

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 3908 of 2020

with

W.P.(T) No. 3909 of 2020

M/s. Godavari Commodities Ltd. Petitioner (in both cases)

Versus

1. The State of Jharkhand, through the Secretary-cum-Commissioner, State Tax Department, having its office at
At Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Ranchi.
2. Joint Commissioner of State Tax (Administration)
Ranchi Division, P.O.-G.P.O, P.S.-Kotwali, District-Ranchi.
3. Deputy Commissioner of State Tax, West Circle, P.O.-G.P.O,
P.S.-Kotwali, District-Ranchi.
4. Assistant Commissioner of State Tax, West Circle, P.O.-G.P.O,
P.S.-Kotwali, District-Ranchi Ranchi.
5. The Principal Commissioner, Central GST & Central
Excise, Ranchi. Respondents (in both cases)

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner	: Mr. Sumeet Gadodia, Adv.(in both cases)
	: Mrs. Shilpi Sandil, Adv.
	: Mr. Ranjeet Kushwaha, Adv.
For the State	: Mr. Ashok Kr. Yadava, G.A.-I. (in both cases)
For the CGST	: Mr. P.A.S. Pati, Adv.(in both cases)
	: Mrs. Ranjana Mukherjee, Adv.

Reserved on: 14/03/2022

Pronounced on: 18 /04/2022

Deepak Roshan, J: Heard learned counsel for the parties.

2. Since both these writ applications are interconnected and common issue is involved, as such both are being heard together and disposed of by this common judgment.

3. Writ Petition No. 3908 of 2020 pertains to the Financial Year 2017-18 wherein the petitioner prayed for quashing and setting aside “**summary of the order**” as contained in Form-GST DRC 07 dated 11.09.2020 issued by respondent no.4 whereby the petitioner was directed to make payment of tax, interest and penalty. Similarly Writ Petition No. 3909 of 2020 pertains to Financial Year 2018-19 wherein petitioner has made similar relief for quashing “**summary of the order**” as contained in Form-GST DRC 07 dated 11.09.2020.

4. The brief facts of the case are that the petitioner is a Public Limited Company and is primarily engaged in the business of trading of

coal. Petitioner for the purpose of trading of coal, purchases coal primarily from various subsidiaries of Coal India Limited including various Government entities like Jharkhand State Mineral Development Corporation, Heavy Engineering Corporation Limited as well as other similarly situated coal traders. It further transpires that the petitioner is having its business in various states of the country including the State of Jharkhand and State of West Bengal and the petitioner sells its purchased coal to its customers which are primarily Government undertakings like MSTC Limited, West Bengal Mineral Development and Trading Corporation Limited etc. It further transpires that the petitioner is regularly issued work orders by MSTC Limited, West Bengal Mineral Development and Trading Corporation Limited and others like entities towards supply of coal and in order to meet the said supplies, the petitioner procures coal from various sources mentioned hereinabove.

5. From the pleadings of the writ application, it further transpires that petitioner also purchased coal from other traders like R.S. Fuels Private Limited; Sandoz Impex Limited, Shri Ram Coal Traders and Sandoz Commercials who are also engaged in the business of trading of coal. As per the business module of the petitioner, in a particular period of time, the petitioner may have shortage of coal in order to fulfill its trade commitments requiring the petitioner to purchase coal from other traders mentioned above and, similarly, it may happen that the said traders like R.S. Fuel Private Limited at a particular point of time, may also have shortage of coal and, thus, would be required to purchase coal from other traders including the petitioner thus, there were inter-se purchase and sale transaction by and between the petitioner and other coal traders mentioned hereinabove.

6. The respondents carried out an inspection under Section 67 of the Jharkhand Goods Service Tax Act, 2017 in the registered premises of the petitioner. Vide inspection report dated 28.01.2019, the petitioner was directed to produce documents pertaining to movement of goods relating to purchase and sale transactions of the petitioner in exercise of powers under Section 71(2) of the CGST Act. In the said inspection report itself, it was mentioned that if the petitioner fails to produce the relevant documents as directed, proceedings for adjudication under Section 73/74, as the case may be, would be initiated against the petitioner.

