

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 3022 of 2020

M/s Vinayak Metal and Chemicals Petitioner

Versus

1. The State of Jharkhand through the Commissioner,
State Goods & Service Tax
2. The Assistant Commissioner, Bokaro Circle, P.O. & P.S. Bokaro, District
Bokaro. Respondents

With

W.P.(T) No.463 of 2021

M/s. ShayamUdyog Petitioner

Versus

1. The State of Jharkhand through the Commissioner,
State Goods & Service Tax
2. The Deputy Commissioner, Bokaro Circle, P.O. & P.S. Bokaro, District
Bokaro. Respondents

With

W.P.(T) No.466 of 2021

M/s. MaaAmbicaBhawani Steel Petitioner

Versus

1. The State of Jharkhand through the Commissioner,
State Goods & Service Tax.
2. The Deputy Commissioner, Bokaro Circle, P.O. & P.S. Bokaro, District
Bokaro.
3. The State Tax Officer, Bokaro Circle, P.O. & P.S. Bokaro, District,
Bokaro. Respondents

With

W.P.(T) No.476 of 2021

M/s. Balajee Enterprises Petitioner

Versus

1. The State of Jharkhand through the Commissioner,
State Goods & Service Tax.
2. The Deputy Commissioner, Bokaro Circle, P.O. & P.S. Bokaro, District
Bokaro. Respondents

With

W.P.(T) No.477 of 2021

M/s. Balajee Enterprises Petitioner

Versus

1. The State of Jharkhand through the Commissioner,
State Goods & Service Tax.
2. The Assistant Commissioner, Bokaro Circle, P.O. & P.S. Bokaro, District
Bokaro.
3. The State Tax Officer, Bokaro Circle, P.O. & P.S. Bokaro, District,
Bokaro Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : M/s. Nitin Kr. Pasari, Advs.
Ms. SidhiJalan, Adv.(in all the cases)

For the Respondents : Mr. Sachin Kumar, A.A.G.-II
Mr. Ashok Kr. Yadav, Sr. S.C.-I
Mr. Rituraj, A.C. to Sr. S.C.I

15/14.11.2022

Heard learned counsel for the parties.

2. Since in all these writ applications common issue is involved; as such all are being heard together and disposed of by this common order.

3. The petitioners in all these writ applications have challenged the respective summary notices in terms of GST DRC-01 read with Rule 142 of the JGST Rules, and summary orders in Form DRC-07 respective adjudication orders and all consequential orders and also the entire adjudication proceedings and further for a direction upon the respondents to unblocked/re-credit the amount of Input Tax Credit illegally blocked / debited from the Electronic Credit Ledger of the petitioners.

4. The brief facts as emerges by going through the documents/averments made in all these writ applications, it appears that the petitioners are business concern, engaged in trading of Iron & Steel, Coal and Salt and for the purpose of aforesaid, since they were registered dealers under the Value Added Tax have migrated from VAT Regime to GST Regime. Since the issue is common in the aforesaid writ applications as such for brevity the facts as enumerated in W.P.(S) 3022 of 2020, Ms. Vinayak Metal and Chemicals is enumerated hereinbelow:

For the period from April, 2017 to June, 2017 the petitioner furnished its Returns under FORM JVAT 200 and declared an amount of Rs.84,16,555.73/- as excess Input Tax Credit to be carried forward to the next period (GST Regime). On 01.07.2017, GST Act was made applicable across the nation and in terms of Section 139 of the Act, the petitioner migrated from VAT Act to GST Act. On 31.10.2017, the petitioner submitted its TRAN-1 for claiming Input Tax Credit to be carried over to GST Regime. Although, the excess Input available to the petitioner was Rs.84,16,555.73/-, but owing to an inadvertent mistake, the petitioner claimed transactional ITC for an amount of Rs.69,16,555.73/-. In addition, the petitioner claimed an amount of Rs.15,41,522/- as input towards Goods held in stock. Having learnt the mistake, the petitioner requested to revise its TRAN-1, but the same was not allowed. A Summary Show Cause Notice in terms of GST DRC-01 read with Rule 142 (1) was purportedly issued, informing about initiation of proceedings for utilization of excess ITC (the said notice was neither electronically uploaded nor physically made over to the petitioner). On

04.05.2018, without any knowledge or information to the petitioner, an amount of Rs.16,36,000/- was blocked from the Electronic Credit Ledger of the petitioner. On 04.05.2018 Summary Order under GST DRC-07, exercising power under Rule 142 (5) was issued without making available the copy of the order to the petitioner till date. On 16.03.2020 having realized that the Electronic Credit Ledger of the petitioner was blocked, the petitioner raised an objection concerning less ITC claimed and blocking of ITC including issuance of DRC-07.

