

GST demand cannot be confirmed without verifying if revenue loss results due to erroneous reporting of credit notes as ITC – Madras HC

17 April 2024



Summary

The Madras High Court (HC) has noted that the petitioner has erroneously reported credit note details as input tax credit (ITC). In this respect, the HC has held that the Revenue cannot confirm the demand without ascertaining whether the amount shown as ITC matches the value of the credit notes and if there is revenue loss due to the excess availment of ITC. The HC further observed that the adjudicating authority had not considered the petitioner's response while passing the demand order. As a result, the HC annulled the order and directed the authority to reconsider the assessee's arguments and issue a fresh order.

Facts of the case

- M/s. Oasys Cybernetics Private Limited (the petitioner) supplies and installs point-of-sale machines in ration shops operated by the Tamil Nadu Civil Supplies Corporation by integrating it with a central server.
- The petitioner received a show cause notice (SCN) for the period 2017-18, demanding tax, interest, and penalty on account of discrepancies between Form GSTR 3B and GSTR 2A returns.
- The assessing officer passed an assessment order confirming the demand without properly examining the petitioner's response to the SCN.
- Aggrieved by the impugned order, the petitioner filed a writ petition before the HC.

Petitioner's submissions

- Issuance of credit notes was one of the reasons for the discrepancy. Inadvertently, the credit notes were reported under B2C (others) instead of Heading 9B of Form GSTR-1. Further, such credit notes were erroneously reported as ITC, and as a result, there was no revenue impact.
- For other discrepancies, the petitioner submitted a certificate from the chartered accountant (CA) in compliance with Circular No.183/15/2022-GST dated 27

December 2022. However, the assessing officer reversed the ITC, considering inadvertent errors made by the petitioner in reporting under Form GSTR-1.

Madras HC's observations and judgement [W.P. No. 9624/2024 and W.M.P. Nos. 10656 & 10657 of 2024; Order dated 12 April 2024]

- **Examination of ITC and credit note values necessary to ascertain revenue loss:** The HC observed that the officer has not ascertained if the amount reflected as ITC matches the credit note values. In the absence of such an exercise, it cannot be determined whether there is any revenue loss by way of excess availment of ITC. The HC also noted that the authority confirmed the demand merely because credit notes were not duly reported. Hence, the impugned order demands interference.
- **Impugned order is not a 'speaking order':** The HC observed that the reasons for the rejection of the CA certificate and the petitioner's response are not stated in the impugned order. Therefore, the HC set aside the order and remanded the matter to the adjudicating authority for re-consideration while considering the petitioner's contentions.

Our comments

The HC highlights that it is important to check the revenue neutrality aspect in the case of unintentional mistakes made by taxpayers while reporting credit note details as ITC.

This is a welcome judgement and provides relief to taxpayers who might have made such inadvertent reporting errors during the initial implementation phase of the GST laws.

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