

# MADRAS HIGH COURT

**W.P.No.33 of 2020 And WMP Nos.39 and 40 of 2020 and 8435 of 2021**

**M/s. Rayan Traders-Appellant**

**Versus**

**Principal Chief Commissioner of Gst Central Excise, Addl.  
Director General  
of Goods And Service Tax Directorate General Of Goods And Services Tax,  
Deputy Commissioner (Preventive Office Of Principal Chief Commissioner  
of Gst And Central Excise Chennai North,  
Hdfc Bank Ltd Represented By Its Branch Manager Korattur Branch-  
Respondent**

**Honourable Dr. Justice Anita Sumanth**

**Date of order: 18/11/2022**

**Appearance:**

**Mr.Senniappan for Mr.Hari Babu for the petitioner.**

**Mr.K.Umesh Rao Junior Standing Counsel – R1 to R4, Mr.Rohith for  
M/s.King & Patridge for the respondent.**

## **JUDGMENT**

The petitioner is an assessee under the Central Goods and Services Tax Act, 2017 (in short 'Act') and challenges attachment notice issued to the HDFC Bank, Korattur Branch dated 27.12.2019 in Form GST DRC-13. In terms of the aforesaid impugned notice, the bank has been directed to withhold the amount of upto a sum of Rs.74,52,943/- and pay the same forthwith to the Government.

2. This direction is premised upon the aforesaid sum becoming due from the petitioner in terms of the provisions of the CGST Act/TNGST Act, 2017. The Assessing Officer in the impugned notice refers to the petitioner as a defaulter and the relevant portion of the form of the impugned notice reads thus:

*'Particulars of defaulter – GSTIN – 33BRMPS7722P1ZY*

*Name – M/s.Rayan Traders (Shri.Mohammed Samsudeen Proprietor)*

*- Account No.50200013842861*

*Demand order no.:*

*Date:*

Reference no. of recovery: C.No.IV/6/221/2019-HPU.Gr.8

Date : 2.12.2019

Period : 8/2017 to 4/2018

Whereas a sum of Rs.74,52,943/- on account of tax, cess, interest and penalty is payable under the provisions of the CGST Act/Tamilnadu GST Act, 2017 by M/s.Rayan Traders (Shri.Mohammed Samsudeen, Proprietor) New No.4, Old No.17/2, Agathiyar Street, TMP Nagar, Padi, Chennai – 600 050 holding GST No.33BRMPS7722PIZY who has failed to make payment of such amount; and/or

It is observed that a sum of Rs.74,52,943/- is due or may become due to the said taxable person from you;

or

It is observed that you hold or are likely to hold a sum of Rs.74,52,943/- for or on account of the said person.

You are hereby directed to pay a sum of Rs.74,52,943/- to the Government forthwith or upon the money becoming due or being held in compliance of the provisions contained in clause (c)(i) of sub-[section \(1\)](#) of [section 79](#) of the Act. ....'

3. It is an admitted position in this case that there has been no order of assessment or any other order passed under the applicable provisions making a determination of the aforesaid amount as being 'due' from the petitioner. Neither has the petitioner been assessed under [Sections 73](#) or [74](#), nor has there been any order passed reversing the Input Tax Credit that is claimed by the petitioner.

4. In such circumstances, it is my considered view that the impugned notice has no legs to stand. The respondent relies on the fact that there was a statement made by the petitioner in the course of an enquiry conducted by the Intelligence Officer under [Section 70](#) of the Act. However, a statement recorded cannot substitute a determination of liability under an order of assessment or any other order passed under the applicable provisions under the Act.

5. Learned counsel for the official respondents would submit that the petitioner has, in fact, filed a return in GSTR 1 and 3B admitting liability, but has set off the output tax liability as against the available credit. According to the respondents, there is no credit that the petitioner could have sought to set off as against the liability.

6. However, and admittedly, though the provisions of [Section 42](#) provide for a procedure for matching, reversal and re-claiming of input tax credit in order that a proper determination of the credit may be made, the officer has not initiated/undertaken the procedure. Having not done so, recourse to coercive recovery alone, is unsustainable.

7. This Court was concerned with a similar factual and legal position in the case of *VN Mehta & Company v. The Assistant Commissioner* (W.P.No.26187 of 2019 order dated 08.11.2019), and that Writ Petition came to be allowed, this Court holding that the impugned proceedings were not maintainable under law, so too in the present case. The Impugned Notice dated 27.12.2019 is set aside in light of there being no statutory sanction for the issuance of the same in terms of [Section 83](#) of the Act.

8. This Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.