

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3333 of 2020

M/s. Om Sai Ram Enterprises, a Proprietorship concern.

..... Petitioner

Versus

1. The State of Jharkhand, through the Secretary-cum-Commissioner, Department of State Tax, having its office at Project Building, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi.
2. Joint Commissioner of State Tax, Dhanbad Division, Dhanbad, having its office at Luby Circular Road, P.O. & P.S. Dhanbad, District-Dhanbad.
3. Deputy Commissioner of State Tax, Bokaro Circle, Bokaro, having its office at Bokaro Steel City, P.O. and P.S.-Bokaro, District-Bokaro.
4. State Tax Officer, Bokaro Circle, Bokaro, having its office at Bokaro Steel City, P.O. and P.S.-Bokaro, District-Bokaro.

..... Respondents

**CORAM : Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan**

For the Petitioner : Mr. Sumeet Gadodia, Adv.
Mrs. Shilpi Sandil Gadodia, Adv.
For the State : Mr. Sachin Kumar, AAG-II

09/05.09.2022

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

2. The instant writ application has been preferred for following reliefs:-

- (i) *For issuance of an appropriate writ/order/direction for quashing/setting aside the Summary of show cause notice, contained in Form GST DRC-01 vide Reference No. 96 dated 04.06.2020 for the Assessment Year 2017-18, including copy of the show cause notice contained in Reference No. 95 dated 04.06.2020, both issued by Respondent No.4 (as contained in Annexure 5 and 5/1 respectively), wherein Respondent No.4, at the stage of show cause notice itself, has already pre-judged and pre-decided the entire issue and has even passed order fastening liability towards tax, interest and penalty upon the petitioner.*
- (ii) *For issuance of further appropriate writ/order/direction for quashing/setting aside the purported Show cause notice issued in Form GST DRC-02 contained in Reference No. 97 dated 04.06.2020 for the Assessment Year 2018-19 (Annexure 5/2), wherein respondent No.4, at the stage of show*

cause notice itself, has already pre-judged and pre-decided the entire issue and has even passed order fastening liability towards tax, interest and penalty upon the petitioner.

(iii) For issuance of further appropriate writ/order/direction for quashing/setting aside the order passed by Respondent No.4 under Section 74 (9) of the Jharkhand Goods & Service Tax Act, 2017 (hereinafter referred to as 'JGST Act' for short), as contained in Reference Nos. 145 & 145/2 dated 06.07.2020 (Annexure-6), wherein respondent no.4 has passed a joint adjudication order for the Financial Years 2017-18 and 2018-19 without granting any opportunity of hearing, in a pre-judged and pre-decided manner, and even liability of tax, interest and penalty has been fastened upon the petitioner.

(iv) For issuance of further appropriate writ/order/direction for quashing/setting aside the consequential Demand Notices dated 06.07.2020 issued in Form GST DRC-07 (Annexure-7) pertaining to the Financial Year 2017-18, wherein tax, interest and penalty has been demanded.

(v) For issuance of further appropriate writ/order/direction for quashing/setting aside the consequential Demand Notices Dated 06.07.2020 issued in Form GST DRC-07)& (Annexure-7/1) pertaining to the Financial Year 2018-19, wherein tax, interest and penalty has been demanded.

3. The brief facts of the case is that an inspection in terms of Section 67 of Jharkhand Goods and Service Tax Act, 2017 (hereinafter to be referred as 'JGST Act' for short) was carried out in the business premises of the petitioner. In the inspection report observations were made that the petitioner has claimed excess ITC and has made certain claims of ITC which were not available to it. In the said inspection report it was suggested that the petitioner, without actual receipt of goods has availed the benefit of ITC only on the basis of paper transaction.

The case of the petitioner is that the copy of those documents being Intelligence Note No. 75 dated 12.06.2019 and authorization contained in INS No. 590 dated 09.07.2019 were not handed over to the petitioner. In the said inspection report it was further mentioned that the petitioner should appear with all relevant documents on 17.07.2019 in

the office of respondent No.3. Pursuant thereto the representative of petitioner firm duly appeared before the Respondent-authority and sought time for producing the documents and accordingly, next date for the case was fixed for 30th July, 2019. Though on the next date fixed the petitioner's representative visited the office of respondent No.3 along with requisite documents, but no proceeding was carried out.

After a lapse of five months, petitioner was issued summon, where he was directed to appear on 01.02.2020 for recording its evidence. Petitioner appeared before the respondent-Authorities and produced all requisite documents and subsequent to that petitioner was issued intimation of liability under Section 74 (5) of the Act dated 25.02.2020, DRC-01 being intimation of tax and also summary of statement, all dated 25.02.2020 by the respondent No.4.

