

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 2812/2025

Uploaded on: 13.10.2025

**Zakir Hussain, aged 55 years
S/o Nazir Ahmed
R/o Padyarna, Nagseni, Bhagna
District Kishtwar-182204**

....Applicant(s)/Petitioner(s)

Through :- Mr. Bhavesh Bhushan, Advocate

v/s

- 1. Union of India
Through Secretary
Ministry of Finance
Department of Revenue
North Block, New Delhi-110001**
- 2. Union Territory of Jammu and Kashmir
Through Principal Secretary to Government of J & K
Finance Department
Civil Secretariat, Jammu-180001**
- 3. Commissioner (State Taxes), J & K
Excise and Taxation Complex
Rail Head, Panama Chowk, Jammu-
180012**
- 4. State Taxes Officer, Circle Kishtwar
District Administration Complex
Mini Secretariat, Kishtwar-182204**
- 5. Deputy Commissioner State Taxes (Recovery)
Excise and Taxation Complex
Rail Head, Panama Chowk, Jammu-
180012**

.....Respondent(s)

Through :-

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER(ORAL)
10.10.2025**

1. The petitioner, who is a Contractor by profession and registered with the GST authorities in terms of GSTIN-01AIZPH1799N2ZG, is aggrieved of an order bearing reference no. ZD010225015658P dated 26.02.2025

issued by State Taxes Officer, Circle Kishtwar [“STO”], whereby a demand of tax of Rs. 15,44,922/- for the financial year 2020-2021 has been raised against the petitioner.

2. The impugned notice of demand is assailed by the petitioner, primarily, on the ground that it has been issued in violation of principles of natural justice, in that, the reply submitted by the petitioner to the show cause notice dated 25.11.2024 has not been considered.
3. Briefly put, the relevant facts necessary for disposal of this petition are that the STO vide show cause notice dated 25.11.2024 issued under Section 73(1) of the State Goods and Services Tax Act, 2017 [“SGST”] called upon the petitioner to pay the outstanding tax liability of Rs. 15,06,304/- or else submit any relevant clarification or supporting documents to explain the pointed shortcomings of the turnover. The notice of show cause was served upon the petitioner in form GST DRC-01 and the petitioner was given the time to submit reply by or before 30.12.2024. The reply to the show cause notice was, however, submitted by the petitioner on 20.01.2025, i.e., after the due date indicated in the show cause notice, but before the final order in terms of Section 73(9) of the SGST could be made. The STO did not consider the reply/response submitted by the petitioner to the show cause notice on the ground that the same was submitted beyond the time prescribed in the show cause notice. The STO, thus, proceeded to pass the order dated 26.02.2025 under Section 73(9) of the GST Act, 2017 raising a demand of Rs. 15,44,922/- against the petitioner. It is this order which is called in question by the petitioner through the medium of the instant petition on the ground that

the same is without considering his reply to the show cause notice and, therefore, violative of principles of natural justice.

4. Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case can be stated as under: -

Whether the proper officer is obliged in law to consider the reply/representation submitted by the assessee in response to the show cause notice issued under Section 73(1) of the SGST Act, 2017 where the reply has not been submitted within the period stipulated in the show cause notice, but before an order under Section 73(9) of the SGST Act, 2017 is passed?

5. Ancillary to this question is a question as to whether non-consideration of such reply/representation filed by the assessee in response to the show cause notice would vitiate the order passed under Section 73(9) of the SGST Act, 2017 being in violation of principles of natural justice.
6. Before we proceed to consider the question, we deem it appropriate to set out Section 73:

73. Determination of Tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

(1): - Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has

erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2): - The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (1) for issuance of order.

(3): -

(4): -.....

(5): -.....

(6): - The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made there under.

(7): - Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8): - Where any person chargeable with tax under sub-section (1) or under sub-section (3) pays the said tax along with interest payable under Section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9): - The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

7. Rule 142(1) of the J & K GST Rules, 2017 is also relevant and is set out below: -

142. Notice and order for demand of amounts payable under the Act.

(1): - The proper officer shall serve, along with the

(a): - Notice under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (2) of Section 76, a summary thereof electronically in FORM GST DRC-01.

(b): - Statement under sub-section (3) of Section 73 or sub-section (3) of Section 74, a summary thereof electronically in FORM GST DRC-02,

Specifying therein the details of the amount payable.

(2): -

(3): -.....

8. From the reading of aforesaid provisions, it is abundantly clear that the time period for submitting reply to the show cause notice issued under Section 73(1) has not been statutorily prescribed. However, nothing stops or prevents the proper officer to solicit reply to the show cause notice within a reasonable period fixed by it.
9. It is true that if the period prescribed for giving reply to the show cause notice or filing reply/representation has expired, it is open to the proper officer to presume that assessee has nothing to say in the matter and pass an order under Section 73(9) of the CGST Act, 2017, however, in a case where before the proper authority could pass a final order under Section 73(9), reply/representation submitted by the assessee to show cause notice is received, it becomes incumbent upon the proper officer to consider the reply/representation and then pass a speaking order in terms of Section 73(9) of the Act after dealing with such response/representation. It is so because the time to file response to the show cause notice is not statutorily fixed and is left to the discretion of the proper officer.

10. Ordinarily, the delay in submitting reply/representation, in response to the show cause notice issued under Section 73(1), will enable the proper officer to pass an order under Section 73(9) on the assumption that assessee has nothing to say in the matter. However, where the reply has been received and order under Section 73(9) is yet to be passed, it is in the interest of justice, equity and fairplay to take note of such response/representation filed by the assessee and pass a reasoned order under Section 73(9) of the CGST Act, 2017.
11. For the foregoing reasons, we are of the considered opinion that if response to the show cause notice is received by the proper officer after the period stipulated in the show cause notice, but before the final order is passed, it is incumbent upon the proper officer as also in the interest of justice, equity and fairplay to consider such response/representation before passing a final order under Section 73(9) of the CGST Act, 2017. We, however, make it clear that nothing stops or prevents the proper officer to pass an appropriate order under Section 73(9) immediately on the expiry of period stipulated in the show cause notice for filing response/representation on the assumption that assessee has nothing to say in defence.
12. In the instant case, there is no dispute with regard to the fact that reply to the show cause notice issued by the proper officer under Section 73(1) was received before the final order under Section 73(9) dated 26.02.2025 was passed by the proper officer.
13. In these circumstances, the proper officer should not have declined to consider the reply and pass the order under Section 73(9) of CGST Act, 2017 as if there was no reply/explanation or representation submitted by the assessee.

14. For the foregoing reasons, we find merit in this petition and the same is, accordingly, allowed. The impugned order dated 26.02.2025 passed by STO Circle Kishtwar under Section 73(9) of the CGST Act, 2017 is set aside. The STO Circle Kishtwar is left free to pass fresh order under Section 73(9) of the CGST Act, 2017 after taking into consideration the reply submitted by the petitioner to the show cause notice on 20.01.2025. The STO concerned shall do well to provide an opportunity of the oral hearing to the petitioner before passing the order. The tax, if any, recovered in terms of impugned order quashed by us shall remain subject to passing of fresh order under Section 73(9) of the CGST Act, 2017.

 SAGblog

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
10.10.2025
Manik



Whether this order is speaking: yes/no

Whether this order is reportable: yes/no