

Court No. – 1

Case: - WRIT TAX No. – 276 Of 2020

Petitioner: - M/S Associated Switch Gears and Projects Ltd. Through Its Director, Jawahar Lal Jain

Respondent: - State of U.P., Through Secretary, Institutional Finance, U.P. Govt. And 2 Others

Counsel for Petitioner: - Rishi Raj Kapoor

Counsel for Respondent: - C.S.C.

Hon'ble Shekhar B. Saraf, J.

(Judgment dictated in Open Court)

1. Heard counsel appearing on behalf of the parties.
2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated August 20, 2019, passed in appeal by the Respondent No. 2/Additional Commissioner Grade-II (Appeal), Commercial/State Tax, Gautam Budh Nagar and the penalty order dated July 24, 2018, passed by the Respondent No. 3/Assistant Commissioner, State Tax/Commercial Tax, Gautam Budh Nagar.
3. Upon examination of the order dated August 20, 2019, passed in appeal, it appears that the plea that had been taken in the show cause notice at the time of detention, that is, that the vehicle was travelling to a destination not mentioned in the invoice, was accepted in appeal by the authorities. However, the appellate authority has imposed penalty on a different ground, that is, that the e-Way Bill had expired though the same was accompanied with goods.
4. It is pertinent to mention here that the Supreme Court on numerous occasions has upheld that the authorities cannot transgress the boundaries of the show cause notice. In *Commissioner of Customs, Mumbai -v- Toyo Engineering Ltd.*, reported in (2006) 7 SCC 592, the Supreme Court emphasized upon the necessity of specifying the grounds for taking action against an individual in the show cause notice. The relevant paragraph of the judgment is delineated below:

“16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the Revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither the adjudicating authority nor the Appellate Authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the showcause notice as well. The Department cannot travel beyond the show-cause notice. Even in the grounds of appeals these points have not been taken.”

5. In *Commissioner of Central Excise, Bhubaneshwar -v- Champdany Industries Ltd.*, reported in, (2009) 9 SCC 466, the Supreme Court held as follows:

“38. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, the Revenue cannot in Court argue a case not made out in its showcause notice. (See Commr. of Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592]) Similar view was expressed by this Court in CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] In para 27 of the said Report, learned Judges made it clear that if there is no invocation of the Rules concerned in the show-cause notice, it would not be open to the Commissioner to invoke the said Rules.”

6. Finally, in *Commissioner of Central Excise, Chandigarh -v- Shital International*, reported in (2011) 1 SCC 109, the Supreme Court, stated that unless the foundation of the case is laid in show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. The relevant paragraph of the judgment is delineated 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. [(2006) 7 SCC 592] , CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] and CCE v. Champdany Industries Ltd. [(2009) 9 SCC 466]) 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 showcause notice nor can it be allowed to take contradictory stands in relation to the same assessee.”

7. One crucial limitation placed upon the exercise of authority is the concept of a “show cause notice”. This administrative instrument serves as a vital checkpoint, delineating the boundaries within which any authority can operate. At its core, a show cause notice represents the initial step in an administrative or legal process, wherein an individual or entity is formally apprised of allegations or discrepancies attributed to them. This notice serves as a mechanism to afford the recipient an opportunity to present their side of the story, provide clarifications, or rectify any perceived errors before any punitive action is taken. By issuing a show cause notice, an authority acknowledges the principle of *audi alteram partem*, or “hear the other side”, ensuring fairness and due process in its proceedings.

8. The significance of adhering to the confines of a show cause notice lies in upholding the rule of law and preventing arbitrary exercises of power. Any action taken by an authority beyond the scope defined in the notice risks transgressing the boundaries of legality and procedural fairness. Such overreach not only undermines the legitimacy of the authority but also compromises the rights of the individuals or entities involved, potentially leading to legal challenges and erosion of public trust. Moreover, the issuance of a show cause notice imposes a duty on the part of the authority to meticulously outline the specific allegations or concerns prompting its issuance. This requirement fosters transparency and accountability, as the recipient is entitled to a clear understanding of the charges against it, enabling it to formulate an informed response. Any attempt by the authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the notice would violate this principle of specificity, depriving the recipient of a fair opportunity to address the accusations leveled against it.

