

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 215 of 2022

M/s. CJ DARCL LOGISTICS LIMITED

..... Petitioner

Versus

1. Union of India represented through the Secretary,
Ministry of Finance, Department of Revenue,
P.O. and P.S.- New Delhi, New Delhi-110001
2. Commissioner of CGST & CX, Outer Circle Road, P.O.
and P.S.- Bistupur, Jamshedpur-831001, Jharkhand
3. Joint Commissioner of the Central Goods & Service Tax and
Central Excise (Appeals), Grand Emerland Building
(2nd & 3rd Floors) Ashok Nagar, Kadru- Argora Main road,
P.O and P.S- Kadru, Ranchi- 834002.
4. Assistant Commissioner of the CGST & Central Excise
Division IV, 2nd Floor, GST Bhawan, Outer Circle
Road, P.O. and P.S.- Bistupur, Bistupur, Jamshedpur-
831001, Jharkhand.

..... Respondents

CORAM: Hon'ble The Acting Chief Justice
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Pratyush Kr. Jha, Advocate
For the Respondents : Mr. Amit Kumar, CGC

14/ 09.02.2023 The instant application has been preferred for following reliefs:

- a) *A writ of and/ or order and/or direction in the nature of writ of mandamus, or a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned Order No. 273/CGST/JSR/2021 dated 08.12.2021 (Annexure-12) passed by Respondent No.3 whereby the Refund application filed by the Petitioner has been fully rejected.*
 - b) *A writ of and/or order and/or direction in the nature of writ of mandamus, or a writ of certiorari or any other appropriate writ, order or direction to the Respondents to allow the refund claimed by the Petitioners along with interest.*
 - c) *Ad-interim order in terms of above prayer;*
 - d) *Costs of and incidental to this application be paid by the Respondents;*
 - e) *Such further or other order or orders be made and/or directions be given as would afford complete relief to your petitioner;*
- AND/OR
- f) *For issuance of any other relief(s) as the Petitioner may be found entitled to, in law;*
 - g) *And your Petitioner, as in duty bound, shall ever pray;*

2. The brief facts of the case is that the petitioner is a public limited company engaged in the business of providing *interalia* goods transportation agency (GTA) services under reverse charge mechanism (RCM) bearing GSTIN 20AAACD2086J2ZZ in State of Jharkhand. The petitioner is registered for the same services vide another registration in the State bearing GSTIN 20AAACD2086J1Z0, but under forward charge mechanism (FCM). The requirement of two registrations stemmed out of the commercial necessity of

business, wherein certain customers of the Petitioner were willing to discharge the liability under RCM; whereas others were not so willing. Under the first registration, the liability to pay output tax, was upon the recipient of services, hence there was no output tax liability to be discharged by the petitioner with respect to GTA services supplied and also no ITC for GTA services was availed. Whereas, under the second registration, the Petitioner was regularly paying the GST liability for each tax period (viz. month).

3. The case of the petitioner is that inadvertently, on account of a bonafide mistake, he deposited an amount of IGST of Rs.2,39,705/- CGST of Rs.83,86,310/- and SGST of Rs.83,86,310/- totaling to Rs.1,70,12,325/- in its electronic cash ledger [Pertaining to the RCM registration] instead of depositing it in the cash ledger of the GSTIN 20AAACD20866J1Z0 [pertaining to FCM registration]. The petitioner again deposited the same amount in the electronic cash ledger of the FCM registration to file GSTR-3B return. As there was double payment and the amount was lying as excess balance in the electronic cash ledger of the petitioner, an application for refund in FORM GST RFD-01 was filed on 18.04.2021.

4. During course of hearing, pursuant to the order dated 12.01.2023 Mr. S.K. Biswas, Assistant Commissioner, CGST, Jamshedpur, was present. The copy of the assessment records as certified to be true have also been submitted before the court for perusal in terms of the aforesaid order.

