

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (T) No. 163 of 2023

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M/s Shree Ram Agrotech, a sole proprietorship firm having its office at Phase-III/A-2S, Industrial Area, Bokaro Steel City, P.O & P.S. Bokaro, District- Bokaro, though its sole proprietor, Mr. Dhruv Kumar Srivastava **....Petitioner**

-VERSUS-

1. The State of Jharkhand, through the Secretary-cum-Commissioner, State Tax Department, Ranchi having its office at 3rd Floor, Project Bhawan, P.O. & P.S. Dhurwa, District-Ranchi.
 2. The Deputy Commissioner of State Tax, Bokaro Circle, Bokaro having its office at Camp-2 Bokaro Steel City, P.O & P.S. Bokaro, District-Bokaro.
 3. The State Tax Officer, Bokaro Circle, Bokaro having its office at Camp-2 Bokaro Steel City, P.O & P.S. Bokaro, District-Bokaro.
 4. The Commercial Tax Officer, Bokaro having its office at Camp-2 Bokaro Steel City, P.O & P.S. Bokaro, District-Bokaro.
 5. The Joint Commissioner of Commercial Tax (Appeal), Dhanbad Division, Dhanbad having its office at Near Randhir Verma Chowk, P.O & P.S. Dhanbad, District-Dhanbad.
- **Respondents**

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CORAM : **Hon'ble Mr. Justice Rongon Mukhopadhyay**
Hon'ble Mr. Justice Deepak Roshan

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For the Petitioner : Mr. Rahul Lamba, Advocate
 For the Respondents : Mr. Ashok Kumar Yadav, Sr.S.C.-I

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09/15.06.2023

Per Deepak Roshan, J: In the instant writ application the Petitioner has challenged the Summary Order in form GST DRC-07, dated 19.01.2019 bearing reference number ZA200119000232J, issued by the Respondent No.4; whereby tax, interest and penalty under the Jharkhand Goods and Service Act (in short JGST Act) amounting to Rs.8,04,134/- has been imposed upon the Petitioner.

The Petitioner has further challenged the Appellate Order, dated 03.09.2022 bearing memo No. 580, passed by the Joint Commissioner of Commercial Taxes (Appeal), Dhanbad Division; whereby the appeal preferred by the Petitioner, challenging the summary order in form GST DRC-07 dated 19.01.2019, was dismissed.

The Petitioner has additionally challenged the consequential recovery notice, dated 19.01.2021 having reference no.78, issued under Section 79 of the JGST Act, 2017 by the Respondent No.3; whereby the Petitioner was directed to pay the outstanding liability of Rs.8,04,134/- based on the Summary Order in form GST DRC-07.

2. The brief fact of the case as disclosed in this application is that the petitioner is primarily engaged in the business of trading of ferrous waste and scrap, iron, steel, ingots and other metal articles and is registered under the provisions of the Goods and Services Tax Act, 2017 having registration No. 20AHGPS1438K1ZE.

On 19.01.2021, the petitioner received a recovery notice issued by the respondent No.3. The said recovery notice was captioned as reminder for recovery of alleged demand of Rs. 8,04,134/- based on the alleged demand order, having no. 1899 dated 19.01.2019, and based on DRC-07 having reference No. ZA200119000232J dated 19.01.2019 for the period July 2017 to March 2018. After the said reminder notice dated 19.01.2021, the petitioner approached the office of the respondent no.2 and 3 enquiring about the basis and details of the said demand of Rs.8,04,134/-. However, the petitioner did not receive any concrete response from the respondent authorities.

In the meantime, the second wave of the COVID pandemic created substantial hurdle for the petitioner to gather the details of the said demand. After the second wave settled down, the petitioner again approached the respondent nos. 2 and 3. As a matter of fact, the petitioner vide its application dated 25.08.2021 applied for a certified copy of the Form DRC-07 dated 19.01.2019 passed in the case of the petitioner. The certified copy of DRC-07 was given to the petitioner on or around 27.08.2021.

Since Form DRC-07 is only a summary order and the petitioner was not provided with the detailed order in terms of Section 73 of the JGST Act and as the petitioner was not provided with the show cause notice, the petitioner vide its letter dated 01.09.2021, requested the respondent authorities to provide a copy of the detailed order and the show cause notice as soon as possible.