A detailed Chart is given hereinbelow which will reflect the tax period as well as date of issuance of DRC-01, DRC-07, date of blocking / debiting of ECL, recovery notice etc.in case of the petitioners’.

S.N	Case No.	Tax Period	Amount Claimed in TRAN-1 (in Rs.)	DRC-01 issued on	DRC-07 issued on	Date of blocking/debiting of ECL	Recovery notice
1	W.P.(T)No 3022/ 2020	July 2017- March 2018	69,16,555.73/- Unclaimed amount- Rs.15,00,000/-	04.01.2018	04.05.2018	04.05.2018	
2.	W.P.(T)No 463/ 2021	August 2017- Dec. 2017	42,76,039.68/-	04.01.2018	29.09.2018	28.01.2021	28.12.2020
3.	W.P.(T)No 466/2021	July 2017-March 2018	13,52,832.29/-	25.01.2018	27.04.2018	03.01.2019	19.11.2020
4.	W.P.(T)No 476/2021	Dec 2017	18,48,834.66/-	04.01.2018	29.09.2018	27.03.2021	23.11.2020
5.	W.P.(T)No 477/2021	Dec 2017 -June 2018	10,08,423.75/-	21.07.2018	23.08.2018	03.01.2019	19.01.2021

5. Counter affidavit has been filed by the respondents department in respective writ applications wherein common stand has been taken that the alternative remedy of appeal is available under Section 107(1) of the GST Act. Since no documents were made available even though DRC-01 was uploaded, hence, final order was passed. The ITC was blocked in

terms of Rule 86A which has been inserted in the Rules from December, 2019.

A rejoinder has also been filed by the petitioners in reply of the respective counter affidavits wherein it is indicated that no adjudication in terms of Sections 73 & 74 has ever been carried out, which is in violation of principles of natural justice. Even the notice under DRC-01 was also not issued as would be evident from Annexure-10. The information about the blocking/debiting of Electronic Credit Ledger was also not informed to the respective petitioners.

Thereafter, a reply has been filed by the respondents to the rejoinder of the petitioners indicating therein that the show cause notice under Rule 142 (1) was issued to the petitioners by email and the petitioners appeared and produced the purchase invoices. The petitioner in W.P.(T) No.3022 of 2020 was directed to appear on 17.01.2018. On 04.05.2018, Order under Section 73 (9) was passed against the petitioner and DRC-07 under Rule 142 (5) was issued and Electronic Credit Ledger was blocked. DRC-07 was uploaded on the GSTN Portal.

Thereafter, supplementary rejoinder of the petitioners to the reply filed on behalf of the respondents have also been filed disputing the claim of the respondents.

6. Learned counsel for the petitioners submits that the plea in all these writ applications is in relation to non-compliance of the statutory provision relating to service of show cause notice in terms of GST DRC-01 before blocking /debiting of the electronic credit ledger of the petitioner companies. He contends that in all these writ petitions the proceeding under Section 73 of the JGST Act has been initiated without issuance of proper show-cause notice under Section 73(1) of the Act. Instead, summary of show cause notice was issued in DRC-01 which the petitioners contend, was never served upon them. The proceedings has led to issuance of summary of the order in DRC-07 in the individual writ petitions which are therefore vitiated in law being in teeth of judgment rendered by this Court in the case of *NKAS Services Pvt. Ltd. Vrs. State of Jharkhand & Ors. [W.P.(T) No.2659 of 2021] dated 09.02.2022*. They are also in teeth of the decision as rendered in the case of *M/s Unity infraproject Ltd. Vrs. State of Jharkhand & Ors. [W.P.(T) No.985 of 2022]* judgment dated 7th July 2022 on failure to give at least three

opportunities including personal hearing before passing the adjudication order which adversely effects the petitioners.

Learned counsel further submits that in all these cases the issue involved is common, so far as the transition of existing ITC under VAT to GST regime is concerned. The petitioners had, in all these writ petitions, rightly availed the transitional credit of ITC through TRAN-1 but the Department had initiated the proceedings on the charge that they have wrongfully availed part of it.

