

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 2659 of 2021

M/s. NKAS Services Private Limited Petitioner

Versus

The State of Jharkhand & Ors. Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

Through Video Conferencing

For the Petitioner : M/S. K.Kurmy, N.K.Pasari, Advocates

For the Respondent : Mr. P.A.S.Pati, G.A.-II

07/10.01.2022 Mr. Kartik Kurmy, learned counsel for the petitioner has argued in support of the challenge to the impugned show cause notice dated 14th June, 2021 (Annexure-1) issued by the respondent No.3 under Section 73 of the Jharkhand Goods & Services Tax Act, 2017 and the summary of show cause notice in FORM- DRC-01 dated 14th June, 2021 (Annexure-2) also issued by respondent No.3 in exercise of power under Rule 142 (1) (a) of the Jharkhand Goods and Services Tax Rules, 2017 that the impugned show cause notice Annexure-1 lacks in the very ingredient of a proper show cause notice as required under Section 73 of the Act. It has been issued in a format without striking out any irrelevant portions and without stating the specific contravention committed by the petitioner. The summary of show cause notice in FORM-GST-DRC- 01 is to be issued in an electronic form along with a notice for the purposes of intimation to the assessee and the same by its very nomenclature cannot be a substitute to the show cause notice which if lacks in the essential ingredients of a proper show cause notice. Relying upon the decision rendered by this Court in W.P.(T) No. 2444 of 2021 dated 6th October, 2021 in the case of the same petitioner concerning a similar show cause notice issued under Section 74 of the JGST Act, it is submitted that the respondent no.3 has once again committed the same error in issuing the impugned show cause notice dated 14th June, 2021. While the show cause notice does not even contain the brief facts of the case or the grounds alleged even the summary of the show cause notice does not contain specific facts and allegations showing evasion of payment of due tax to the Government. In the absence of the ingredients of a proper show cause notice the petitioner is being denied proper opportunity of

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defending himself. Such a proceeding could end up in vague result and would also not be in the interest of the revenue. The impugned notices at Annexure-1 and 2 therefore, are unsustainable in law and on facts on same principles as has been held in the case of the petitioner in W.P.(T) No. 2444 of 2021.

Learned counsel for the petitioner submits that the State Tax Authorities are fixated on the notion that since the show cause notice has to be issued in a format on the GSTN Portal, the ingredients of the show cause notice containing the detail facts and the charges cannot be uploaded or inserted by them and instead a summary of show cause notice would suffice.

Learned counsel for the petitioner has specifically referred to Section 75 (7) to indicate that in no case the amount of tax, interest and penalty demanded can be in the excess of the amounts specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice. The notice does not contained any specific grounds as such.

Learned counsel for the petitioner has relied upon the decision of *Union of India Versus Bharti Airtel Ltd. 2021 (54) G.S.T.L. 257 (S.C.)* para 33.

Learned counsel for the State Mr. P.A.S.Pati, has relied upon the contents of the counter-affidavit in defence of the impugned notices. However, on being specifically as asked as to how the summary of a show cause notice as it is in its present format Annexure-2 could in itself be a substitute for the show cause notice stipulated in Section 73 of the JGST Act, seeks time to obtain instruction.

As prayed for, matter be listed on 17.01.2022.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)