The respondent authorities expressed their inability to provide the copy of the detailed order and the show cause notice to the petitioner as these documents were not available in the records of the respondent-

authorities; accordingly, no copy of the detailed order and the show-cause notice were provided to the petitioner.

The petitioner filed an appeal before the respondent No. 5 on 09.09.2021 challenging the said summary order in Form DRC-07 dated 19.01.2019 in Form GST APL-01 before the respondent No.5. The respondent No. 5 vide its order dated 03.09.2022 dismissed the appeal.

The specific case of the petitioner is that it had neither received DRC-01; nor any detailed show-cause notice and above all, no adjudication order has been passed in the instant case and only on the basis DRC-07, which is summary of the Order, the Respondents are not entitled for recovery as it is against the mandatory provisions of the JGST Act.

3. Mr. Rahul Lamba, learned counsel for the Petitioner has contended that the Summary Order in form GST DRC-07, dated 19.01.2019 by which tax, interest and penalty under the JGST Act amounting to Rs. 8,04,134/- was imposed on the Petitioner, has been passed without any show causes notice, as required under the JGST Act, 2017. It has further been contended that Section 73 (1) of the JGST Act, 2017 mandates that a detailed show-cause notice must be issued to the assessee before passing of any order imposing tax, interest or penalty and the Respondents have not issued the Show Cause Notice to the Petitioner, as required under Section 73 (1) of the Act before issuance of the summary order in Form GST DRC – 07 imposing the alleged tax and interest.

Learned counsel further submits that for this reason alone the said summary order in Form DRC – 07 is liable to be set aside along with the Impugned Order passed by the Appellate Authority who has failed to consider this aspect.

4. *Per Contra*, the counsel for the Respondents have vehemently opposed the writ petition and has based their challenge on the allegation that they have issued and served Form GST DRC-01 dated 20.12.2018, which is a summary of show cause notice to the Petitioner. However, the Respondents on the other hand have admitted that there is no detailed adjudication order, corresponding to the Impugned Summary Order in Form GST DRC – 07, whereby tax, interest and penalty under the Jharkhand GST Act amounting to Rs. 8,04,134/- has been imposed on the Petitioner. It has been argued on behalf of the Respondents that since the Appellate Authority, vide Impugned Appellate Order, has already dismissed the appeal of the Petitioner, therefore

this Court should not interfere with the Summary Order in Form GST DRC – 07.

5. Having heard learned counsel for the rival parties and after going through the averments made in the respective affidavits and the documents annexed therein, it would be evident that Petitioner has disputed to have received the alleged Form GST DRC-01 dated 20.12.2018 as filed by the Respondents along with their Counter Affidavit. The Petitioner has laid emphasis on to the fact that the Respondents have not brought even a chit of paper to show that the alleged Form GST DRC-01 dated 20.12.2018 was served to the Petitioner.

Reliance has further been placed on Rule 142 of the JGST Rules which requires that along with DRC-01, a detailed Show Cause Notice, as per Section 73 (1), shall also be served to the Assessee prior to imposition of any tax, interest or penalty. Accordingly, the requirement in law is for service of Form GST DRC-01 along with a detailed show cause notice prior to the issuance of the GST DRC – 07. It has been contended on behalf of the Petitioner that for the first time, the Respondents have brought the alleged Form GST DRC-01 dated 20.12.2018 along with their Counter Affidavit and this fact itself creates a serious doubt on the genuineness of the said document.

Further, the Petitioner at paragraph 13 and 14 of its writ petition has categorically stated that the Petitioner, vide its letter dated 01.09.2021, had requested the Respondents to provide a copy of the show cause notice (Annexure – 3 to the Writ Petition) but the Respondents had not provided the same as it was not available with them. The said statements made in the writ petition has neither been denied nor disputed by the Respondents in their Counter Affidavit. Accordingly, it has been argued that when the Respondents did not have the show cause notice on or around 01.09.2021, how have they now managed to bring the alleged Form GST DRC-01 dated 20.12.2018. These facts create serious doubts on the genuineness of the alleged Form GST DRC-01 dated 20.12.2018 and its service on the Petitioner.

