

**IN THE HIGH COURT OF JHARKHAND AT RANCHI****W.P.(T) No. 2091 of 2019**

Vishkarma Industries having its office at Jaipur, Rajasthan through  
its Proprietor Ashish Singh, R/o Banka, Bihar --- --- Petitioner

Versus

- 1.The State of Jharkhand through the Commissioner of  
State Tax, State Tax Department, Ranchi
- 2.Deputy Commissioner of State Tax, Singhbhum Circle,  
Jamshedpur, East Singhbhum
- 3.State Tax Officer, Singhbhum Circle, Jamshedpur, East Singhbhum
- 4.The Union of India through the Director General of Goods and &  
Service Tax Intelligence, Jamshedpur, East Singhbhum
- 5.The Director General of Goods & Service Tax Intelligence, Jaipur  
Zonal Unit, Jaipur, Rajasthan --- --- Respondents

With

**W.P.(T) No. 1593 of 2019**

Kanchan Alloys & Steels, a Proprietorship firm having its office  
at Jaipur, Rajasthan through its Proprietor Mahaveer Prasad R/o  
Shahpura, Jaipur, Rajasthan --- --- Petitioner

Versus

- 1.The State of Jharkhand through the Commissioner of  
State Tax, State Tax Department, Ranchi
- 2.Deputy Commissioner of State Tax, Singhbhum Circle,  
Jamshedpur, East Singhbhum
- 3.Assistant Commissioner of State Tax, Singhbhum Circle,  
Jamshedpur, East Singhbhum
- 4.The Union of India through the Director General of Goods and &  
Service Tax Intelligence, Jamshedpur, East Singhbhum
- 5.The Director General of Goods & Service Tax Intelligence, Jaipur  
Zonal Unit, Jaipur, Rajasthan --- --- Respondents

With

**W.P.(T) No. 1594 of 2019**

Sakambari Metalicks, a Proprietorship firm having its office  
at Jaipur, Rajasthan through its Proprietor Manoj Kumar Pareek,  
R/o Vidyadhar Nagar, Jaipur, Rajasthan --- --- Petitioner

Versus

- 1.The State of Jharkhand through the Commissioner of  
State Tax, State Tax Department, Ranchi
- 2.Deputy Commissioner of State Tax, Singhbhum Circle,  
Jamshedpur, East Singhbhum
- 3.Assistant Commissioner of State Tax, Singhbhum Circle,  
Jamshedpur, East Singhbhum
- 4.The Union of India through the Director General of Goods and &  
Service Tax Intelligence, Jamshedpur, East Singhbhum
- 5.The Director General of Goods & Service Tax Intelligence, Jaipur  
Zonal Unit, Jaipur, Rajasthan --- --- Respondents

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**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH**  
**HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : M/s Sumeet Gadodia, Ranjeet Kushwaha &  
Aakansha Mittal, Advocates

For the Respondents : Mr. Sachin Kumar, A.A.G-II  
: Mr. Ratnesh Kumar, Sr. S.C. (DGGI)

2. All these writ petitions have been tagged together as petitioners have common grievances. W.P.(T) No. 2091 of 2019 was initially preferred for quashing of the show cause notice bearing reference no. 8656 dated 10.09.2018 (Annexure-13) issued by the respondent no.2 asking him to show cause as to why proceedings be not initiated for alleged wrongful claim of ITC and wrongful distribution of ITC benefit. The proceedings are currently pending with the respondent no. 5. In the alternative, petitioner sought a declaration that the proceedings initiated against the petitioner by the Respondent DGGI is not maintainable at the instance of the respondent no.2, the Deputy Commissioner of State Tax, Singhbhum Circle, Jamshedpur. Petitioner also prayed that two parallel proceedings and / or investigation in respect of the same transaction cannot be continued for alleged wrongful claim of ITC and wrongful distribution of ITC by two different authorities. During the pendency of the writ petition, by order dated 28.09.2022 petitioner was allowed to challenge the summary of the order contained in DRC-07 dated 24.10.2018 (Annexure-16), which arose out of the summary of show cause dated 10.09.2018 originally impugned.