5. The petitioner was proceeded against a show cause notice dated 17th May, 2021 on an application for refund under Section 54 of the CGST Act, 2017 in respect of his registration GSTIN registration No. 20AAACD2086J2ZZ. The petitioner claims that the following communication was sent to him on his portal to furnish reply within 15 days of receipt of the notice. For brevity, the same is extracted herein below:

“On verification of GSTR-1 and GSTR-3B for the month of August, 2018 to March, 2021 of the applicant, it is observed that the applicant-M/s. CJ DARCL Logistics Limited, having GSTIN: 20AAACD2086J2ZZ have showing the value and tax amount for outward supply in the column of ‘4B-REVERSE CHARGE’ in the GSTR-1 Returns, whereas they have showing the same amount for outward supply in the column of “outward taxable supplies (other than zero rated, nil rated and exempted) in the GSTR-3B, which have not been discharged by them for payment of tax liabilities. The reasons may please be explained within 15 days of receipts of this notice.”

6. Though petitioner contends that the formal notice in FORM GST-RFD-08 under Rule 92(3) for rejection of application for refund was not

intimated to him, but it is the contention of the department that it was duly uploaded on his portal which is accessible through a login and password by the assessee. Be that as it may, the notice in Form GST-RFD-08 dated 17th May, 2021 in its body did not disclose any reasons for inadmissibility of refund from the dropped down of the amount of Rs.1,70,12,325/- as would appear from the relevant part of the Form GST-RFD-08 extracted hereunder:

“This has reference to your above mentioned application for refund application is liable to be rejected on account of the following reasons:

Sr. No	Description (select the reasons of inadmissibility of refund from the drop down)	Amount Inadmissible
1	Other	17012325

You are hereby called upon to show cause as to why your refund claim, to the extent of the amount specified above, should not be rejected for reasons stated above.”

Petitioner furnished his reply to the allegation of mismatch in the outward tax supplies in GSTR-3B returns compared to GSTR-1 at Annexure-8 filed on 20th May, 2021. Petitioner was not granted any personal hearing during the adjudication process. But his claim was rejected by order dated 14th June, 2021 in FORM GST RFD-06 passed by the Assistant Commissioner of CGST and CX-Division-IV Jamshedpur-Respondent No.4. The adjudicating authority on examination of his documents submission and returns which were uploaded in the portal for the period August, 2018 to March, 2021 came to finding that the applicant had taken two registrations of the GST number vide GSTIN No. i) 20AAACD2086J2ZZ, and ii) 20AAACD2086J1Z0 of the same category of services i.e. “Transport of goods by Road”; “Transport of goods by Rail” and “Cargo handling services” in the State of Jharkhand having the same permanent account number, the principal place of business of both GSTIN being the same as well as the books of account were also maintained through the same bank account transaction for both GSTINs which is in teeth of the proviso of sub-Section 2 of the Section 25 of the CGST Act, 2017.

7. To decide the issue in hand, the pre-amended proviso to subsection 2 and after amendment carried out w.e.f. 1st February, 2019, are extracted hereunder:

“(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Pre amended proviso:

“Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.”

After amended proviso:

“Provided that a person having multiple places of

business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.”

In the instant case, the learned adjudicating authority proceeded to decide the SCN taking into account the aforesaid illegality committed by the petitioner by obtaining two GSTIN numbers in respect of which the first one GTA services was under reversed charged mechanism @ 5% RCM without ITC and the second one providing GTA under forward charge mechanism @ 12% FCM with ITC. The learned adjudicating officer dealt with the scenario where the valuation was devised as per formula which ensure that ITC availed by unit opting for 12% rate stands appropriated in the ratio of turnover of 5% unit and 12% in a Tabular Form. Thereafter, he arrived at a finding that the applicant had taken benefit of ITC of Rs. 4,57,27,369/- in excess during the period as discussed therein above due to reason that he has taken two GST registrations in the same State under same PAN one GSTIN for FCM @ 12 % with ITC and another GSTIN for RCM @ 5 % without ITC. This according to the AO was a suppression of facts resulting in heavy loss to the Government revenue due to twice GSTIN by taking excess ITC of Rs.4,57,27,369/- from GSTIN: 20AAACD2086J1Z0. Petitioner was accordingly advised to reverse the excess ITC with interest *suo motu* before any adverse action is taken against him. However, in view of the aforesaid facts since the applicant had not paid the aforesaid amount in terms of Section 49(1) of the CGST Act, 2017 and had not maintained ‘Electronic Cash Ledger’ in terms of Sub section (6) of Section 49, the AO held that he had failed to fulfill the laid down conditions under Section 54(1) of the CGST Act read with Rule 89 (1) of the CGST Rules, 2017 as such his application for refund an amount of Rs.1,70,12,325/- in respect of GSTIN No. 20AAACD2086J2ZZ was rejected by the order in original which has been affirmed by the appellate authority.

