

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1117 of 2021

M/S Shyam Hardware Store, a proprietorship firm Petitioner

Versus

1. The State of Jharkhand.
2. Joint Commissioner of State Tax (Administration), Hazaribagh Division, Hazaribagh.
3. Deputy Commissioner of State Tax, Investigation Bureau, Hazaribagh Division, Hazaribagh.
4. Deputy Commissioner of State Tax, Ramgarh Circle, Ramgarh.
5. State Tax Officer, Ramgarh Circle, Ramgarh. Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Vishnu Deo Bhagat, Adv.

For the State : Mr. Deepak Kumar Dubey, A.C. to AAG-II

6/11.7.2022

Per Deepak Roshan, J. The instant writ application has been preferred for following reliefs:-

- (i) For issuance of an appropriate writ/order/direction, including writ of certiorari for quashing/setting aside the summary of the order contained in Form GST DRC 07 dated 04.12.2020 as well as Summary of rectification/withdrawal order contained in Form GST DRC 08 dated 07.12.2020 issued by respondent no.5 pertaining to the periods 2017-18, 2018-19, 2019-20 & 2020-21 (Annexure-4 & 5 series) wherein respondent no.5 has directed the petitioner to make payment of tax, interest and penalty on alleged grounds of purported adjudication order passed by respondent no.3.
 - (ii) For issuance of further appropriate writ/direction/order including writ of declaration, declaring that the purported order passed by respondent no.3 (Annexure-3) in alleged exercise of power under Section 61 & 73 of JGST Act, 2017 without having any authority for doing so, as communicated to the petitioner vide Form GST DRC 07 dated 04.12.2020 as well as Form GST DRC 08 dated 07.12.2020 is wholly illegal and arbitrary having been passed in utter violation of the provisions of the JGST Act, and in utter violation of the principle of natural justice actuated with malice in law against the petitioner.
2. The facts of the case as disclosed in the instant writ application are that on 11.1.2020 by the order of Joint Commissioner of State Tax

(Admin), Hazaribagh Division, Hazaribagh an inspection was conducted by the joint team of officers of Investigation Bureau and Ramgarh Circle in the premises of the petitioner and an Inspection Report was prepared. At the bottom of the inspection report (Annexure-2/6) petitioner was directed to appear on 17.1.2020 before the Joint Commissioner of State Tax (Admin) Hazaribagh Division, Hazaribagh failing which proceeding under Sections 73, 50(1) and 125 of JGST Act would be initiated. In the Inspection Report, the inspecting team has also alleged three discrepancies against the petitioner namely, short of goods in physical stock to the tune of Rs. 4,26,734.01/-, short of goods in summary stock for Rs.19918.00/- and failure to declare additional place of business and thereby directed the petitioner to submit his explanation for aforesaid discrepancies along with purchase invoices and payment evidences before the Joint Commissioner of State Tax (Admin), Hazaribagh Division, Hazaribagh on 17.01.2020, otherwise, the action would be taken against the petitioner under Sections 73, 50(1) and 125 of the Act.

In pursuance of the inspection report, the proceeding of enquiry was initiated by respondent no.3 and the petitioner was directed to appear before the said authority along with requisite books of accounts and pursuant thereto; the petitioner appeared before the respondent No.3 along with its books of accounts.

Interestingly; pursuant to the inspection dated 11.01.2020, petitioner was served summary of the order in Form GST DRC 07 separately for the period 2017-18, 2018-19, 2019-20 and 2020-2021, all dated 04.12.2020 (Annexure-4 series) wherein alleged amount of tax, interest and penalty have been levied against the petitioner by the Respondent No.5 in spite of the fact that the petitioner was regularly appearing before the respondent No.3 pursuant to the said inspection. The petitioner was also served three rectification orders as well as summary of rectification/withdrawal order in Form GST DRC 08 all dated 07.12.2020 (Annexure-5 series) which were also issued by respondent no.5 in respect to three of the Form GST DRC 07 issued previously against the petitioner.

3. Mr. Vishnu Deo Bhagat, learned counsel for the petitioner submits that in the instant case no pre-show cause notice in form of Form GST DRC-01A was issued intimating him of the liability of tax, interest applicable and/or penalty which if not paid would lead to initiation of adjudication process as contemplated under Section 73 of JGST Act. Learned counsel contended that due to this action petitioner was debarred from filing his objection in part B of Form GST DRC-01 A against the same. He further contended that no show-cause notice was issued in this regard to the petitioner under Section 73(1) of the JGST Act. The proper officers, as a matter of fact, has not initiated the adjudication process as contemplated under Section 73 of the JGST Act to determine the tax which in their opinion, has not been paid. Learned counsel also assailed the jurisdiction of the proper officers. Learned counsel concluded his argument by submitting that since the procedure prescribed for initiation of proceeding under Section 73 (1) of the JGST Act has not been followed; the petitioner has been highly prejudiced because of violation of principle of natural justice.

4. At this stage, it is pertinent to mention here that during course of hearing learned counsel for the State was directed to file specific reply with regard to paragraph 41, 42 and 43 of the writ application which dealt with the contention of the petitioner w.r.t. violation of statutory rules and principles of natural justice and in this regard a supplementary counter affidavit has been filed on 16.6.2022 wherein the respondents, in a sense, have admitted that procedure has not been followed.