In W.P.(T) No. 1593 of 2019 petitioner sought quashing of the summary of the order dated 02.02.2019 contained in Form GST DRC-07 issued by the respondent no.3 (Annexure-16). He also sought quashing of the show cause notice contained in reference no. 7574 dated 21.08.2018 issued by the respondent no.3 (Annexure-15) as being wholly without jurisdiction. Petitioner made similar prayer seeking declaration that the proceedings initiated by the DDGI for wrongful availment and distribution of ITC benefit is not maintainable in respect of the same transaction as proceeding has already been initiated by the respondent no.2. Petitioner contends that two parallel proceeding and / or investigation cannot be carried out.

In W.P.(T) No. 1594 of 2019 similar prayer is made as in W.P.(T) No. 2091 of 2019 *inter alia* challenging the show cause notice contained in Reference No. 7575 dated 21.08.2018 (Annexure-16) issued by the respondent no.2 and also for a declaration that the proceedings initiated against the petitioner by the DDGI regarding wrongful availment and distribution of ITC is not maintainable in respect of the same transaction in view of the proceedings initiated by the respondent no.2. In the instant writ petition also summary of the order passed on 02.02.2019 was challenged by way of an interlocutory application allowed by order

dated 19.10.2022. Those amendments have been incorporated in the writ petition.

3. Learned counsel for the petitioners, at the outset, seeks to confine the challenge to the proceedings initiated by the State Tax Officer in respect of each of the petitioners on common grounds *inter alia* as under:

- i. No show cause notice in terms of the section 74(1) of the JGST Act, 2017 read with Rule 142 was issued by the Respondent-Authorities. The issuance of the Summary show cause notice cannot substitute the requirement of the proper show cause notice under section 74 of the Act. In this regard learned counsel for the petitioner has placed reliance on decision of this Court in the case of ***Nkas Services Private Limited Vrs. State of Jharkhand & others*** reported in ***2021 SCC Online Jhar 1266***.
- ii. Petitioners have alleged violation of principles of natural justice as they were not granted adequate opportunity and no date of hearing was fixed before the impugned adjudication order was passed. In this regard petitioners have also contended that the relied upon documents, based upon which the adjudication order has been passed, was not supplied to the petitioners. Petitioners, in support of the aforesaid grounds have placed reliance on the decisions in the case of ***M/s Godavari Commodities Ltd. Vrs. State of Jharkhand & Ors. [W.P.(T) No. 3908 of 2020 with other analogous cases]*** dated 18.04.2022 and also in the case of ***Natwar Singh Vrs. Director of Enforcement & another, reported in 2010(13) SCC 255***.
- iii. It is also pointed out that the except in W.P.(T) No. 1594 of 2019, no proper adjudication as indicated in the summary of the order (GST DRC-07) has either been passed or has it been supplied to the petitioners despite the certified copy of the entire order sheet having been obtained by the petitioners.

4. Learned counsel for the petitioners submitted that therefore the impugned summary of the show cause notice in GST DRC-01 and the impugned summary of the order contained in GST DRC-07/ adjudication order in W.P.(T) No. 1594 of 2019 be set aside. It is also submitted that

the respondents may be left with a liberty to initiate fresh proceeding in accordance with law and as per the requirement of Section 73/74 of the JGST Act, 2017.