7. From the record it further transpires that various communications were exchanged between the petitioner and the Respondents-State Tax Authorities and the petitioner produced several documents to demonstrate its claim towards genuineness of the transactions of purchase and sale of coal made by the petitioner. However, the Respondent-authorities were not convinced with the documents furnished by the petitioner and, accordingly, in terms of the provisions of Section 73(5)/74(5) of the GST Act read with Rule 142(1A) issued an intimation to the petitioner in Form GST DRC-01A dated 29.01.2020 directing the petitioner to make payment of the amount of tax as stated in the notice along with applicable interest and penalty. In the said intimation itself, it was stated that if the petitioner fails to pay the amount demanded, **‘show cause notice’** will be issued to the petitioner under Section 74(1) of the GST Act.

8. Subsequently, respondent No. 4 issued a **‘summary of show cause notice’** to the petitioner in Form GST DRC-01 in terms of Rule 142(1) of the GST Rules on 14th March, 2020. The specific case of the petitioner is that no show cause notice was ever issued to the petitioner and even in the summary of the show cause notice, no time line was provided as to when the petitioner was to submit its reply. Subsequently, the petitioner was issued **‘summary of order’** in Form GST DRC-07 wherein the date of the adjudication order was mentioned as 11.09.2020. Although, GST DRC-07 was issued to the petitioner, the copy of the adjudication order was not communicated to the petitioner.

9. The petitioner in the writ application has also annexed the certified copy of the entire order-sheet pertaining to the adjudication proceeding, and, from the order-sheet, it transpires that on 14th March, 2020, there is a recording that the petitioner was issued ‘summary of show cause notice’ in Form GST DRC-01. Thereafter, straightaway in the order-sheet the next date mentioned is 14th August, 2020 and the said order-sheet records, *inter alia*, that despite service of Form GST DRC-01, the petitioner has not taken any steps for payment of the due amount and, further, that due to COVID-19 more than one opportunity has been given to the petitioner. Accordingly, it was recorded that Form DRC-07 should be issued against the petitioner. It is against the aforesaid adjudication orders that the petitioner has filed the present writ petitions.

10. This Court vide its order dated 07.01.2021 tagged the writ petitions being W.P.(T) No. 3908 of 2020 with W.P.(T) No. 3909 of 2020 to be heard together. Although the impugned orders were passed by the State Tax Authorities, this Court in order to effectively adjudicate the dispute in question vide order dated 21.01.2021 even directed the Central Tax Authority through Principal Commissioner of Central GST and Central Excise, Ranchi to be impleaded as respondents and, further, direction were issued to the respective respondents for filing their counter-affidavit.

11. Thereafter, Respondents-State Tax Authorities filed their counter affidavit and in their counter affidavit an adjudication order dated 13th August, 2020 was annexed being a common adjudication order for both assessment years i.e. 2017-18 and 2018-19.

12. The said adjudication order was dated 13th August, 2020, though in Form GST DRC-07 the date of the adjudication order was mentioned as 11.09.2020. Petitioner thereafter filed amendment applications seeking amendment in prayer portion challenging the adjudication order dated 13th August, 2020 as the said adjudication order was for the first time communicated to the petitioner. The said amendment applications filed by the petitioner in both the writ petitions were allowed by this Hon'ble Court vide order dated 28.01.2021. Further, in view of apparent discrepancy in the date of adjudication order mentioned in Form GST DRC-07 and the actual adjudication order brought on record by Respondents-State Tax Authorities in their counter affidavit, this Court vide its order dated 28.01.2021 directed the respondents to file supplementary counter-affidavit annexing the entire records of the file. The entire order-sheet of the proceedings was subsequently filed by Respondent-State through supplementary counter- affidavit. The said order-sheets filed by respondents revealed that the adjudication order which was passed on 13th August, 2020 does not find any mention in the order-sheet.

13. On 14.03.2022, this Court specifically asked the counsel for the State as to whether there is any mention in the order-sheet drawn by the adjudicating officer regarding reference of the adjudication order dated 13th August, 2020, but it was fairly submitted that there is no reference in the order-sheet drawn of the adjudication order dated 13th August, 2020. It

was further admitted that no ‘**show cause notice**’ was issued and only ‘**summary of show cause**’ was issued.

