid Pandemic.

6. Thus, on a consideration of both the contempt petition as well as the request of the respondents for further time to complete the proceedings, at paragraph 8, the Division Bench fixed an outer time limit of four months from date of receipt of a copy of that order for completion of assessment proceedings.

7. To be noted, that the Sub-Applications filed by the respondents alleged non-co-operation and delay on the part of the petitioner in finalisation of the assessment proceedings. The order of the Division Bench dated 25.02.2022 had been received by the respondents on 08.04.2022 and the outer time limit would thus run from 08.04.2022 and expire on 08.08.2022.

8. However, there has been a delay of 2 months in forwarding the order to the concerned Assessing Officer and when an explanation was sought from the respondents in regard to the delay, no explanation, let alone one that is acceptable, is given by panel counsel.



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9. The respondents are of the rank of Additional Director General and Senior Intelligence Officer of the Directorate General of Goods and Services Tax Intelligence and, in my view, have not exhibited the expected diligence or devoted necessary attention to effect compliance of the order of the Division Bench. They are put to terms for the intervening delay of 2 months and directed to pay a sum of Rs.50,000/- (Rupees fifty thousand only) to the Cancer Institute, Adayar, Chennai within a period of two weeks from today.

10. The issue that remains now is a consideration of the prayer for mandamus and my attention is drawn to the provisions of Section 67 of the Act, that deal with the powers of Inspection, Search and Seizure. It is the petitioner's case that, on a combined reading of Section 67(2), second proviso and Section 67(3), the amount of Rs.9.39 lakhs collected from the petitioner's residence on 14.03.2019 would have to be returned, since it has not been appropriated towards the demand quantified under show cause notice dated 31.07.2021.

11. Per contra, it is the argument of the counsel for the respondents that the amount must be retained till completion of proceedings and this conclusion is, according to him, apparent from a simple reading of the



WEB COPY 12. The provisions of Section 67(2) authorise search and seizure of premises by the authorised officials, who upon conduct of such search, may seize such documents, books or things as may be, in their opinion, necessary to determine the duty in a particular case. The second proviso protects the interest of the assessee by stating that such documents/books/things referred to in sub-section (2) or any other document/books/things relied upon by a taxable person or any other person that have not been ‘relied upon’ for the issue of notice under this Act shall be returned within a period of 30 days from date of issue of notice.

13. The use of the phrase ‘relied upon’ is wide and in this context, my attention has been drawn to the show cause notice itself, which at paragraphs 2.2.1.2(vii) and 4.3.6(i) thereof, makes specific reference to the amount of Rs.9.30 lakhs that has been seized. It is correct that the aforesaid amount has not been appropriated towards the liability.

14. However, such appropriation is not a condition under Section 67(2) or (3) and the condition is only that the asset seized must be ‘relied upon’ by the authorities for issue of show cause notice. Thus, in the present case, the references to the amount in the course of the show cause notice



would, in my considered view, justify the retention of the amount till proceedings for adjudication are complete.

15. This view is also supported by the language employed in second proviso which states that the asset seized may be retained by the Department till such time the enquiry or proceedings under the Act are complete. Based upon the aforesaid reasons, the mandamus as sought for by the petitioner is not liable to be granted and hence the same is rejected.

16. The direction of the Division Bench is to complete the proceedings within a time frame of four months. The petitioner appears to have made a request for cross examination of certain parties which request shall be considered by the respondent in accordance with law. The proceedings, including consideration of request of cross examination and grant of request if the respondent believe that such request is to be granted, shall be completed within a period of 6 weeks from date of issuance of this order.

17. Both learned counsel would assure the Court that the concerned parties will co-operate fully in adhering to the timelines as aforesaid. It is made clear that upon conclusion of adjudication, the amount seized is liable to be refunded to the party, unless it is appropriated in accordance with law.



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18. This Writ Petition stands dismissed, though with the aforesaid observations. No costs. Connected Miscellaneous Petition is also dismissed.

01.07.2022

Index:Yes

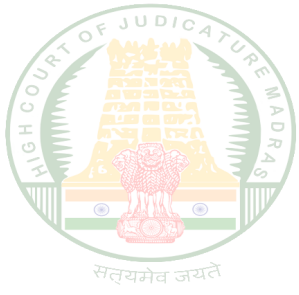
Speaking Order

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To

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The Directorate General of Goods and Services Tax  
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No.155-1, Lakshmanan Street,  
Behind Ukkadam Bus Stand,  
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**Dr.ANITA SUMANTH, J.**

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