



Lawgics

By Nidhi, Advocate



Judgment No.: 144
Dt.: 12-06-2024



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Judgment Deals With

Officers of Director General of G.S.T. (Intelligence) have the power to issue show cause notice	
Section/Rule	Section 73/ 74
Authority	Madras High Court
Case Name	M/s. Famina Shopping Mail Pvt. Ltd. VS Director General of G.S.T. Intelligence
Dated	14 th March, 2024
Citation	W.M.P.(MD) Nos.16032 of 2021 and 5247 of 2023

Brief Facts of the Case:

The petitioner was running a Departmental Store. There was a search and seizure operation in the petitioner's premises, followed by which, the petitioner was issued with the impugned proceedings dated 12.10.2021 by the DGGI.

Contention of the Petitioner:

The DGGI is not the proper Officer and adjudicating authority as contemplated under Sections 73 and 74 of the CGST Act, which has been highlighted in Circular No.23/2021 dated 04.10.2021.

The show cause notice can be issued only by the jurisdictional proper Officer concerned and not by the Inspecting Officers.

Since the impugned proceedings have not been issued by the proper officer, it is liable to be quashed.

Contention of the DGGI:

The inspection was conducted in the petitioner's premises on 06.06.2019 and 20.08.2019 and they found that the petitioner sold the goods, which were procured from the local suppliers in their own packaged unit containers.

Since the petitioner did not discharge the GST amount, a summon was issued to the petitioner on 26.06.2019, which was challenged by the petitioner in W.P.(MD)No. 16842 of 2019 before this Court and this Court, by order dated 30.07.2019, directed the DGGI to conduct an enquiry and issue a show cause notice and adjudicate the case.

Pursuant to the direction of this Court, a pre-show cause notice was issued in Form GST DRC-01A dated 12.10.2021, which is challenged in this writ petition.

The circular No.23/2021 dated 04.10.2021, relied upon by the petitioner, was issued by the Commissioner of Commercial Tax (State) laying down the proper procedure of adjudication by the Intelligence Wing Officer. The said circular is applicable to the State GST Officers and it is not binding on the central tax officer.

CBIC has issued a Circular No.31/05/2018-GST dated 09.02.2018 assigning proper Officers under various Sections of the statute and giving powers to issue show cause notice. Therefore, DGGI is the proper officer to issue the impugned proceedings.

The impugned proceedings is only a pre-show cause notice and it has been issued in Form GST DRC-01A in order to afford an opportunity to the petitioner to resolve the dispute by depositing the tax and interest at pre-show cause notice stage and also to reduce the litigations.

Findings & Decision of the Court:

The DGGI have conducted an inspection on the petitioner's premises. During the inspection, they found that during the period from 22.09.2017 to 20.08.2019, the petitioner company has effected outward supply of taxable goods viz., certain grocery items, under the unregistered brand name, but, they have not paid the appropriate GST and not fulfilled either one of the conditions prescribed in the Notification No.27/2017-Central Tax (Rate) dated 22.09.2017 to avail exemption. Therefore, the impugned proceedings have been issued.

As per the Circular dated 09.02.2018 issued by the CBIC, Central Government of India, the officers of Director General of G.S.T. (Intelligence) shall exercise the power to issue show cause notice. Therefore, the impugned proceedings have been issued by the competent authority.

Moreover, the impugned proceedings are only a pre-show cause notice. Therefore, the writ petition was dismissed.