

GIB/TN/V.N Mehta/08-11-2019 /HC-104**High Court Category :** Others**State :** Tamil Nadu**Order No.:** GIB/TN/V.N Mehta/08-11-2019 /HC-104**Name of Entry :**

V.N Mehta & Company

Date : 08-11-2019**Breif Issue :****Facts & Issue of the case**

V.N Mehta & Company (“the Petitioner”) is a company who filed petition on the ground that proceedings was issued straightaway, even before making an assessment or at least initiating proceedings for making the assessment. It is the specific case of the petitioner that no proceedings whatsoever, was issued against the petitioner for determining either the tax, cess or interest or penalty totally amounting to Rs.53,28,645/- as claimed in the impugned proceedings. Therefore, it is contended that Section 79 of the Central Goods and Services Tax Act, 2017, cannot be invoked by the AC GST (Chennai) to recover the said sum as if, such sum is an arrear payable by the petitioner.

Hence, This writ petition was filed challenging the proceedings of the first respondent i.e AC GST (Chennai) dated 07.08.2019 addressed to the fourth respondent i.e The Manager (Indian Overseas Bank) through which, the fourth respondent was directed to recover a sum of Rs.53,28,645/- from the account maintained by the petitioner on the reason that the said sum on account of tax, cess, interest and penalty is payable by the petitioner under the provisions of the GST Act and that the petitioner had failed to make such payment.

Decision of Advance Ruling Authority :**Decision:**

The Hon’ble Madras High Court in the instant case has held that recovery proceedings cannot be initiated u/s 79 without even before making an assessment or at least initiating proceedings for making the assessment. The recovery proceedings u/s 79 were initiated against the Petitioner on the basis of an admitted liability in a statement given to the Department.

The said admission was also later retracted by the Petitioner through a written communication. The Hon’ble Hon’ble High Court noted that it is for the Department to determine the tax liability by resorting to the procedures in accordance with law, instead of issuing the impugned proceedings straightaway under Section 79 based on the so called admission which is subsequently retracted.

Accordingly, the proceedings-initiated u/s 79 were held not sustainable as no proceedings were

pending against Petitioner even till date, and accordingly the said proceedings would not be saved by Section 83 i.e. in the interest of revenue. Thus, the proceedings are not maintainable and merit being set aside.