8. Learned counsel for the petitioner has contended *inter alia* as under:

- (i) That the impugned proceedings are vitiated for violation of principles of natural justice as no proper show cause notice has been issued upon him.
- (ii) The communication at page 144 to the writ petition was on a different allegation and the show cause notice in Form GST-RFD-08 which was not served upon the petitioner had no reasons or contraventions to which the petitioner could submit a reply;
- (iii) It was only after submission of petitioner’s reply that the

adjudicating officer proceeded to decide the refund application on grounds or alleged contraventions which were never part of the show cause notice and communicated to him; i.e. related to maintaining two GSTIN numbers one under RCM and the other under Forward charge mechanism with two different rates of GST to be charged upon the services being provided;

- (iv) It is submitted that maintaining of two GSTIN numbers is not impermissible either under the pre-amended proviso to subsection 2 of Section 25 or under the amended proviso;
- (v) Since petitioner is entitled to maintain two GSTIN registrations in view of the definition of business vertical the entire adjudication order rejecting the claim for refund is bad in law.

9. Learned counsel contended that the petitioner had duly explained in his defence reply that the amount of tax received against the other GSTIN having with FCM facility @ 12% with ITC was inadvertently deposited in the other GSTIN with RCM facility and having prescribed rate of 5% without ITC. If the main contention of the petitioner would have been accepted there was no basis to refuse and reject the refund application. Petitioner was entitled to refund of the amount with statutory interest in terms of Section 54 read with Section 56 of the CGST Act.

10. On the other hand the respondents have contested the plea *inter alia* on the following grounds:

(i) The petitioner was not entitled to have two GSTIN numbers in the same place of business i.e. Jamshedpur in the district of East Singhbhum and that too in respect of the same nature of business. Mere change in the nomenclature of the business did not make any change in the nature of business which was essentially goods and transporting services, GTA and ground cargo handling services.

(ii) The petitioner had consciously taken the defence of two registration numbers in his reply to the show cause notice and that is why the adjudicating authority proceeded to determine the liability taking into account both the GSTINs which are not permissible in law.

(iii) The entire plea raised by the petitioner herein was taken into consideration by the appellate authority which refused to interfere with the order in original as the act of the petitioner in having two GSTINs in the same place of business, in the same nature of business under the same PAN number and maintain to the same Bank account was not proper in the eye of law and

rather in the teeth of the amended proviso to Section 25(2) of the CGST Act, 2017. Therefore, order in original and the impugned appellate order does not suffer from any infirmity.

However, learned counsel for the respondent has not been able to dispute the contention of the petitioner that the show cause notice at page 144 did not make any allegation of contravention of Section 25 (2) proviso to the CGST Act against the petitioner as regards having two GSTIN numbers within the same place of business and in respect of the same nature of business. His reply is that the department was unaware of the two GSTIN registrations of the petitioner at the time of issuance of the show cause notice.

Learned counsel for the respondent is also not in a position to dispute the contention of the petitioner regarding the absence of any specific contravention indicated in form GST-RFD-08 which was the basis for proceeding against the petitioner on his refund application.