5. Mr. Deepak Kumar Dubey, A.C. to AAG-II relied upon the supplementary counter affidavit and submits that the concluding paras of the inspection report dated 11.1.2020 itself provides the information as regard to the notices under Sections 73, 50(1) and Section 125 of the JGST Act and as such it should be treated that notice under Section 73 has already been issued and served upon the petitioner.

For brevity, relevant paragraph nos. 6 to 8 of the supplementary counter affidavit dated 16.6.2022 are quoted herein below:-

“6. That, it is further submitted that, the said inspection dated 11.01.2020 was carried out in the physical presence of the petitioner proprietor.

7. That it is further submitted that the concluding paras of the said inspection report dated 11.01.2020 itself provide the information as regard to the notices u/s 73, 50(1) and Section 125 and therefore, it shall be treated that notice u/s 73 has already been issued and served upon the petitioner.

8. That therefore, the notices u/s 73, 50(1) and 125 were deemed to have been issued to the petitioner proprietor on the day of inspection i.e. 11.01.2020.”

6. At the outset it is clarified that though petitioner has challenged the summary of the order contained in Form of GST DRC 07 dated 4.12.2020 as well as summary of rectification/withdrawal order contained in Form GST DRC 08 dated 7.12.2020 issued by the respondent No.5 pertaining to the period Financial Year 2017-18, 2018-19, 2019-20 and 2020-21; however, the order dated 30.6.2020 clearly indicates that the issue in hand is with respect to Financial Year 2017-18, 2018-19 and 2019-20 and there is no reference of 2020-21. As such, this Court is dealing the issue in hand only with respect to the Financial Year 2017-18, 2018-19 and 2019-20 only and not giving any finding with respect to contention raised by the petitioner in connection with Financial Year 2020-21.

7. 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 appears that the respondents have unsuccessfully tried to defend their action, inasmuch as, in para-7 of their supplementary counter affidavit quoted herein above mentioned that the concluding paras of the said inspection report dated 11.01.2020, were treated as notice under Section 73 upon the petitioner. The above statements show that the petitioner has been only informed that if he fails to appear before the prescribed authority on prescribed date, the proceeding under Sections 73, 50(1) and 125 will be initiated.

8. The respondents have failed to establish that the petitioner has ever ignored the directions given in the inspection report rather it appears from the entire order sheet (Annexure-3 series) that the petitioner has

not only appeared on the date as prescribed in the inspection report but also on various dates as required by the adjudicating officer. At no point of time, the adjudicating officer has mentioned in the order sheet that the petitioner has failed to appear.

On the contrary, it appears from the order sheet that the adjudicating officer has mentioned that the proceeding under Sections 73, 50(1) and 125 has been initiated by the inspecting team itself; whereas from the concluding part of the inspection report it clearly transpires that the petitioner was directed to appear on 17.1.2020 before the Joint Commissioner of State Tax (Admin) Hazaribagh Division, Hazaribagh failing which proceeding under Sections 73, 50(1) and 125 of JGST Act would be initiated. The said direction nowhere elucidates that if the petitioner fails to appear, the said direction will *suo-motto* convert into a notice under Section 73, 50(1) and 125. Even otherwise, the averment of the respondents that the direction shall be treated as notice under Section 73 already being issued and served upon the petitioner is nothing but an attempt to misrepresent the facts and is not accepted by this Court.

In para-8 of the supplementary counter affidavit the respondents have averred that the direction in the inspection report is a deemed notice. In this regard it is pertinent to mention that in the matter where the principles of natural justice is at stake, words such as deemed, tantamount etc. hold no merit. Moreover under Rule 142 of JGST Rules, 2017 procedure of notice under Section 73 has already been prescribed; hence any other such deemed notice, can be treated no notice in the eye of law.

9. In this regard reference may be made to the case of *M/s Godavari Commodities Ltd. Vs. the State of Jharkhand & Ors. (W.P.(T) No.3908 of 2020*, this Court has categorically held that any order passed without complying the requirement as prescribed under Rule 142 of JGST Rules, 2017 is against the principle of natural justice. Paragraph 18 of the said judgment is extracted herein below:-

“18. The present case is squarely covered by the aforesaid decision of this Court and we fully agree with the law laid down in the case of NKAS Service Pvt. Ltd. (supra) and, accordingly, it is held that the Adjudication Order is non est in the eye of law, as the same has been passed without issuance of proper show cause notice and, thus, amounts to violation of principles of natural justice.”

10. As a matter of fact, in series of judgments passed by this Court it has been categorically held that any adjudication order is *non-est* in the eye of law if the same is passed without issuance of proper show-cause notice being *dehors* principle of natural justice. In the instant case admittedly, the procedure has not been followed.

11. In view of the aforesaid discussions, we are of the considered view that since the inspection report does not fulfill the ingredients of a proper show-cause notice it amount to violation of principles of natural justice. The challenge is therefore maintainable in exercise of writ jurisdiction of this Court and the instant writ application deserves to be allowed.

12. Consequently, the summary of the order as contained in Form GST DRC 07 dated 04.12.2020 (Annexure-4 series part) as well as summary of rectification/withdrawal order as contained in Form GST DRC 08 dated 07.12.2020 (Annexure-5 series part) only with respect to Financial Year 2017-18, 2018-19 and 2019-20, is hereby, quashed and set aside.

However, the respondents are at liberty to initiate fresh proceedings from the stage of issuing proper show-cause notice as laid down in the JGST Act, 2017 and the Rules made thereunder and following principles of natural justice.

13. Accordingly, the instant writ application stands allowed and in the manner and to the extent indicated above.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)