

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 1526 of 2022

M/s. Om Prakash Store, a Partnership Firm. Petitioner

Versus

1. The State of Jharkhand, through the Commissioner, State Tax Department having its office at Project Building, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi.
2. Deputy Commissioner of State Tax, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum.
3. Assistant Commissioner of State Tax, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum.
4. State Tax Officer, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum. Respondents

WITH

W.P. (T) No. 1527 of 2022

M/s. Om Prakash Store, a Partnership Firm Petitioner

Versus

1. The State of Jharkhand, through the Commissioner, State Tax Department having its office at Project Building, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi.
2. Deputy Commissioner of State Tax, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum.
3. Assistant Commissioner of State Tax, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum.
4. State Tax Officer, Jamshedpur Circle, Jamshedur, P.O. & P.S. Jamshedpur, District-East Singhbhum. Respondents

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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 Gadodia, Adv.
For the State : Mr. P.A.S. Pati, G.A.-II. . (in both cases)

04/18.08.2022

Per Deepak Roshan, J: Since common issue is involved in both these writ petitions, as such both are heard together and being disposed of by this common order.

2. Writ petition no. 1526 of 2022 relates to the financial year 2017-18; whereas Writ Petition no. 1527 of 2022 relates to the period from April 2018 to June, 2019.

3. The petitioner in both these writ applications have assailed the adjudication orders, both dated 12.09.2019, on the ground of not following the statutory provisions as enshrined under JGST Act and settled principles of natural justice by the respondents.

The petitioner has also challenged the initiation of proceeding which was issued vide Form GST-13 dated 08.09.2021 in both the writ applications.

Petitioner has further prayed for a declaration that the adjudication order passed in both these writ application in exercise of power under Section 73 of the Jharkhand Goods and Service Tax, Act, (hereinafter to be referred as JGST Act.) as communicated to the petitioner on 06.10.2021 is wholly illegal, arbitrary and in utter violation of provisions contained under Section 73 and 75 of the JGST Act.

4. Brief facts of the case is that the petitioner is a registered dealer and is primarily engaged in the business of trading of Jaggary, Mahua and Krana Goods. An inspection was carried out in the premises of petitioner by a team of officials of State Tax Department, Jharkhand and pursuant thereto; an inspection report was prepared by recording, inter alia, that for the period from 2017-18 and 2018-19 (April, 2018 to June,

2019), there were certain discrepancies in GSTR-3B return and auto populated GSTR-2A return.

Pursuant to the inspection, respondent-authorities in exercise of power under section 70 (1) of the JGST Act, directed the petitioner to appear and produce relevant books of accounts on 05.10.2018. The representative of the petitioner duly appeared and participated in the enquiry proceeding by producing relevant documents.

However, in terms of Section 70 of the JGST Act, summons were issued to the petitioner with a direction to appear on 3rd April, 2019 along with documents indicated in the summons. Pursuant to the aforesaid summons, petitioner duly appeared and filed requisites documents before Respondent- authorities. Thereafter, summary show cause notice dated 15.05.2019 [in W.P.(T) No. 1527 of 2022)] & dated 16.05.2019 [in W.P(T) No. 1526 of 2022)] was issued to the petitioner in Form GST DRC-01. Pursuant to issuance of Form GST DRC-01, straightway, without issuing show-cause and notice of personal hearing, adjudication order under Section 73 (1) of the JGST Act was passed against the petitioner.

5. The specific case of the petitioner is that no show cause notice, summary of show cause notice, adjudication order and summary of order was ever served to the petitioner. As a matter of fact, all of a sudden the bank attachment notice contained in GST DRC-13 under Section 79(1)(c) dated 08.09.2021 was issued to the banker of the petitioner, namely, Bank of India, Branch Mango, Dimna Road by attaching bank account of the petitioner pursuant to Form GST DRC-07. It is only after

issuance of Form GST DRC-13, petitioner came to know about the adjudication proceeding and the orders passed by respondent-authorities.