14. Mr. Sumeet Kumar Gadodia, learned counsel for the petitioner assisted by Mr. Ranjeet Kushwaha, assailed the adjudication orders on the following grounds:-

- (i) No show cause notice in terms of Section 74 of the JGST Act, 2017 read with Rule 142(1) of the JGST Rules, 2017 was issued to the petitioner and, thus, the entire proceeding is bad in law;
- (ii) The impugned adjudication orders dated 13th August, 2020/11th September, 2020 have been passed in utter violation of the principles of natural justice, and, the same have been passed in utter defiance to the provisions of Section 75(4) and Section 75(5) of the JGST Act, 2017; and,
- (iii) The adjudication order dated 13th August, 2020 is an antedated order and the same has been issued actuated with malice in law to somehow justify the earlier issued Form GST DRC-07.

15. Per contra, Mr. Ashok Kumar Yadav, learned GA-I appearing for the State of Jharkhand supported the adjudication proceedings and stated that an investigation was initiated against the petitioner and despite the fact that the petitioner was directed to produce the documents towards movement of goods, it failed to produce the said documents. Resultantly, the State Tax Authorities were compelled to issue intimation to the petitioner under Section 73(5)/74(5) of the JGST Act, 2017 read with Rule 142(1)(A) of the JGST Rules on 29.01.2020, directing the petitioner to discharge the liability of tax, interest and penalty but the petitioner failed to discharge the said liability. Accordingly, the Respondent-authorities issued the summary of show cause notice in Form GST DRC-01 in terms of Rule 142(1) on 14.03.2020 and even after issuance of the said summary of show cause notice, no reply was filed by the petitioner and the authorities were left with no option but to pass an adjudication order dated 13th August, 2020. However, as already stated above, the Respondent-State Counsel has fairly admitted that although the adjudication order is dated 13th August, 2020 but there is no recording in the order-sheet regarding passing of the said adjudication order on 13th August, 2020 and the first order-sheet recorded after issuance of show cause notice is on 14th August, 2020. The respondents have, however, tried to justify the said fact

by stating, *inter alia*, that after passing of the adjudication order dated 13th August, 2020, the order-sheet in the file was drawn on 14th August, 2020 and, hence, it cannot be said that the adjudication order is an antedated order. On pointed question being put by the Court as to why in the summary of the order in Form GST DRC-07 the date of adjudication order was mentioned as 11.09.2020 instead of 13.08.2020, no satisfactory reply was given and it was merely stated that it was by mistake. Further, as already mentioned above, the Respondent-State counsel fairly stated that no show cause notice in terms of Section 74(1) of the Act read with Rule 142(1) of the Rules were issued and, merely, a summary of the show cause notice was issued. Even on the issue of grant of personal hearing, it was fairly admitted that no separate notice was issued fixing the date of personal hearing. However, again by placing reliance upon the investigation proceedings as initiated under Section 67 read with Section 71(2) of the Act, it was stated that the same would amount to sufficient compliance of the provisions of natural justice.

16. Having heard the learned counsels for the parties and after going through the documents annexed with the respective affidavits and the averments made therein including narration of facts stated hereinabove, it appears that petitioner, who is engaged in the business of trading of Coal, was subjected to an inspection proceedings under Section 67 of the JGST Act on 29.01.2019 (Annexure-10) with primary allegation of having availed ITC on goods without its actual movement. During the inspection itself, petitioner was directed under Section 71(2) of the JGST Act to produce documents evidencing the movement of goods in respect of which ITC was claimed. It further transpires that petitioner has produced documents, and, on not being convinced with the documents produced by the petitioner, Form GST DRC 01A was issued directing the petitioner to discharge the amount of tax, interest and penalty, failing which it was stated that show cause notice under Section 74(1) of the Act would be issued. Thereafter, admittedly, no show cause notice in terms of Section 74(1) read with Rule 142(1) was issued to the petitioner and only a **‘Summary of Show Cause Notice’** in Form GST DRC 01 was issued on 14th March, 2020. Even in the said ‘Summary of Show Cause Notice’, no date was notified either for filing of reply and/or for hearing.