5. The brief facts of the individual writ petitions are as under:

In W.P.(T) No. 2091 of 2019 petitioner had obtained registration certificate in Form GST REG-06 both from the State of Jharkhand and State of Rajasthan vide Annexure 2 and Annexure-1 dated 23.03.2018 and 09.06.2018. Inspection was carried out on 28.08.2018 in his business premises but before that date petitioner had applied for cancellation of registration on 15.06.2018. Thereafter the impugned show cause notice was issued on 10.09.2018 asking him to show cause as to why he has wrongly claimed ITC in its GSTR-3B returns and has wrongly distributed the benefit of ITC to others by GSTR-I returns. On 24.10.2018 the summary of order in Form GST DRC-07 was issued imposing liability of tax, interest and penalty. Petitioner obtained certified copy of the entire order sheets of Form GST DRC-07, which show that no proper show cause notice was issued nor any date of hearing was fixed nor any documents relied upon were provided. After the first date of issuance of DRC-01, it has been recorded that no steps were taken by the petitioner. Learned counsel for the petitioner has pointed out that no adjudication order has been passed in this case as indicated in the summary of the order in Form GST DRC-07.

Petitioner Kanchan Alloys in W.P.(T) No. 1593 of 2019 had also obtained two registration, one by the State of Jharkhand and other by the State of Rajasthan in Form GST REG-6 under the GST Act, 2017 (Annexure-1 and 2). On inspection being carried out on his registered business premises on 06.04.2018, petitioner applied for cancellation of the registration with the State of Jharkhand on the ground that it was unable to manage its business in the State of Jharkhand on 17.04.2018. Petitioner was directed to appear before the State Tax authority on 09.04.2018 to explain the excess ITC claim in his GSTR-3B vis-à-vis his GSTR-2A return. Later on, a notice in GST ASMT-10 dated 04.05.2018 was issued pertaining to the scrutiny of the return of the petitioner which showed discrepancies in figures of inward supplies and outward supplies made by him. Petitioner submitted his reply informing that for January 2018 clerical error had occurred at the time of filing returns before the State of Jharkhand and figures of State of Rajasthan were mentioned instead. Thereafter impugned summary of show cause notice has been

issued on 21.08.2018 by the Respondent no.2 Deputy Commissioner of State Tax, Singhbhum Circle, Jamshedpur asking him to show cause as to why he has availed excess ITC in its GSTR-3B return. On the same day the summary of show cause notice was revised by the same office wherein it was alleged that the petitioner has availed excess ITC of an amount of Rs.7,57,30,059.10 for the period of October 2017 to March 2018. Petitioner was surprised to receive the summary of the order dated 02.02.2019 in form GST DRC-07 imposing liability of tax, penalty and interest upon him on the same ground that he has wrongly claimed ITC and distributed the same to the others. Petitioner specifically contends that no date of hearing was fixed nor any opportunity of hearing was granted to the petitioner. Petitioner has obtained the certified copy of the entire order sheets along with Form GST DRC-07, which shows that only summary of show cause notice in DRC -01 was issued on 21.08.2018 where no date of hearing was fixed neither any document was provided. There was no record about any revised DRC-01 being issued vide reference no. 7574 dated 21.08.2018. On the very first date after issuance of DRC-01, it was recorded that no steps were taken by the petitioner and accordingly the order has been passed by issuance of Form DRC-07. On these factual and legal grounds, petitioner has assailed the impugned action taken by the State Tax authorities now.

Counter affidavit has been filed by the respondent DDGI and the State of Jharkhand.

In W.P.(T) No. 1594 of 2019 also petitioner had obtained two registration certificate being Annexure-1 and 2 dated 06.11.2017 and 09.10.2017 from the State of Rajasthan and State of Jharkhand respectively. He applied for cancellation of his registration for the State of Jharkhand as he was unable to manage the business at Jharkhand on 21.03.2018. Thereafter an inspection was carried out in his premises on 24.05.2018 and in similar manner summary of impugned show cause notice dated 21.08.2018 and a revised show cause notice of different reference number of the same date was issued in which figures were substantially reduced. Petitioner submitted reply before the respondent no.3 and thereafter the adjudication order was passed by the respondent authority on 02.02.2019 along with summary of order contained in DRC-07 holding the petitioner liable for tax, penalty and interest on account of having wrongly claimed the benefit of ITC and distribution of ITC. Petitioner in this case also obtained the certified

copy of entire order sheets of the proceedings, which did not show any revised DRC-01 being reference no. 7575 dated 21.08.2018 having been issued. Similar grounds of lack of proper show cause notice; no opportunity of hearing and non-supply of the relied upon documents have been taken by the petitioner in this case also.