6. Accordingly, vide its letter dated 22.10.2021 petitioner requested respondent No.2 to recall the notice dated 08.09.2021 issued in Form DRC-13. However, State Tax Department did not reply to the said notice. However, on 30.09.2021, petitioner also applied for certified copy of adjudication order which was supplied to petitioner on 06.10.2021. Similarly, petitioner also applied for certified copy of summary of show cause notice (DRC-01) and certified copy of summary of order (DRC-07) on 23.11.2021 which was supplied to petitioner on 06.01.2022 along with the certified copies of purported show cause notice.

During the pendency of the writ application, respondent's State counsel has furnished the copy of entire order-sheet including the show cause notice issued under Section 73 of the JVAT Act. However, the said show cause notice is nothing but reiteration of provisions of Section 73 of the JGST Act. In fact, date, time and venue of personal hearing was indicated as 'NA' in the show cause notice.

7. Mr. Sumeet Gadodia, learned counsel for the petitioner while assailing the impugned orders submit that the respondent No.3 without serving copy of show cause notice and without affording opportunity of being heard passed the adjudication orders and consequent thereto issued Form GST DRC-07 being summary of orders just in order to fasten huge liability of tax, interest and penalty. He further submits that for the first time petitioner came to know about the adjudication order when his bank account has been attached by the respondent No.4. He contended that the

bank account was attached without serving the copy of DRC-07 to this petitioner.

8. Learned counsel further contended that by perusing the adjudication order dated 12.09.2019 it would be evident that only after DRC-01 was issued to the petitioner, the impugned adjudication order has been passed ex-parte and no opportunity of personal hearing has been granted to the petitioner. As a matter of fact, the impugned assessment order is also non-speaking order and without application of judicial mind by respondent No.3. The adjudication orders have been passed in utter defiance of the provision of JGST Act more particularly section 73 and 75 of the Act.

9. Learned counsel further contended that provision of Section 16(2) of the GST Act nowhere stipulates that a dealer would not be entitled to claim ITC in its GSTR-3B return of an amount to the extent which has not been reflected in GSTR-2A statement. It is an admitted fact that till date no notification has been issued prescribing the due date of GSTR-2 and GSTR-3 and, thus, in effect, filing of GSTR-2 and GSTR-3 remains suspended. He further submits that the Central Government amended Rule 61 to the CGST Rules, 2017 vide Notification No. 17/2017-CT dated 27.07.2017 wherein GSTR-3B (current statutory return) was made the statutory return for all tax periods till time limit of implementing GSTR-2 & GSTR-3 remains extended. He submits that a press release dated 04.05.2018 by the GST council has indicated that in future there shall be a single return for compliance under GST laws and that till such return is made statutory, status quo of filing GSTR-1 and GSTR-3B shall continue.

He submits that in the press release dated 18.10.2018 issued by the GST council it has been specifically clarified that, “the furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.

Learned counsel contended that the learned adjudicating authority failed to appreciate that no proceedings for denial of ITC can be initiated merely because there is difference of the amount of ITC as claimed in GSTR-3B vis-à-vis GSTR-2A statement.

10. Relying upon the aforesaid contention on merit and more particularly on the ground of non-compliance of statutory provision and settled principle of natural justice learned counsel submits that both the impugned adjudication orders should be quashed and set aside and the matter may be remitted back to the concerned authority.

11. Learned counsel concluded his argument by submitting that the amount of 10 % of alleged tax dues which was deposited pursuant to the order dated 28.04.2022, whereby this Court granted stay on the garnishee notices subject to payment of 10% of the tax dues; the same may be refunded or be adjusted towards future liability.

12. Learned counsel for the respondent-State raised mainly two points:

(i) The writ petition is not maintainable in the light of availability of alternative remedy of filing an appeal under Section 107 of JGST Act, 2017.

(ii) The opportunity of hearing in terms of provision of JGST Act was duly provided to the petitioner but the petitioner did not appear and therefore, the impugned order has been passed.

13. Mr. P.A.S.Pati, learned counsel for the respondent-State contended that the petitioner appeared before the adjudicating authority and furnished requisite documents and only thereafter, the impugned order has been passed in both these writ applications. He further contended that if at all the petitioner is having any grievance; he may file appeal before the appellate authority.

14. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein it appears that an inspection was carried out in the premises of the petitioner by a team of State Tax Department and pursuant thereto; an inspection report was prepared for the period from 2017-18 which relates to W.P.(T) No. 1526 of 2022 and for the period from April, 2018 to June 2019 which relates to W.P.(T) No. 1527 of 2022 as there were certain discrepancies in GSTR 3B Return and auto populated GSTR-2A Return.

Pursuant to the inspection, the petitioner was directed to appear and produce relevant books of accounts on 05.10.2008. Accordingly, the representative of the petitioner-company duly appeared and submitted the relevant documents. However, in terms of Section 70 of the JGST Act a summons was issued by directing the petitioner to appear on 03.04.2019 along with documents indicated in the summons. Petitioner again appeared on the said date. Thereafter, on 16.05.2019 summary of show cause notice in Form GST DRC-01 was issued to the petitioner.

Interestingly, the show cause notice under Section 73 which was issued to the petitioner; in the column date, time and venue of personal hearing, it was mentioned “NA” which clearly goes to show that the said show cause notice issued under GST DRC-01 was negligently issued and no date, time and venue was mentioned and straightway after issuance of DRC-01, adjudication order under Section 73 of JGST Act was passed and also summary of order dated 18.09.2019 in Form GST DRC-07 was issued.

15. The specific case of the petitioner is that after issuance of GST DRC-01 on 16.05.2019, the petitioner was not aware of any order. It was only when his account was attached; petitioner’s-bank informed him about the notice under Section 79 (1) (c) of the Act.

Even after going through the entire order sheet it clearly transpires that on 16.05.2019 there was an order for issuance of DRC-01 but after that there was no mention of issuance of DRC-07; rather all of a sudden, 08.09.2021, there was a direction to issue DRC-13. This clearly goes to show that there is serious discrepancy and incongruity in the assessment proceedings, inasmuch as, there is no whisper of issuing DRC-07. Thus, it clearly transpires that a proper show cause notice under Section 73 (1) of the JGST Act and proper opportunity of hearing was not afforded to the petitioner before the adjudication order was passed covering the tax period from July, 2017 to March, 2018 [W.P.(T) No. 1526 of 2022]] and April 2018 to June, 2018 [W.P.(T) No. 1527 of 2022)].

There is no other document to suggest that the petitioner was given due opportunity of hearing, inasmuch as, in the notice issued under notice under Section 73 of the Act, in the column of date time and venue

of personal hearing it was indicated by the respondents as “NA” which means not applicable. This clearly indicates that no opportunity of personal hearing has been given and merely a form has been issued just to cover up the discrepancies committed by the respondent-State.

The issue involved in this case is squarely covered by the judgment delivered in the case of ***M/s NKAS Services Private Limited Versus The State of Jharkhand & Ors.*** in ***W.P.(T) No. 2444 of 2021***; wherein this court after going through the several judgments laid down the law as Under:

“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 lacks 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 9

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 showcause 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.”

16. In view of the aforesaid decision and also looking to the entire facts and circumstances of the case it clearly transpires that the statutory requirements as enshrined under Section 73 and 75 of the JGST Act has not been followed and as a matter of fact principles of natural justice has also not been followed and thus, both these writ applications are maintainable. We hold that the impugned adjudication order in both these writ application are not in accordance with the procedure prescribed in law and deserves to be quashed and set aside on the ground of non-compliance of statutory provisions of the JGST Act and for non-compliance of principle of natural justice.

17. Consequently, adjudication order in both these applications dated 12.09.2019 and consequential notice of demand as contained in Form GST DRC-07 dated 18.09.2019 (Annexure 5 & 6 respectively) are, hereby, quashed and set aside. The matter is remitted back to the adjudicating authority to issue a fresh show cause notice and after giving due opportunity to the petitioner pass an order afresh.

So far as 10 % deposit of the tax amount is concerned; after issuance of fresh adjudication order the petitioner may file for refund of the claim if fresh adjudication order is not against him and /or the said amount shall be adjusted from his future tax liability.

18. Both these writ applications are allowed in the manner and to the extent indicated hereinabove.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Amardeep/AFR