

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE HIRDESH
ON THE 10th OF MAY, 2023
WRIT PETITION No. 6124 of 2020

BETWEEN:-

M/S DURGE METALS THR. ITS PROPRIETOR SHRI GOPAL SHARAN TAMRAKAR S/O SHRI KRISHAN SHARAN TAMRAKAR AGE 43 WARD N. 1001 SWAMI JU MARG CHHATARUR (MADHYA PRADESH)

.....PETITIONER

(*BY SHRI KAPIL DUGGAL - ADVOCATE*)

AND

1. APPELLATE AUTHORITY AND JOINT
COMMISSIONER STATE TAX THR. SAGAR DIVISION
(MADHYA PRADESH)

2. ASSISTANT COMMISSIONER STATE TAX
CHHATARPUR CIRCLE NEAR NAYA PANNA
NAKA, CHHATARPUR (MADHYA PRADESH)

.....RESPONDENTS

(*BY SHRI DARSHAN SONI – GOVT. ADVOCATE*)

This petition coming on for this day, JUSTICE SHEEL NAGU passed the following:

ORDER

This writ petition filed under Article 226 of the Constitution of India challenges Annexure P-2 dated 03.05.2019 and Annexure P-4 dated 30.08.2019 issued by Appellate Authority & Joint Commissioner, State Tax, Sagar Division, respectively.

2. Principal ground of challenge to show cause notice, issued vide Annexure P-1 dated 28.03.2019 under Section 74(1) of GST Act, is that it does not satisfy the requirements of the said provision r/w Rule 142 of GST Rules.

3. Learned counsel for rival parties are heard on the question of admission and also final disposal.

4. It is the contention of counsel for the petitioner that the show cause notice (Annexure P-1) was vague to the extent of not communicating the relevant information and material thereby disabling the petitioner to respond to the same, and therefore, all consequential actions of passing of order (Annexure R-2) and dismissal of appeal vide Annexure P-4 are vitiated in law.

4.1. Learned counsel for the petitioner has placed reliance upon decision of the Division Bench of Jharkhand High Court (***M/s Sidhi Vinayak Enterprises Vs. The State of Jharkhand & ors***) including WP(T) No.745/2021 rendered on 14th- 15th, September 2022, the facts and circumstances of which are similar if not identical to the facts and circumstance prevailing herein. It is urged that show cause notice in M/s Sidhi Vinayak Enterprises (supra) was identical to the show cause notice issued in the present case vide Annexure P-1 to the extent of being vague and cryptic.

4.2 The Jharkhand High Court has dealt with the provisions of Section 74 and 75 of GST Act as well as Rule 142 of GST Rules. Relevant extract of the said judgment from the Jharkhand High Court is reproduced below for ready reference and convenience:-

“9. In view of the aforesaid facts and the settled preposition of law, the foundation of the proceeding in both the cases suffers from material irregularity and hence not sustainable being contrary to Section 74(1) of the JGST Act; thus, the subsequent proceedings/impugned Orders cannot sanctify the same.

Though, the petitioner submitted their concise reply vide letter dated 03.10.2018; the respondent State cannot take benefit of the said action as summary of show cause notice cannot be considered as a show cause notice as mandated under Section 74(1) of the Act.

10. As we are of the considered view that the impugned show cause notice in both the cases 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 summary of show-cause notices dated 12.09.2018 issued in Form GST DRC-01 at Annexure-4 (in both cases), the orders dated 14.05.2019 issued under section 74(9) of JGST Act (in both cases) and also the final orders dated 18.10.2021 passed after rectification at Annexure-09 (in both cases), are hereby quashed and set aside. However, since this 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.

11. Consequently both these applications stands allowed. The matter is remanded to the adjudicating authority to pass afresh order in accordance with law from the stage of issuance of proper show cause notice under Section 74(1) of the JGST Act.”

5. Learned counsel for State on the other hand by referring to Return as well as Additional Return, submits that the reply dated 25.04.2019 to the show cause notice (Annexure P-1) gives an impression that petitioner was not handicapped in giving any response to the show cause notice being vague. Counsel for the State further points out that in the memo of appeal vide Annexure P-3, the said ground of the show cause notice being vague was not raised.

6. It is true that the petitioner has not specifically raised the said ground before the appellate authority but the fact remains that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to

the same.

6.1. Bare reading of the show cause notice (Annexure P-1) reveals that it neither contained the material and information nor the statement containing details of ITC transaction under question.

7. Section 75 of GST Act is complete Code in itself which prescribes for various stages or determination of wrongful utilization of ITC which is required to subject to affording of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the end result.

8. In view of above and the following decision of the Jharkhand High Court, this Court has no manner of doubt that the very initiation of the proceedings by way of show cause notice (Annexure P-1) is vitiated for the same being vague.

9. Accordingly, impugned orders Annexure P-2 dated 03.05.2019 and Annexure P-4 dated 30.08.2019 and the show cause notice are quashed with a liberty to the competent authority to proceed in the matter in accordance with law, if so advised.

Writ petition stands allowed.

(Sheel Nagu)
Judge

(Hiradesh)
Judge

vibha