Counter affidavit has been filed by the respondent DDGI and State of Jharkhand in this writ petition also.

6. Counter affidavit of the respondent State however does not dispute the contention of the petitioners that no proper show cause notice was issued under Section 74(1) of the JGST Act, 2017 as per the requirement of law and decisions rendered by this Court in the case of *NKas Services Pvt. Ltd.* (supra). Respondent State have also not been able to dispute that no opportunity of hearing was granted to the petitioners contrary to the mandate of Section 75(4) and (5) of the Act and the ratio rendered by this Court in the case of *M/s Godavari Commodities Ltd.* (supra). It is also not disputed that relied upon documents, which were the basis for passing summary of the order in GST DRC-07 in the respective cases or the adjudication order in W.P.(T) No. 1594 of 2019 was supplied to the petitioner.

Though in W.P.(T) No. 1594 of 2019, learned counsel for the State has referred to the supplementary affidavit filed on 16.01.2023 to the effect that notice of hearing was given to the petitioner and the order was communicated on the portal but no document has been annexed thereto. On the contrary, petitioner has placed reliance upon the certified copy of the entire order sheet to substantiate the contention that no opportunity of hearing was given to the petitioner as per the mandate of Section 75(4) and (5) of the Act.

Learned counsel for the DDGI submits that since the petitioner has confined his challenge to the action taken by the respondent State authorities, respondent DDGI may be allowed to proceed independently against the petitioners.

7. We have considered the submission of the learned counsel for the parties and taken note of the relevant materials placed from the pleadings. The nature of challenge now is confined to the proceedings initiated by the State Tax authorities against the petitioner for wrongful availment of ITC and passing the benefits of ITC to others.

Bereft of unnecessary details, the relevant material facts which are germane to the controversy at hand and taken note in forgoing

paragraphs concerning each of the petitioners show that in case of the none of the three petitioners any proper show cause as contemplated under Section 74(1) of the JGST Act, 2017 was issued upon the petitioner. This is clearly in teeth of Section 74(1) of the JGST Act and also the ratio rendered by this Court in the case of *NKas Services Pvt. Ltd.* (supra). The relevant paragraph containing the opinion of the Court is extracted hereunder.

*“14. A bare perusal of the impugned show-case notice creates a clear impression that it is a notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any willful misstatement or suppression of facts in order to evade tax. Needless to say that the proceedings under Section 74 have a serious connotation as they allege punitive consequences on account of fraud or any willful misstatement or suppression of facts employed by the person chargeable with tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. In this regard, it is profitable to quote the opinion of the Apex Court in the case of Oryx Fisheries P. Ltd. (supra) at para 24 to 27 wherein the opinion of the Constitution Bench of the Apex Court in the case of Khem Chand versus Union of India [AIR 1958 SC 300] has been relied upon as well :*

*“24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A showcause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.*

*25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.*

*26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)*

*“(a) An opportunity to deny his guilt and establish his innocence, 8 which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”*

*27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and*

*the subsequent proceedings become an idle ceremony.”*

15. *The Apex Court has held that the concept of reasonable opportunity includes various safeguards and one of them is to afford opportunity to the person to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based.*