17. Thus, the first issue to be adjudicated in the instant writ application is as to whether the very initiation of the adjudication proceeding without issuance of show cause notice is *void ab initio* and any consequential adjudication order passed thereto is *nonest* in the eye of law. The said issue has already been settled by a decision of Coordinate Bench of this Court in the case of *M/s NKAS Services Private Limited Vs. State of Jharkhand and ors*, reported in 2021-VIL-732-Jhr.[in which one of us (Justice Aparesh Kumar Singh) was a Member]. In the aforesaid matter of NKAS Services Pvt. Ltd. (supra), in respect of an identical situation where only a ‘Summary of Show Cause Notice’ was issued and Adjudication Order was passed pursuant thereto, this Court has observed as under:-

“13. A bare perusal of the provision indicates that in a case where it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax, which has not been paid or has been short paid or to whom refund has been erroneously made or who has wrongly availed or utilised input tax credit requiring him to show cause as to why he should not pay the amount specified in the notice along with the interest payable thereupon under Section 50 and a penalty equivalent to the tax specified in the notice. In contradistinction to the provision under Section 73 of the Act under the same Chapter-XIV relating to ‘Demands and Recovery’, the ingredients of Section 74 of the Act require either of the following ingredients to be satisfied for proceeding thereunder i.e. that the tax in question has not been paid or short paid or erroneously refunded or the ITC has been wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts to evade tax.

14. A bare perusal of the impugned show-case notice creates a clear impression that it is a notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any willful misstatement or suppression of facts in order to evade tax. Needless to say that the proceedings under Section 74 have a serious connotation as they allege punitive consequences on account of fraud or any willful misstatement or suppression of facts employed by the person chargeable with tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. In this regard, it is profitable to quote the opinion of the Apex Court in the case of *Oryx Fisheries P. Ltd. (supra)* at para 24 to 27 wherein the opinion of the Constitution

Bench of the Apex Court in the case of Khem Chand versus Union of India [AIR 1958 SC 300] has been relied upon as well :

“24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.”

15. The Apex Court has held that the concept of reasonable opportunity includes various safeguards and one of them is to afford opportunity to the person to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based.

16. It is also true that acts of fraud or suppression are to be specifically pleaded so that it is clear and explicit to the noticee to reply thereto effectively [See Larsen & Toubro Ltd. Vs. CCE, (2007) 9 SCC 617 (para 14)]. Further in the case of CCE Vs. Brindavan Beverages (P) Ltd. reported in (2007) 5 SCC 388 relied upon by the petitioner, the Apex Court at para-14 of the judgment has held that if the allegations in the show-cause notice are not specific and are on the contrary, vague, lack details and/or unintelligible i.e. its sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice. We do not agree with the contention of the respondent that the notice ought not to be struck

down if in substance it contains the matters which a notice must contain. In order to proceed under the provisions of Section 74 of the Act, the specific ingredients enumerated thereunder have to be clearly asserted in the notice so that the noticee has an opportunity to explain and defend himself.

17. As observed herein above, the impugned notice completely lack in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. Proceedings under Section 74 of the Act have to be preceded by a proper show-cause notice. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of a proper show-cause notice. This court, however, is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case. This Court finds that upon perusal of Annexure-2 which is the statutory form GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague.

18. Since we are of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show-cause notice and thus amounts to violation of principles of natural justice, the challenge is entertainable in exercise of writ jurisdiction of this Court. Accordingly, the impugned notice at Annexure-1 and the summary of show-cause notice at Annexure-2 in Form GST DRC-01 are quashed. However, since this Court has not gone into the merits of the challenge, respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks from today.”

18. The present case is squarely covered by the aforesaid decision of this Court and we fully agree with the law laid down in the case of NKAS Services Pvt. Ltd. (supra) and, accordingly, it is held that the Adjudication Order is *non est* in the eye of law, as the same has been passed without issuance of proper show cause notice and, thus, amounts to violation of principles of natural justice.