11. Having heard learned counsel for the parties and after going through the documents available on record it appears that a show cause notice was issued to the petitioner on 17th May, 2021 on the application for refund filed by the petitioner under Section 54 of CGST Act, 2017 in respect of his Registration GSTIN No. 20AAACD2086J2ZZ. It further transpires that the petitioner herein refuted the allegation of the department given in the show cause notice vide his reply by clarifying among other things that returns in FORM GSTR-3B and FORM GSTR-1 have been correctly filed. However, interestingly, the order in original which was passed pursuant to the reply to the show cause notice did not deliberate with the content of reply but the adjudicating officer has proceeded to pass an order rejecting the refund application on the grounds which were never part of the original show cause notice as indicated in paragraph No.5 herein above.

In other words, the show cause notice (Annexure-7) was of different allegation and only after submissions of petitioner's reply the order in original was passed on the grounds which were never part and parcel of the original show cause notice.

For better appreciation, the finding of the OIO can be summarized as under:

- (i) Two registrations could not have been obtained by the petitioner within the State of Jharkhand under the same PAN and at the same principle place of business in terms of provision of Section 25(2) of the CGST Act.

- (ii) The petitioner could not have availed the option for both the RCM @ 5% GST as well as FCM @ 12% GST, against the outward supply of GTA services.
- (iii) Petitioner availed ITC of Rs.7,08,712/- against outward supplied for GTA services charging GST @ 5% RCM by the service recipient, in violation of Notification No. 20/2017-Central Tax (Rate) dt. 05.08.2017.
- (iv) As far as the petitioner company's office bearing GSTIN 20AAACD2086J1Z0 is concerned, it has claimed ITC in excess of Rs.3,34,92,342, which is ineligible in terms of Section 17(1), (2) and (3) of the CGST Act.
- (v) On combining the turnover and ITC availed by both the units paying tax under FCM and RCM, it is observed that the petitioner has taken ITC in excess of Rs.4,57,27,369 by virtue of obtaining two registrations, which has resulted in revenue loss.

From the finding as enumerated hereinabove, it clearly transpires that regarding none of the grounds on which the OIO has been passed there is any allegation made in the show cause notice. It is settled principle of law that if an allegation or ground is not made at the time of issuance of show cause notice, the authority cannot go beyond the scope of show cause notice to create new ground at the later stage of adjudication.

12. It further transpires that the impugned proceedings are also vitiated for violation of principles of natural justice as neither a proper show cause notice has been issued nor any opportunity of hearing was given to the petitioner. It is also now well settled that before adjudicating any issue which is against the interest of assessee; opportunity of hearing should be granted to him. In the instant case, had there been any opportunity given to the petitioner, the respondents might have proceeded to issue a subsequent show cause. At the cost of repetition, it is stated that it is only after the submissions of petitioner's reply, the Adjudicating Officer decided the refund application on the grounds which were not part of the show cause notice i.e. related to maintaining of two GSTIN number: one under RCM and other under forward charge mechanism (FCM) with two different rates of GST to be charged upon the services being provided.

13. Though the petitioner has argued on merits of the case but we do not feel it proper to give any finding on merits of the case as the impugned

order of adjudication is bad in law for the reasons that it has been passed beyond the scope of show cause notice. It further transpires that even the order in appeal does not deliberate on this issue and simply confirmed the order in original. Thus, since the show cause notice is vague and cryptic in nature and order in original has been passed beyond the show cause notice, both are liable to be quashed and set aside.

Consequently, the impugned show cause notice dated 17th May, 2021 and the consequent order in original dated 14.06.2021 and order in appeal dated 08.12.2021, are quashed and set aside. However, the revenue is at liberty to issue a fresh show cause notice and proceed in accordance with law. It is made clear that entire exercise shall be completed within a period of four months from the date of receipt/production of copy of this order; failing which the petitioner shall be entitled to claim refund in accordance with law.

14. As a result, the instant application is allowed.

(Aparesh Kumar Singh, A.C.J.)

(Deepak Roshan, J.)