9. The issuance of a show cause notice represents a pivotal juncture in administrative proceedings, demarcating the boundaries within which any authority can exercise its powers. By adhering to the confines of the notice, authorities uphold principles of fairness, accountability, procedural regularity, and legal certainty essential for the legitimacy and effectiveness of governance systems. Any attempt to transcend these limits not only violates the rights of the individuals or entities involved but also undermines the rule of law and public trust in the institutions tasked with upholding it. Thus, this Court holds that, adhering to the show cause notice is not merely a procedural formality, but a mandatory requirement, beyond the scope of which, no action can be taken. Adherence to the show cause notice is a fundamental safeguard against arbitrary exercises of power, ensuring that authority remains tethered to the principles of justice and the rule of law.

10. In ***Ramlala -v- State of U.P and Ors.***, reported in, ***2023 SCC OnLine All 2479***, this Court, while placing reliance on ***The Board of High School and Intermediate Education, U.P. -v- Kumari Chitra Srivastava***, reported in, ***(1970) 1 SCC 121***, held that the reason to not allow the authorities to go beyond the show cause notice is that a person must be given a chance to put up his case with regard to the said show cause notice. Relevant paragraphs are extracted below:

“9. The principle that emerges from the above judgments is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalise the noticee on grounds that were not stated in the show cause notice.

10. The rationale for not allowing the respondents from going beyond the realm of the show cause notice is that the petitioner has to be given a chance to put up his case with regard to the said show cause notice. In the event, a particular case is made out in the show cause notice and the order passed subsequently is beyond the said show cause notice, the same would amount to violation of the principles of natural justice, as the petitioner would not have been aware of the new grounds or new factual elements and could never have placed his case

for the above before the authority concerned. It is in this background that the Supreme Court in umpteen judgments has laid down the law that an order passed by an authority cannot go beyond the scope of the show cause notice. In fact, the Supreme Court in the case of The Board of High School and Intermediate Education, U.P. v. Kumari Chitra Srivastava, (1970) 1 SCC 121 has categorically stated that the principles of *audi alteram partem* are required to be followed even if the same is burdensome in nature. Justice S.M. Sikri in his inimitable style stated as follows:

“Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law.”

11. In *Jitendra Kumar -v- State of U.P. and Anr.*, reported in, *2023 SCC OnLine All 2837*, this Court, while dealing with a similar factual matrix, stated that as has been settled by various Supreme Court judgments, once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground. Relevant paragraphs are delineated below:

“5. It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.

6. In the present case, it is clear that the detention was made on the ground that the goods were not accompanied by valid documents. However, when the show-cause notice was issued, there is no whisper of any invalid document whatsoever. In fact, the stand was completely changed by the Revenue and this volte face cannot be countenanced by this Court. The detention of goods causes serious prejudice to an assessee and the same can only be done on the basis of specific, valid and reasonable grounds. In the present case, it is quite obvious that at the time of detention, the ground that was stated by the Revenue was incorrect. More so, there was no reason for the Revenue to have detained the goods and the consequential actions that followed, were obviously vitiated.”

12. In the present case, it is evident that the authorities have travelled beyond reasons provided in the show cause notice and imposed penalty on

the ground that was never provided to the petitioner in the show cause notice. The petitioner never had any opportunity to defend itself on the said ground, and therefore, the show cause notice is directly in teeth of the principles of natural justice, namely, the principle of *audi alteram partem*.

13. Therefore, the impugned orders in the instant case, cannot be allowed to stand. Accordingly, a writ of certiorari is issued against the impugned orders dated August 20, 2019 and July 24, 2018. These orders are hereby quashed and set aside.

14. This Court also directs the amount deposited by the petitioner to be refunded within a period of 4 weeks from the date of this order. Other consequential reliefs to follow.

15. This writ petition is, accordingly, allowed.

Order Date:-25.1.2024

Rakesh

(Shekhar B. Saraf, J.)