19. We would have refrained ourselves from further adjudicating other issues raised by learned counsel for the petitioner and would have straightaway quashed the impugned Adjudication Order, but we are of the opinion that further issues raised by the petitioner is also required to be dealt with in our Judgment, especially in view of the fact that this Court is flooded with several similar writ petitions wherein the procedure prescribed under the GST Act is not being followed by the GST authorities, more particularly, the State Tax authorities, leaving no option

for this Court but to entertain the writ application straightaway against the Adjudication Order without relegating the Writ Petitioners to avail alternative remedy of appeal as provided under the GST Act. The manner in which the impugned Adjudication Orders in this case have been passed clearly point out serious lacuna in the proceedings conducted under the GST Act, which clearly has entailed adverse consequences upon the Petitioner. Accordingly, we deem it proper to further adjudicate the other issues raised by the Petitioner, which are dealt with herein-under.

20. Mr. Sumeet Gadodia, has contended that not only that the Adjudication Order has been passed without even issuance of a show cause notice, but has further contended that Respondent-authority has even proceeded to pass the Adjudication Order in gross violation of the mandatory statutory provisions contained under Section 75(4) read with Section 75(5) of the JGST Act and neither adequate opportunity of filing reply to the Summary of Show Cause Notice was provided to the Petitioner, nor any notice was issued granting opportunity of personal hearing, and, thus, the Adjudication Order cannot be sustained in law. The counsel for the Petitioner has placed reliance upon the following Judgments passed by various High Court on the aforesaid issues namely:-

- (a) *Order dated 10.12.2021 passed in the Case of M/s. Prime Alloys Vs. The State Tax Officer being W.P. Nos. 26250 & 26252 of 2021 and W.M.P. Nos. 27700 & 27701 of 2021 passed by the Hon'ble High Court of Judicature at Madras. (PARA-3&5)*
- (b) *Order dated 29.10.2021 passed by the Hon'ble High Court of Judicature at Madras in the case of Akanksha Distributers Private Limited Vs. Assistant Commissioner (ST), Chennai being W.P. Nos. 22507 & 22512 of 2021 and W.M.P. Nos. 23732 of 2021. (PARA-2, 5 & 6)*
- (c) *Order dated 17.06.2021 passed by the Hon'ble Andhra Pradesh High Court in the case of Benq Catering and Allied Services Private Limited Vs. Assistant Commissioner reported in 2021-VIL-479-AP. (Verbatim)*
- (d) *Order dated 28.04.2021 passed in the case of M/s. OCEAN SPARKLE LIMITED Vs. ASSISTANT COMMISSIONER (ST) reported in 2021-VIL-356-AP (PARA 7 &8)*
- (e) *Order dated 28.04.2021 passed by the Hon'ble Andhra Pradesh High Court in the case of KorrapathiJanardhana Naidu Vs. State of Andhra Pradesh reported in (2021) 35 TAXLOC.COM 100 (AP). (PARA 7 & 8)*
- (f) *Order dated 04.02.2021 passed in Alkem Laboratories Limited Vs. Union of India by the Hon'ble Gujarat High Court reported in 2021-VIL-120-GUJ. (PARA-12, 13 & 16)*
- (g) *Order dated 19.01.2021 passed by the Hon'ble Madras High Court in the case of B.M. Patel and Company Vs. State Tax Officer being Writ Petition No. 13652 of 2020 and WMP No. 16973 of 2020. (Verbatim)*

- (h) *Order dated 08.01.2021 passed in the case of Enprocom Enterprises Ltd. Vs. The Assistant Commissioner of State Tax reported in 2020-VIL-25-GUJ (PARA-48)*
- (i) *Order dated 14.07.2020 passed in the case of CeraSanitaryware Limited Vs. State of Gujarat reported in 2020-VIL-310-GUJ (PARA-6)*

21. At this stage, we deem it appropriate to quote the provisions of Section 75(4) and 75(5) of the CGST/JGST Act:-

“75. General provisions relating to determination of tax

(4)An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5)The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted for more than three times to a person during the proceedings.”

22. A conjoint reading of the provisions of Sections 75(4) and 75(5) would reveal as under:-

- (i) Opportunity of hearing’ shall be granted on request.
- (ii) Opportunity of hearing shall be granted where any adverse decision is contemplated.
- (iv) If sufficient cause is shown, the proper officer can adjourn the hearing for reasons to be recorded in writing.
- (v) However, no such adjournment shall be granted for more than three times during the proceedings.

