

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 4784 of 2022

M/s Chitra Automobile, represented through its sole
Proprietor Sarwesh Kumar S/o Sri Panchanan Pandey,
Aged about 45 years resident of At + P.O.- Koridih,
P.S.- Jasidih, District-Deoghar, Jharkhand

..... Petitioner

Versus

1. The State of Jharkhand
2. The Commissioner of State Taxes, having its office at
Project Bhawan, P.O.- Dhurwa, P.S.-Jagarnathpur,
District-Ranchi, Jharkhand.
3. The State Tax Officer, having its office at Deoghar,
P.O., P.S. & District- Deoghar, Jharkhand.

..... Respondents

CORAM: Hon'ble The Acting Chief Justice
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : M/s Ravi Kumar, Akata Anand,
 Bhawesh Kumar, Sanjeev Kumar,
 Sneha Sonam, Advocates

For the Respondents : Mr. Sachin Kumar, AAG-II

07/ 24.01.2023 The petitioner has prayed for following reliefs:

- I. *For issuance of an appropriate writ(s), order(s) or direction(s) quashing and setting aside the impugned purported Show Cause Notice dated 12.02.2022 bearing No.ZD200222000811G which is Annexure-1 here to, issued by the Respondent No.03 in purported exercise of powers under Section 73 of the Jharkhand Goods and Services Tax Act, 2017.*
- II. *For issuance of an appropriate writ(s), order(s) or direction(s) quashing and setting aside the consequential impugned Summary of Show Cause notice in FORM GST DRC-01 dated 12.02.2022 issued by the Respondent No.03 which is at Annexure-2 here to, in purported exercise of powers under Rule 142(1) (a) of the Jharkhand Goods and Services Tax Rules, 2017.*
- III. *For issuance of an appropriate writ(s), order(s) or direction (s) quashing and setting aside the consequential impugned Summary of the order in FORM GST DRC-07 dated 17.02.2022 issued by the Respondent No.3 which is at Annexure-3 hereto, 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(s), order(s) or direction(s) to the respondents to not attach the business bank Account no. 37038649040 of the petitioner running in the State Bank of India, Deoghar Branch.*

AND/OR
- V. *For any other appropriate writ(s)/order(s)/direction(s) as this Hon'ble Court may deem fit and proper for doing conscionable justice to the petitioners.*

2. The brief facts of the case are that the petitioner firm is engaged in trading of Two Wheeler Bikes and its parts which are sold to the various customers. The petitioner is registered under the Central Goods and Services

Tax Act, 2017 and the Jharkhand Goods and Service Tax Act, 2017 (hereinafter to be referred as the 'JGST Act') vide GSTIN 20AMQPK5542B1ZF with the Commissioner of Commercial Taxes, Commercial Tax Department, Project Bhawan, Dhurwa, Ranchi-834004 for supply of taxable services in the State of Jharkhand. Further, the petitioner for supply of taxable services, receives input services, inputs and capital goods for use in the course or furtherance of its business and claims input tax credit on such inward supplies in accordance with Section 16 of the JGST Act, 2017/CGST Act, 2017.

During the period under dispute the petitioner had regularly filed its monthly returns of outward supplies in FORM GSTR-1 under Section 37 of the JGST Act read the Rule 59 of the JGST Rules, monthly return of self assessment in FORM GSTR-3B under Section 39 read with rule 61 (5) of the Act.

All of a sudden, a Show Cause Notice under Section 73 of the JGST Act, 2017 was issued on 12.02.2022 along with FORM GST DRC-01 of even date stating that the petitioner has violated provisions of the JGST Act, 2017 related to the Tax Period: MAR 2019 and the petitioner was asked to reply the show cause notice vide Reference No. ZD200222000811G. The total demand was to the tune of Rs. 30,22,586.00 including CGST, SGST and interest. Since the petitioner has not presented any reply of the show cause notice dated 12.02.2022; summary of order in FORM GST DRC-07 as per Rule 142(5) of the JGST Act, 2017 was issued on 17.02.2022.

3. Learned counsel for the petitioner submits that the show-cause notice under Section 73(1) of the JGST Act, 2017 dated 12.02.2022 (Annexure-1) for the tax period March 2019 is 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 State Tax Officer, Dumka has thereafter proceeded to issue Summary of the Order in FORM GST DRC-07 on 17.02.2022 (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.

Learned counsel for the petitioner contended that the show cause notice issued is in violation of rule of law and principles of natural justice. He contended that the initiation of proceeding under Section 73(1) of the JGST Act is not an empty formality or a mere pretext but integral of principles of natural justice and fair play.

He lastly submits that on the one hand, the show cause notice which was issued under Section 73 (1) of JGST Act, 2017 (Annexure-1) dated 12.02.2022 was in format without striking the irrelevant particulars; on the other hand, summary of order in Form GST DRC-07 was issued just within five days of issuance of show cause notice dated 12.02.2022 i.e., on 17.02.2022.

4. He further relied on the judgment passed by this Court in the case of *M/s NKAS Services Pvt. Ltd. vs. State of Jharkhand & Ors.*, passed in W.P.(T) 2444 of 2021 and submits that the impugned show cause notice dated 12.02.2022 issued under Section 73(1) of the Act (Annexure-1), summary of show cause notice of the even date issued under FORM GST DRC-01 (Annexure-2) and summary of order issued in FORM GST DRC-07 on 17.02.2022, are liable to be quashed and set aside.

