



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 7778/2021

M/s Shyam Sunder Girdhar Gopal, Through Its Proprietor Mr. Girdhar Gopal Bharuka (Age 51 Year), Having Principal Place Of Business At Loha Mandi, Didwana (Rajasthan).

----Petitioner

Versus

1. The State Of Rajasthan, Through Joint Secretary (Tax) Finance Department (Tax Division), 1St Floor, Main Building, Gate-2, Government Secretariat, Jaipur, Rajasthan - 302005.

2. Commissioner, Rgst, Commercial Taxes Department, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.

3. Office Of Joint Commissioner, Government Of Rajasthan, State Tax, Circle- Nagaur (Rajasthan).

4. Additional Commissioner (Administrative), Government Of Rajasthan, State Tax, Circle- Ajmer (Rajasthan).

----Respondents

D.B. Civil Writ Petition No. 7705/2021

M/s Shyam Sunder Girdhar Gopal, Through Its Proprietor Mr. Girdhar Gopal Bharuka (Age 51 Year), Having Principal Place Of Business At Loha Mandi, Didwana (Rajasthan).

----Petitioner

Versus

1. The State Of Rajasthan, Through Joint Secretary (Tax) Finance Department (Tax Division), 1St Floor, Main Building, Gate-2, Government Secretariat, Jaipur, Rajasthan - 302005.

2. Commissioner, Rgst, Commercial Taxes Department, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.

3. Office Of Joint Commissioner, Government Of Rajasthan, State Tax, Circle- Nagaur (Rajasthan).

4. Additional Commissioner (Administrative), Government Of Rajasthan, State Tax, Circle- Ajmer (Rajasthan).



----Respondents

D.B. Civil Writ Petition No. 7783/2021

M/s Shyam Sunder Girdhar Gopal, Through Its Proprietor Mr. Girdhar Gopal Bharuka (Age 51 Year), Having Principal Place Of Business At Loha Mandi, Didwana (Rajasthan)

----Petitioner

Versus



1. The State Of Rajasthan, Through Joint Secretary (Tax), Finance Department (Tax Division), 1St Floor, Main Building, Gate - 2, Government Secretariat, Jaipur, Rajasthan - 302005
2. Commissioner, Rgst, Commercial Taxes Department, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur - 302005
3. Office Of Joint Commissioner, Government Of Rajasthan, State Tax, Circle - Nagaur (Rajasthan)
4. Additional Commissioner (Administrative), Government Of Rajasthan, State Tax, Circle - Ajmer (Rajasthan)

----Respondents

For Petitioner(s) : Mr. Prateek Gattani
For Respondent(s) : Mr. Hemant Dutt

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR

सत्यमेव जयते

08/09

These three writ petitions involve identical questions of facts and law. The petitioner has assailed identical orders dated 22.04.2021 (Annex.-8 in all these three writ petitions) passed by Joint Commissioner, State Tax, Circle Nagaur under Sec.74(1) of Rajasthan Goods & Service Tax Act,2017 (hereinafter referred to



as 'the RGST Act, 2017' levying tax, interest and penalty upon the petitioner.

Counsel Shri Hemant Dutt raised preliminary objections regarding maintainability of these writ petitions. He placed reliance on the Supreme Court judgment in the case of **the Assistant Commissioner of State Tax & Ors. vs M/s Commercial Steel Ltd. (Civil Appeal No.5121 of 2021, decided on 03.09.2021)** and urged that as statutory remedy of filing appeal under Section 107 of CGST Act is available to the petitioner for assailing the impugned assessment orders, these writ petitions are not maintainable. He also placed reliance on the Supreme Court judgment in the case of **Bhaskar Laxman Jadhav & Ors. vs Karamveer Kakasaheb Wagh Education Society & Ors.** reported in **(2013) 11 SCC 531** and urged that the petitioner has not approached the Court with clean hands. The petitioner has suppressed material facts and thus, these writ petitions deserve to be rejected. Shri Dutt specifically pointed out to the Form GST DRC-06 submitted by the petitioner on 15.04.2021 wherein, regarding the option of personal hearing, the petitioner has selected option/choice 'No'. Shri Dutt thus, urged that there is no ground to believe that the impugned assessment orders were passed in violation of the principles of nature justice. The petitioner submitted detailed replies which were duly considered and well-reasoned assessment orders were passed by the competent authority which can be assailed in appeal if so desired.

Learned counsel Shri Gattani is not in a position to dispute this pertinent assertion made in the reply filed by the respondents that pursuant to the notice(s) issued to the petitioner under



Section 74 of the RGST Act, reply was filed on its behalf and Form GST DRC-06 was submitted wherein, for the option of personal hearing, a conscious selection was made by the petitioner in the negative. Apparently thus, it was the explicit desire of the petitioner not to opt for personal hearing. Hence, the impugned orders cannot be branded as having been passed in breach of principles of nature justice. Having held so, apparently these writ petitions are liable to be rejected as being not maintainable in view of the ratio of the Hon'ble Supreme Court judgment in the case of the **Assistant Commissioner of State Tax**, referred to *supra*

In view of the above conclusion, we do not propose to delve into the issue of concealment of material facts and would rather relegate the petitioner to approach the appellate authority by filing appeals against the impugned orders by taking recourse of the procedure provided under Section 107 of the CGST Act.

The writ petitions are thus dismissed. However, dismissal of these writ petitions shall not preclude the petitioner from availing the statutory remedy of filing appeal in terms of Section 107 of the CGST Act. No order as to costs.

(KULDEEP MATHUR),J

(SANDEEP MEHTA),J

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