23. From the facts of the present proceedings, it would transpire that on 14th March, 2020, Form GST DRC 01 was issued without specifying any date of hearing and, thereafter, straightaway, an Adjudication Order was allegedly passed on 13th August, 2020 fastening liability of tax, interest and penalty upon the Petitioner. From the order sheet, it is evident that no opportunity of personal hearing was granted to the petitioner and the purported Adjudication Order was passed on 13.08.2020 i.e. on the first date itself after issuance of the summary of show cause notice. This itself clearly reveals that the entire adjudication proceedings have been carried out in stark disregard to the mandatory provisions of the GST Act and in violation of the principles of natural justice and, thus, the Adjudication Orders, allegedly dated 13.08.2020, are liable to be quashed and set aside on this ground also.

24. The learned counsel for the petitioner further argued that the purported Adjudication Order dated 13th August, 2020, which has been introduced in the Counter Affidavit for the first time is an antedated order and the same has been passed with malice in law to somehow justify GST

DRC 07 issued earlier to the Petitioner. It has been submitted that the Petitioner, in the writ petition, has categorically pleaded that it applied for certified copy of the entire order-sheet, records of the proceedings and the Adjudication Order passed by respondent no.4, but the petitioner was only supplied with copy of the Order-sheet and the summary of the show cause notice in form GST DRC 01 and Summary of Order in form GST DRC 07. However, no Adjudication Order was supplied to the petitioner.

25. It has been further submitted that in the Summary of Order dated 11.09.2020 (Annexure-23), Adjudication Order is referred to have been passed on 11.09.2020, but interestingly, respondents in their Counter Affidavit have introduced an Adjudication Order which is dated 13.08.2020. It further reveals that there is no recording in the Order-sheet of any proceeding having been conducted on 13.08.2020 and/or 11.09.2020. Learned counsel for the State has fairly admitted that in the order-sheet, there is no recording of drawing any proceeding either on 13.08.2020 and/or 11.09.2020, but has still tried to justify the date of Adjudication Order as 13.08.2020 by stating, inter alia, on instruction, that the Adjudication Order was actually passed on 13.08.2020, but, inadvertently, the same could not be recorded in the Order-sheet on 14.08.2020. However, no explanation could be furnished by the Respondents as to why in the Summary of Order the date of Adjudication Order was mentioned as 11.09.2020 instead of 13.08.2020 and it was merely stated that the same happened by mistake.

26. We have given our conscious consideration to the arguments advanced by the counsels for the parties and we are of the opinion that there is serious lacuna in the proceeding conducted under the JGST Act which has ultimately entailed adverse consequences upon the petitioner. Vide our order dated 10th March, 2022, we have directed respondent Nos. 3 and 4 to appear before us with complete records and has further communicated our order to the Commissioner, State Tax Department also so that the matter can be looked at from the level of the Commissionerate as it reflects on the Tax Administration within the State. Relevant portion of the order dated 10th March, 2022 is quoted herein-under:-

“All these instances do point out to serious lacune in the proceedings conducted under the JGST Act which ultimately has entailed adverse consequences upon the Petitioner. As such, we deem it proper to direct the Respondent Nos. 3 and 4 to appear with the complete records of the case

on the next date. Let this order be communicated to the Commissioner, State Tax Department also so that the matter can be looked at from the level of the Commissionerate as it reflects on the Tax Administration within the State. In case the author of the Adjudication Order has been transferred to some other jurisdiction, he should also appear.”

27. The original records produced before us leave no iota of doubt that the present adjudication proceedings have been carried out by the authorities of the State Tax Department in stark disregard to the mandatory provisions of GST Act and the well-known procedures for conduct of proceedings have been completely disregarded. We refrain ourselves from saying any further, but we direct the Commissioner of State Tax Department to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure and process of law.

28. In view of the aforesaid discussions the summary of show cause notices, both dated 14.03.2020, Adjudication Order Dated 13.08.2020 and summary of orders, both dated 11.09.2020, issued against the petitioner in both the writ petitions, are hereby, quashed and set aside. However, the respondents would be at liberty to initiate fresh proceeding in accordance with law, if so advised.

29. As a result, both these writ applications are allowed and disposed of.

(Aparesh Kumar Singh, J.)

I agree

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)