

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1849 of 2022

Roushan Kumar Chouhan

--- --- Petitioner

Versus

1. Commissioner of State Tax, State of Jharkhand, Jharkhand
Goods and Service Tax, Ranchi

2. Deputy Commissioner of State Tax, Jharkhand Goods and Service Tax
Godda and Dumka, Godda

--- --- Respondents

.....

**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : Mr. Deepak Kr. Sinha, Rakhi Sharma, Advocate

For the Respondents : Mr. Salona Mittal, A.C to Sr. S.C.-I

03/03.08.2022 Heard learned counsel for the parties.

2. Petitioner has sought quashing of the show cause notice dated 28.08.2020 (Annexure-1) issued under **Section 73 of the JGST Act, 2017** (hereinafter to be referred as the 'Act of 2017') for the period April, 2018 to March 2019. Petitioner has also laid **challenge to the summary of show cause notice of the same date issued in Form GST DRC-01 (Annexure-2).** **Petitioner has also challenged the summary of the order dated 12.12.2020 (Annexure-3) issued in Form GST DRC-07.** All such notices and order have been issued by the Deputy Commissioner of State Tax, Jharkhand Goods and Service Tax, Godda (Respondent no.2)

3. Petitioner is a civil contractor engaged in the business of civil construction. Petitioner is duly registered under the provisions of the JGST Act, 2017.

4. The ground taken in the writ petition is that the show-cause notices at Annexure-1 is in teeth of the provisions of Section 73(1) the Act of 2017 and the judgment rendered by this Court in the case of **M/s NKAS SERVICES PRIVATE LIMITED Versus State of Jharkhand & others in W.P (T) No. 2659/2021** dated 09.02.2022. Summary of Show-Cause Notice cannot be a substitute of a proper show-cause notice as has been held by this Court in **M/s NKAS SERVICES PRIVATE LIMITED (Supra).** The show-cause notice does not strike out the relevant particulars and does not even enumerate the contravention which the petitioners have been called upon to reply. These proceedings were initiated allegedly on account of a **mismatch in GSTR-3B and GSTR-2A for the period in question and that the petitioners have taken undue ITC to which they were not entitled.** Petitioners have also taken a plea that Summary of the Order contained in Form GST DRC-07 imposes **100% penalty which is impermissible under the provisions of**

Section 73(9) of the Act of 2017. 100% penalty can only be levied in a proceeding under section 74 (9) of the Act of 2017. No adjudication order has been uploaded. It is further submitted that proceedings suffer from serious violation of principles of natural justices and the procedure prescribed in law. Therefore, the impugned show cause notices and the Summary of the Orders be quashed and the matters be remanded.

5. Counter affidavit has been filed by the Respondent State. Plea of alternative remedy of appeal under section 107 of the Act of 2017 has been taken. It has further been stated that GSTN provides for standard format in which only notices can be issued upon the assessee. The Deputy Commissioner of State Tax, Godda Circle, Godda has therefore followed the procedure by mentioning the violations and charges on the petitioner i.e. difference between GSTR-3B and 2A. The show-cause notices and Summary of the show-cause notices in Form GST DRC-01 clearly mentions the charge i.e. difference between GSTR-3B and 2A. A plea has also been taken that entries in GSTR-2A, which are auto populated figure of inward supply for the taxpayer in the online GSTN portal, is dynamic in nature and changes upon filing of GSTR-1 by the suppliers / taxpayer. Thus, after filing of GSTR-1 by the suppliers, any changes made in the figures in GSTR-2A by the taxpayers was never brought to the notice of the Department either during adjudication stage or until filing of the writ petition. Therefore, because of late filing of GSTR-1 by the suppliers, interest under section 50 of the Act of 2017 is required to be levied to prevent loss of revenue to the State Exchequer.

It appears that there is no specific denial of the plea taken by the petitioners that no penalty of 100% of the tax dues can be levied in a proceeding under section 73(1) in terms of section 73(9) of the Act, 2017.

6. Learned counsel for the State have however, submitted that in case impugned show-cause notices and Summary of the Orders are quashed, liberty may be granted to the Revenue to initiate proceeding after proper service of show-cause notice upon the petitioners. In view of section 73(2) read with Section 73(10) of the Act of 2017, limitation for initiating fresh proceeding and passing orders would be three years from the date of filing of annual return i.e. December 2022 which has not yet expired.