5. Mr. Sachin Kumar, learned AAG-II for the respondent State relied upon the counter affidavit and submits that the present writ petition is not maintainable in the eye of law as the petitioner has efficacious and alternative remedy available of filing the appeal against any decision or order before the Appellate Authority under Section 107(1) of the GST Act. The petitioner despite having knowledge of the issuance of summary order in FORM GST DRC-07 dated 17.02.2022 has not availed the same.

Further, the prayer of the petitioner is primarily concerned with the realization of its Input Tax Credit (ITC) to the tune of Rs.22,01,732.12/- lying in the electronic credit ledger of the petitioner as for the Financial Year 2018-19 last date for availing ITC as per provisions under Section 16(4) of Jharkhand Goods & Service Act, 2017 was 20.10.2019; however, petitioner filed his GSTR-3B returns for the tax period mentioned above after 20.10.2019, as such, ITC availed to the tune of Rs.22,01,732.12 is in utter violation of Section 16(4) of JGST Act, 2017.

Accordingly, ASMT-10 notice under Section 61 of JGST Act, 2017 and Rule 99 of JGST Rule, 2017 was issued as per the provisions of law on 26.10.2021. Since the petitioner has not given any reply to the ASMT-10; the show cause notice under Section 73 of the JGST Act, 2017 was issued on 12.02.2022 stating that the petitioner has violated provisions of the JGST Act, 2017 related to the Tax Period: MAR 2019 and the petitioner was asked to reply the show cause notice along with FORM GST DRC-01 as per Rule 100(2) & 142(1)(a) of the JGST Act, 2017 stating the ground as "ITC AVAILED AFTER DUE DATE" of the JGST Act, 2017. Since the petitioner has not presented the reply of the show cause notice dated 12.02.2022 summary of order in FORM

GST DRC-07 as per Rule 142(5) of the JGST Act, 2017 was issued on 17.02.2022.

6. He lastly submits that the petitioner is liable to pay the tax liability as issued by the Department in FORM GST DRC-07 as the same is legal and fully justified.

7. Having heard learned counsel for the parties and after going through the documents available on record, it appears that a show cause notice under Section 73(1) of the Act dated 12.02.2022 (Annexure-1) was issued to the petitioner which was issued in a format without striking out the irrelevant particulars and thus, there won't be an exaggeration in treating the same as vague as it does not spell out the contraventions for which the petitioner is charged. As a matter of fact, it is worse than the summary of show cause notice issued under FORM GST DRC-01 of the even date (Annexure-2).

It further transpires that without giving any opportunity of hearing State Tax Officer was in so hurry, that he finally issued summary of order in FORM GST DRC-07 on 17.02.2022 (Annexure-3); that means just within five days from issuance of show cause.

8. Now the law is no more res integra, inasmuch as, Rule 142(1) (a) of the JGST Rules provides that the summary of show cause notice in Form DRC-01 should be issued "along with" the show cause notice under Section 73(1) which will spell out the contraventions in details for which the Assessee is charged. The word "along with" clearly indicates that in a given case show cause notice as well as summary thereof both have to be issued. As per Rule 142(1)(a) of the JGST Rules, the summary of show cause notice has to be issued electronically to keep track of the proceeding initiated against the registered person whereas a show cause notice need not necessarily be issued electronically.

This Court in the case of ***M/s NKAS Services Pvt. Ltd. vs. State of Jharkhand & Ors.***, passed in W.P.(T) No. 2444 of 2021 in which one of us (Aparesh Kumar Singh, J.) was the member, has taken note of the said position of law. For brevity, Paragraph-14, 15 & 16 of the said judgment is quoted herein below:

"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:

“(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.”

9. Though, in the instant case purported show cause notice has been issued but at the cost of repetition, the same was issued in a format without striking out irrelevant particulars which is not the intent of the legislature. Thus, this Court holds that the foundation of the proceeding in the instant case suffers from material irregularity and hence not sustainable being contrary to Section 73 (1) of the JGST Act. Thus, the subsequent proceedings/impugned orders issued under DRC-07 dated 17.02.2022 cannot sanctify the same and liable to be quashed and set aside. At the cost of repetition, DRC-07 has been issued within five days of issuance of DRC-01 is a clear picture of violation of principles of natural justice.

10. As we are of the considered view that the impugned show cause notice in the instant case does not fulfill the ingredients of a proper show cause notice and thus amounts to violation of principles of natural justice; the challenge is maintainable in exercise of writ jurisdiction of this Court. Accordingly, the show cause notice under Section 73(1) of the Act dated 12.02.2022 (Annexure-1), summary of show cause notice in FORM GST DRC-01 of the same date (Annexure-2) and also the summary of order dated 17.02.2022 in FORM GST DRC-07 (Annexure-3), are, quashed and set aside.

It is made clear that since this Court has not gone into the merits of the case, the respondents are at liberty to initiate fresh proceeding from the stage of issuance of show cause notice under Section 73 (1) of the JGST Act, 2017 in accordance with law. As a result, the instant application stands allowed. I.A. No. 11817 of 2022 is also disposed of.

(Aparesh Kumar Singh, A.C.J.)

(Deepak Roshan, J.)