

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No.4782 of 2022

Santosh Kumar Roy

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Petitioner

Versus

1. The State of Jharkhand.

2. The Commissioner of State Taxes, having its office at Project Bhawan, P.O. Jagarnathpur, District-Ranchi, Jharkhand.

3. The Deputy Commissioner of State Taxes, having its office at Deoghar, P.O, P.S. & District- Deoghar, Jharkhand.

4. The State Tax Officer, having its office at Deoghar, P.O, P.S. & District- Deoghar, Jharkhand.

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Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner

: Mr. Bhawesh Kumar, Adv.

For the Res. State

: Mr. Sachin Kumar, AAG-II

Mr. Deepak Kr. Dubey, A.C. to AAG-II

07/24.01.2023

The instant writ application has been preferred for the

following relief:-

(i) For quashing and setting aside the impugned purported show cause notice dated 07.01.2022 bearing No.ZD200122000229D (Annexure-01) issued by the respondent No.3 in purported exercise of powers under Section 73 of the Jharkhand Goods and Services Tax Act, 2017.

(ii) For quashing and setting aside the consequential impugned summary of show cause notice in FORM GST DRC-01 dated 07.01.2022 issued by the respondent no.3 (Annexure-2) in purported exercise of powers under Rule 142(1) (a) of the Jharkhand Goods and Services Tax Rules, 2017.

(iii) For quashing and setting aside the consequential impugned order dated 09.02.2022 under Section 73 of the Jharkhand Goods and Services Tax Act, 2017 issued by the respondent no.3 (Annexure-3) in purported exercise of powers under Rule 142(5) of the Jharkhand Goods and Services Tax Rules, 2017.

(iv) For issuance of an appropriate writ , order or direction to the respondents to not attach the business bank account no.5112112000040 of the petitioner running in the Corporation Bank, Deoghar Branch.

2. Brief facts of the case are that the petitioner is engaged in a construction work and is a civil contractor and he has registered under the Central Goods and Service Act, 2017 and the Jharkhand Goods and Service Act, 2017 (hereinafter referred as the Act) vide GSTIN No.20ACBFS6933P1ZU with the Commissioner of Commercial Taxes, Project Bhawan, Dhurwa, Ranchi. The petitioner for supply of taxable services received input services, inputs and capital goods for use in the course or furtherance of its businesses and claims input tax credit on such inward supply in accordance with Section 16 of the Act.

On 9.2.2021, a notice in FORM ASMT-10 under Section 61 of the Act 2017 was issued and since the petitioner did not reply to the said ASMT-10, DRC-01A was issued on 26.10.2021. Thereafter, a show cause notice under Section 73 of JGST Act was issued on 7.1.2022 along with summary of show cause in Form DRC-01 of even date, however, the petitioner did not send the reply and finally DRC-07 was issued as per Rule 142 (5) of the Act 2017 on 9.2.2022.

3. Learned counsel for the petitioner submits that show-cause notice under Section 73(1) of the JGST Act, 2017 dated 07.01.2022 (Annexure-1) for the tax period January 2019-February 2019 are in a format without striking out the irrelevant particulars, is vague and does not spell out the contravention for which the petitioner is charged. It is in fact, worse than the summary of show cause notice in Form GST DRC-01 of the same date (Annexure-2). It is submitted that the Deputy Commissioner, Deoghar has thereafter proceeded to issue summary of the order in Form GST DRC-01 on 09.02.2022 (Annexure-3). The impugned proceedings, show cause notice and the Summary of the Order are in teeth of the decision rendered by this Court on this subject.

4. Learned counsel for the revenue opposed the prayer of the petitioner and submits that the petitioner is having an alternative efficacious remedy under Section 107 of the JGST Act; as such he should not have preferred writ application directly. Learned counsel

further contended that when the petitioner failed to reply to the notice issued under ASMT-10, DRC-01A was issued and finally the show cause notice was issued under Section 73 (1) of the Act on 7.1.2022 to the extent that the petitioner has violated the provisions under Section 16(4) of the JGST Act, 2017 related to the tax period January 2019-February 2019. However, even after getting the show cause notice with regard to the violation, no reply was given by the petitioner and finally in absence of any show cause reply; DRC-07 was issued on 09.2.2022. Thus, there is no procedural lapse and since the petitioner is having alternative remedy under Section 107(1) of the Act, the instant writ application should be dismissed.

5. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavits, it transpires that a show cause notice under Section 73(1) of the JGST Act, 2017 dated 7.1.2022 (Annexure-1) for the tax period January 2019-February 2019 was issued. However, from bare perusal of Annexure-1, it appears that the same is issued in a format without striking out of irrelevant particulars, thus the same is vague and does not spell out clearly the contravention for which the petitioner is charged. It is in fact, worse than summary of show cause notice in Form GST DRC-01 of the same date.

From record it further transpires that the Deputy Commissioner Deoghar had proceeded to issue of summary of order in Form GST DRC 07 on 9.2.2022 without any adjudication order. Thus, it appears that the issuance of show cause notice as well as consequential issuance of DRC-07 is in teeth of the decision rendered by this Court in the case of NKAS Ltd.

6. Now it is well settled that the show cause notice issued under Section 73(1) of the Act is not mere a formality. This Court in the case of NKAS Service Ltd. in W.P.(T) No.2444/21 has held as under:-

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.*

6. As a matter of fact, the intent of legislature for issuing a show cause notice along with DRC-01 is that the DRC-01 is a summary of show cause notice and show cause notice should be in detailed giving the facts and circumstances and the grounds for levying tax. However, by going through the impugned show cause notice dated 7.1.2022, it appears that it is in a format without striking out the irrelevant particulars.

It further transpires that the respondent Deputy Commissioner, Deoghar finally issued DRC-07 on 9.2.2022 without giving any further opportunity which is certainly beyond the provisions of law.

In fact, no adjudication order is on record and it is only the summary of order issued under DRC-07 which is on record. As a matter of fact, stating specific charges in the show cause notice is part of due procedure and fair play in action which are essential requirements of rule of law and has its genesis in Article 14 of the Constitution of India.

7. Having regard to the facts of the case that the show cause notice is in a format and is not in a strict compliance of Section 73 (1) of the JGST Act and Rule 142(1)(a) of the Rules and since the principle of natural justice has not been complied in the instant case, the ground of alternative remedy is not acceptable by this Court. For the reasons stated hereinabove the instant application is allowed and the impugned show cause notice and DRC 01; both dated 7.1.2022 and also the summary of order issued under DRC-07 dated 9.2.2022, are hereby, quashed and set aside.

The matter is remitted back to the Deputy Commissioner, State Tax Deoghar, Jharkhand to pass a fresh order after following due procedure of law from the stage of issuing fresh show cause notice strictly in accordance with law.

It is made clear that we have not gone into merits of the case and the interference is only on the ground of non-following the provisions of JGST Act and principle of natural justice.

8. As a result, the instant application stands allowed.

(Aparesh Kumar Singh, ACJ.)

(Deepak Roshan, J.)