7. We have considered the submissions of learned counsel for the parties and taken note of the materials on record. We may straightaway point out that notices under section 73(1) of the Act of 2017 at Annexure-1 of the respective writ petition is in the standard format and neither any particulars have been struck off, nor specific contravention has been indicated to enable the petitioner to furnish a proper reply to defend itself. The show-cause notices can therefore, be termed as vague. This Court has, in the case of **M/s NKAS SERVICES PRIVATE LIMITED (Supra)** categorically held that summary of show cause notice in Form GST DRC-01 cannot substitute the requirement of a proper show cause notice under section 73(1) of the Act of 2017. It seems that the authorities have, after issuance of show-cause notice dated 28.08.2020 (Annexure-1) and Summary of show cause notices contained in GST DRC-01 (Annexure-2) of the same date, proceeded to issue Summary of the Order dated 12.12.2020 (Annexure-3). Respondents have also not brought on record any adjudication order. In this regard, the opinion of this Court rendered in the case of **M/s NKAS SERVICES PRIVATE LIMITED Versus State of Jharkhand and others** in **W.P (T) 2659/2021** at paragraph-14 to 16 are profitably quoted hereunder:

“14. We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act.

15. Learned counsel for the petitioner has relying upon the case of **Bharti Airtel Ltd. (supra)** and contended that the Apex Court has observed that the common portal of GSTN is only a facilitator. The format GST DRC-01 or 01A are prescribed format on the online portal to follow up the proceedings being undertaken against an assessee. They themselves cannot substitute the ingredient of a proper show cause notice. If the show cause notice does not specify a ground, the Revenue cannot be allowed to raise a fresh plea at the time of adjudication, as has been held by the Apex Court in a matter arising under Central Excise Act in the case of

Shital International (supra) at para 19, extracted herein below:

“19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See Commr. of Customs v. Toyo Engg. India Ltd., CCE v. Ballarpur Industries Ltd. and CCE v. Champdany Industries Ltd.) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show-cause notice nor can it be allowed to take contradictory stands in relation to the same assessee.”

In a notice under Section 74 of the JGST Act, the necessary ingredients relating to fraud or willful misstatement of suppression of fact to evade tax have to be impleaded whereas in a notice under Section 73 of the same act the Revenue has to specifically allege the violations or contraventions, which has led to tax not being paid or short paid or erroneously refunded or Input Tax Credit wrongly availed or utilized. It is trite law that unless the foundation of a case is laid down in a show cause notice, the assessee would be precluded from defending the charges in a vague show cause notice. That would entail violation of principles of natural justice. He can only do so, if he is told as to what the charges levelled against him are and the allegations on which such charges are based. Reliance is placed on the opinion of the Constitution Bench of the Apex Court in the case of Khem Chand versus Union of India [AIR 1958 SC 300], which has also been relied upon in the case of Oryx Fisheries P. Ltd. Vs. Union of India reported in (2010) 13 SCC 427 and profitably quoted in our decision rendered in the case of the same petitioner in W.P (T) No. 2444 of 2021.

16. We are thus of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice. The challenge is entertainable in exercise of writ jurisdiction of this Court on the specified grounds as clearly held by the decision of the Apex Court in the case of Magadh Sugar & Energy Ltd. Vrs. State of Bihar & others reported in 2021 SCC Online SC 801, para 24 and 25. Accordingly, the impugned notice at annexure-1 and the summary of show cause notice at annexure-2 in Form GST DRC-01 is quashed. 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. Since the 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”

8. Levy of penalty of 100% of tax dues reflected in the Summary of the Order contained in Form GST DRC-07 vide Annexure-34 in the writ petition is also in the teeth of the provisions of Section 73(9) of the Act

of 2017, wherein while passing an adjudication order, the Proper Officer can levy penalty up to 10% of tax dues only. The above infirmity clearly shows non-application of mind on the part of the Deputy Commissioner, State Tax, Godda Circle, Godda. Proceedings also suffer from violation of principles of natural justice and the procedure prescribed under section 73 of the Act and are in teeth of the judgment rendered by this Court in the case **M/s NKAS SERVICES PRIVATE LIMITED (Supra)**.

9. Taking into account all these facts and circumstances and for the reasons recorded hereinabove, the impugned show-cause notices and Summary of the Show Cause Notice dated 28.08.2020 (Annexure-1 and 2) and Summary of Orders contained in Form GST DRC-07 dated 12.12.2020 (Annexure-3) are quashed. However, Respondent No. 2- Deputy Commissioner of State Tax, Godda is at liberty to initiate fresh proceeding for the alleged contravention for the said tax period after issuance of proper show-cause notice in accordance with law. Writ petition is allowed in the manner and to the extent indicated herein above.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)