The grievance of the petitioner is that under Section 74 (5) of the Act read with Rule 142 of the Rules, provisions have been incorporated for issuance of intimation prior to issuance of show cause notice to an assessee by the Proper Officer; however, in the instant case the respondent-authority treated the information/intimation under Section 74 (5) of the Act to be show cause notice which is not legal.

Further case of the petitioner is that in the purported show cause notices not only that the respondent has already pre-judged and pre-decided the entire issue and has fastened the liability upon the petitioner, but even no direction was given to the petitioner to file its representation/reply to show cause notice and even no date of hearing was fixed by the respondent-authority.

4. From perusal of Annexure-5, which is the show cause notice in terms of Section 74 (1) and 74 (3) of the Act, it transpires that though in the said show cause notice it was mentioned that the petitioner was given opportunity to file its reply up till 03.07.2020, but no date was fixed for personal hearing. Subsequently, adjudication order was passed by respondent No.4 under Section 74(9) vide Reference No. 145 & 145(2) dated 06.07.2020. Consequently, two separate demand notice in form of summary orders contained in form GST DRC-07 for the Financial Year 2017-18 and 2018-19 have been issued.

The specific grievance of the petitioner is that the adjudication order and consequential demand notice has been passed/issued against the petitioner without granting any opportunity of hearing and in utter violation of the mandate of Section 74 of JGST Act.

5. Mr. Sumeet Gadodia, learned counsel for the petitioner amongst other grounds assailed the impugned adjudication order by submitting that no opportunity of personal hearing has been granted to this petitioner and since the opportunity of personal hearing was not given, petitioner could not get any opportunity to ask for relied upon documents. In other words, neither the relied upon documents were served to the petitioner, nor opportunity of hearing was given to him which highly prejudiced the case of the petitioner.

6. Learned counsel further submits that recently in the case of *M/s. Godavari Commodities Ltd. Vs. The State of Jharkhand & Ors*, [W.P.(T) No. 3908 of 2020 with W.P.(T) No. 3909 of 2020], this Court has decided the issue about the requirement of personal hearing.

7. A counter-affidavit has been filed in this case, wherein a preliminary objection has been raised with regard to maintainability of the writ application.

Mr. Sachin Kr, learned AAG-II submits that the writ is not maintainable, inasmuch as, there is a provision of appeal under Section 107 of the JGST Act. Any order passed under Sections 73 & 74 of the Act can be challenged before the appellate authority.

Learned counsel further reiterated the averments made in the counter-affidavit with regard to merits of the case; however, he could not dispute the fact that no personal hearing was granted to the petitioner. However, he contended that petitioner has produced some document and he was having every opportunity to submit the detailed book of accounts but he failed to do so; as such the petitioner may be directed to approach the appellate authority.

8. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein, it appears that admittedly; no opportunity of personal hearing has been granted to the petitioner and he was also not given the relied upon documents. This Court in the case of *M/s. Godavari Commodities Ltd.(supra)* has laid down the law with regard to opportunity of personal hearing.

9. For better appreciation para 21 and 22 reads as follows:-

“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.”

10. In the instant case on 25.02.2020 DRC-01 A (intimation of tax) DRC-02 (Summary of Statement) and intimation of liability under Section 74 (5) of the Act was issued on the same date i.e. 25.02.2020, thereafter, on 04.06.2020 summary of show cause notice in the form of DRC-01 along with show cause notice was issued, fixing the date as 03.07.2020 for filing reply and thereafter, without giving any opportunity of hearing and without fixing any date for hearing adjudication order has been passed on 06.07.2020.

Here lies the lacuna committed by the respondents in non-compliance of the statutory provisions of the JGST Act and also the settled principles of natural justice. The issue of reasonable opportunity has been dealt in detail in the case of *NKAS Service Pvt. Ltd.* reported in *2021-VIL-732-Jhar*. Further, in the case of *Godavari Commodities Ltd.* (*supra*) the matter has been further clarified about requirement of personal hearing.

From the counter-affidavit filed by the respondents it transpires that respondents themselves had admitted that few documents were produced by the representative of the petitioner and the time was asked for filing rest of the document. However, no further documents were demanded by the respondent-Authorities and even pursuant to summon issued to the petitioner, no statement of proprietor of the Firm was recorded.

Admittedly; prior to passing of adjudication order, no notice of personal hearing as required under Section 75 (4) and 75 (5) was given to the petitioner which is against the provision of law.

11. In view of the aforesaid discussions, since opportunity of personal hearing was not given to the petitioner; interest of justice demands that the matter should be remitted back to the authority for compliance of the necessary provision of the Act.

Consequently, adjudication order dated 15.09.2020 is quashed and set aside. The matter is remitted back to the concerned respondent who shall issue a fresh notice to the petitioner for personal hearing and after providing relied upon documents and hearing the petitioner following proper principle of natural justice pass a fresh order.

12. As a result, the instant writ application stands allowed and disposed of.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)