7. Learned counsel for the petitioners lastly relies upon the decision of the Hon'ble Apex Court in the case of ***Union of India & Anr. Vrs. FILCO Trade Centre Pvt. Ltd. & Anr. dated 22nd July 2022*** under which any aggrieved assessee has been allowed a window period to file TRAN-1 or TRAN-II or revise the already filed form for availing transitional credit irrespective of whether the taxpayer had filed writ petition before the High Court or his case was decided by the Information Technology Grievance Redressal Committee. By the subsequent order the revised period has been modified and extended up to 30th November 2022. However, he submits that unless the impugned adjudication orders are set aside, the petitioners may not be able to avail of the liberty granted by the Hon'ble Apex Court and file revised TRAN-1 within the window period.

8. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein, it is clear that the petitioners have challenged the impugned notices/orders and action of the respondent authorities on the ground of non-compliance of statutory provision as mentioned in Jharkhand Goods and Services Tax Act, 2017 (in short JGST). Admittedly, no proper show-cause notices have been issued to the respective petitioners except a summary of SCN in GST DRC-01 which are not in accordance with the provision of the JGST Act and to that extent these cases are covered by the judgment passed by this Court in the case of ***NKAS Service Private Ltd. Vs. State of Jharkhand & Ors. (W.P.T No.2659/2021)***.

It further transpires from the record of all these writ applications that in none of the case personal hearing has been granted to the petitioners. In the case of ***Unity Infraprojects Ltd. Vs. State of Jharkhand Ors. (W.P.T No.985/2022)*** this Court has categorically held that "It is

evident that in terms of Section 75(4) & (5) in case an adverse order is to be passed against the assessee, the assessee is to be granted three opportunities to furnish reply, if the time is sought for. In the absence of proper show cause notice for furnishing reply petitioner was prevented from taking his defence and submitting a proper reply to the show cause notice. The adjudication order has been passed straightaway without following due procedure prescribed under Section 73 read with section 75(4) & (5) of the JGST Act. The aforesaid infirmities have vitiated the adjudication proceeding.”

9. Thus, it appears that admittedly, the petitioners in the respective applications have been denied of principle of natural justice. In view of the aforesaid discussion, the show cause notices in terms of GST DRC-01 read with Rule 142 of the JGST Rules, summary of orders in Form DRC-07 and respective adjudication orders and all consequential orders, are hereby, quashed and set aside.

10. Even otherwise, recently the Hon’ble Apex Court in the matter of FILCO Trade Centre Pvt. Ltd. (supra) vide order dated 22.07.2022 has passed directions to the Goods and Service Tax network for opening the common portal for 2 months i.e. with effect from 01.09.2022 to 31.10.2022, for filing concerned forms for availing transitional credit, as also, to revise the already filed forms.

In view of the above judgment, the petitioners in the present cases shall also be entitled to revise its GST TRAN-1 form for claiming the short claimed input tax credit, as also, to revise its form if any excess input tax credit was claimed by the petitioners as per the department. In that eventuality petitioners still have opportunity to file its revised TRAN-1 form during the window period fixed by the Apex Court in FILCO Trade Centre Pvt. Ltd. (supra)

By the judgment rendered in the case of *FILCO Trade Centre Pvt. Ltd.* (supra), the respondent department was directed to open common portal for two months with effect from 01.09.2022 to 31.10.2022, which has been further extended till 30.11.2022, The petitioners herein are at liberty to file the revise TRAN-1 or TRAN-II.

By the aforesaid order of Hon’ble Apex Court, liberty has been granted to all taxpayers irrespective of the fact whether the taxpayer has filed the writ application before the High Court or his case was decided by

the Information Technology Grievance Redressal Committee. Thus, since the period for filing TRAN-1/TRAN-2 is extended by 30.11.2022, as such the petitioners can avail the facility before the expiry of said period.

11. At this stage it is pertinent to mention here that even the Ministry of Finance vide its Circular No.182/14/2022-GST dated 10.11.2022 has issued guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court. As such the respondents are required to abide by the said direction and proceed in accordance with law after proper scrutiny of the revised TRAN-1, if any filed by the individual petitioner. In case any of the petitioner fails to file its revised TRAN-1 during this window period, the respondent may initiate fresh proceeding after issuance of a proper SCN in accordance with law.

12. As a result, all these writ applications are allowed in the manner and to the extent indicated hereinabove.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)