

Mismatch in ITC can be communicated by way of issue of a show cause notice to recipient - Madras HC

30 June 2022



Summary

The Madras High Court (HC) has stated that the rectification of a mismatch could have been done by the petitioner at the time of the receipt of the show cause notice (SCN). Further, if the petitioner wanted to rectify the mismatch, it should have submitted the supporting documents to substantiate that the supplier has paid the outward tax at its end. Therefore, the HC held that the SCN issued to the petitioner itself can be treated as a communication intimating mismatch between the supplier and the recipient.

Facts of the case

- The petitioner¹ is a dealer under the GST regime and has availed the ITC for the FY 2017-18 and 2018-19.
- The Revenue has issued the SCN requiring the petitioner to explain the mismatch in input tax credit (ITC). The petitioner has replied to such SCN. The Revenue passed an impugned order considering such reply.
- The petitioner contended that as per the provision², the Revenue authorities have obligation to first communicate³ the mismatch to both the supplier and recipient. After such communication, there must be a procedure to be followed. Thus, SCN cannot be issued as a first communication.
- The Revenue submitted that SCN issued to the petitioner is itself a communication and reply could have been given with substantiated documents to show that the supplier has paid tax.

the petitioner would have done the rectification at the time of receipt of SCN. If the petitioner wanted to rectify the mismatch, it should have submitted the reply and the supporting documents to substantiate that the supplier has paid the outward tax at its end. However, the petitioner has failed to do so. Therefore, the HC has held that SCN can be treated as a communication intimating the mismatch between the supplier and the petitioner.

Madras HC observations and ruling⁴:

- **SCN can be treated as a communication:** The HC stated that the Revenue's submission is right, and

¹ M/s. Mahendra Feeds and Foods

² Section 42(3) of CGST Act, 2017, Now omitted

³ as per Section 42(3)

⁴ Writ Petition No.11191 of 2022 and W.M.P.No.10767 of 2022

Our comments:

As per GST provisions, in case ITC claimed by the recipient is in excess of the tax declared by supplier, the discrepancy shall be communicated electronically in Form GST MIS-1 to the recipient and GST MIS-2 to the supplier respectively. The objective behind introduction of section 42 and 43 was to ensure that the supplier reports its correct tax liability and make appropriate payment of taxes to the exchequer

However, in the present case, the Madras HC has held that a SCN issued to the recipient can be treated as a communication intimating mismatch of ITC under Section 42(3) of the CGST Act, 2017. Thus, it seems that the above ruling is not in consonance with the provisions and arbitrary. Since the discrepancy should be communicated to both the supplier and the recipient in the prescribed manner, direct issuance of the SCN only to the recipient in the present case does not hold good.

Further, it is relevant to note that the invoice matching mechanism⁵ was expected to be accomplished by the introduction of return process wherein GSTR-2 and GSTR-3 were to be activated. However, since these forms were not made active, the matching process is also not operational. Furthermore, the government vide Finance Act, 2022 has omitted these sections⁶ so as to do away with the two-way communication process in return filing.

⁵ contemplated under Sections 42 and 43

⁶ Yet to be notified

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