At this stage, it is relevant to observe that even the stand of the Respondents is admitted with regard to service of DRC-01, but admittedly; no detailed Show Cause Notice as per Rule 142 of the JGST Rules which requires

that along with DRC-01, a detailed Show Cause Notice, as per Section 73 (1), shall also be served to the Assessee, has been produced by the Respondents; which in itself is clear violation of mandatory provisions of JGST Act and its Rules.

6. Another contention of the Petitioner is that as per Section 73 (9) of the JGST Act, 2017 a detailed adjudication order is to be passed and served to the assessee for imposing any tax, interest or penalty. However, in the present case it is admitted by the Respondents in their Counter Affidavit at paragraph 12, that no such detailed adjudication order, in terms of Section 73 (9) of the JGST Act, 2017, has been passed or served to the Petitioner. Therefore, the Respondent authorities have also contravened the said provision of the JGST Act, 2017.

7. Having regard to the aforesaid facts, it is crystal clear that no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 has been served by the Respondents upon the Petitioner towards imposition of the tax, interest and penalty under the JGST Act amounting to Rs. 8,04,134/- for the concerned period. The reliance of the Respondents on the alleged Summary show cause in Form GST DRC-01, dated 20.12.2018, is also of not much avail. The contents of the said Summary show cause in Form GST DRC-01, dated 20.12.2018, does not provide the specific alleged violations by the Petitioner and also does not specifically give the opportunity to the Petitioner to rebut the allegations of the Respondent Department. Thus, in essence, the said Form GST DRC-01 dated 20.12.2018, cannot be considered as an opportunity provided by the Respondent to the Petitioner before passing of the Impugned Summary Adjudication order in Form GST DRC – 07. Similar issue was adjudicated by a Co-ordinate Bench of this Court in the case of *Nkas Services Private Limited v. State of Jharkhand and Others* 2021 SCC OnLine Jhar 847, wherein this Court has held as under:

“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 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.”

8. Additionally, in the present case it is an admitted fact that no detailed adjudication order, as required under Section 73 (9) of the JGST Act, 2017, has been passed by the Respondents. Furthermore, admittedly; no such adjudication order is available on the records of the Respondents and now it is well settled that the Form DRC-07, alone and in the absence of issuance of detailed adjudication order, can make an Assessee liable to pay any tax, interest or penalty. Accordingly, we hold that when no detailed adjudication order, as required under Section 73 (9) of JGST Act, 2017, has been passed or issued to the Petitioner, the Petitioner is not liable to pay any tax, interest or penalty only on the basis of the said Form DRC-07.

9. It further emerges from perusal of the appellate order dated 03.09.2022 that the Appellate authority has not considered any of the grounds taken by the petitioner herein (Annexure to Form GST APL-01) and dismissed the appeal on the ground that since three opportunities of hearing has been provided to the petitioner but he failed to appear on either of the dates and the Assessee has also not annexed required documents/adjudication order and finally rejected the Appeal filed before him without deciding it on merit; though the grounds were on record. The Appellate authority should have decided the case on merit and should have given its finding on the grounds of Appeal that DRC-07 has been issued without issuing any no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 and also without any adjudication order.

10. In view of the discussions made herein above, the Summary Order in Form GST DRC-07, dated 19.01.2019 bearing reference number ZA200119000232J, issued by the Respondent No.4 whereby tax, interest and

penalty under the JGST Act amounting to Rs. 8,04,134/- has been imposed on the Petitioner, is hereby, quashed and set aside.

Consequently, the Appellate Order, dated 03.09.2022 bearing memo No. 580, passed by the Joint Commissioner of Commercial Taxes (Appeal), Dhanbad Division and also the recovery notice, dated 19.01.2021 having reference no.78, issued by the Respondent No.3, are also quashed and set aside.

However, the Respondent department would be at liberty to issue fresh show cause notice to the Petitioner, if so advised, and proceed in the matter strictly following the provisions of JGST Act and its Rules.

11. With the aforesaid observations and directions, the instant writ application stands allowed. Pending I.A., if any, also stand disposed of.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J)

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