16. *It is also true that acts of fraud or suppression are to be specifically pleaded so that it is clear and explicit to the noticee to reply thereto effectively [See Larsen & Toubro Ltd. Vs. CCE, (2007) 9 SCC 617 (para 14)]. Further in the case of CCE Vs. Brindavan Beverages (P) Ltd. reported in (2007) 5 SCC 388 relied upon by the petitioner, the Apex Court at para-14 of the judgment has held that if the allegations in the show-cause notice are not specific and are on the contrary, vague, lack details and/or unintelligible i.e. its sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice. We do not agree with the contention of the respondent that the notice ought not to be struck down if in substance it contains the matters which a notice must contain. In order to proceed under the provisions of Section 74 of the Act, the specific ingredients enumerated thereunder have to be clearly asserted in the notice so that the noticee has an opportunity to explain and defend himself.*

17. *As observed herein above, the impugned notice completely lacks in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. Proceedings under Section 74 of the Act have to be preceded by a proper show-cause notice. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of a proper show-cause notice. This court, however, is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of 9 deciding the instant case. This Court finds that upon perusal of Annexure-2 which is the statutory form GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague.*

18. *Since we are of the considered view that the impugned showcause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show-cause notice and thus amounts to violation of principles of natural justice, the challenge is entertainable in exercise of writ jurisdiction of this Court. Accordingly, the impugned notice at Annexure-1 and the summary of show-cause notice at Annexure-2 in Form GST DRC-01 are quashed. 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 within a period of four weeks from today.”*

8. It is beyond cavil that a summary of a show cause notice cannot be a substitute of a proper show cause notice and would entail violation of principles of natural justice. In the absence of clear charges upon which the person so alleged is required to answer, proper opportunity to defend itself stands denied. It is also apparent from the materials on record that contrary to the requirement of Section 75(4) and (5) of the Act and the ratio rendered on the very subject by this Court in the case of ***M/s Godavari Commodities Ltd.*** (supra), no opportunity of hearing was



granted to the petitioner before passing an order which is adverse to him. It also appears that the relied upon documents which forms the basis of passing of the impugned order, have not been supplied to the petitioners. The relevant extract in the case of *M/s Godavari Commodities Ltd.* (supra) is profitably extracted hereunder:

21. *At this stage, we deem it appropriate to quote the provisions of Section 75(4) and 75(5) of the CGST/JGST Act:-*

*“75. General provisions relating to determination of tax*

*(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

*(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:*

*PROVIDED that no such adjournment shall be granted for more than three times to a person during the proceedings.”*

22. *A conjoint reading of the provisions of Sections 75(4) and 75(5) would reveal as under:-*

- i. Opportunity of hearing' shall be granted on request.*
- ii. Opportunity of hearing shall be granted where any adverse decision is contemplated.*
- iv. If sufficient cause is shown, the proper officer can adjourn the hearing for reasons to be recorded in writing.*
- v. However, no such adjournment shall be granted for more than three times during the proceedings.*

23. *From the facts of the present proceedings, it would transpire that on 14th March, 2020, Form GST DRC 01 was issued without specifying any date of hearing and, thereafter, straightaway, an Adjudication Order was allegedly passed on 13th August, 2020 fastening liability of tax, interest and penalty upon the Petitioner. From the order sheet, it is evident that no opportunity of personal hearing was granted to the petitioner and the purported Adjudication Order was passed on 13.08.2020 i.e. on the first date itself after issuance of the summary of show cause notice. This itself clearly reveals that the entire adjudication proceedings have been carried out in stark disregard to the mandatory provisions of the GST Act and in violation of the principles of natural justice and, thus, the Adjudication Orders, allegedly dated 13.08.2020, are liable to be quashed and set aside on this ground also.”*

9. In the aforesaid circumstances, following the ratio rendered in the case of *NKas Services Pvt. Ltd.* (supra) and *M/s Godavari Commodities Ltd.* (supra), the impugned summary of show cause issued in GST DRC-01 dated 10.09.2018 [Annexure-13 in W.P.(T) No. 2091 of 2019]; dated 21.08.2018 [Annexure-15 in W.P.(T) No. 1593 of 2019] and dated 21.08.2018 [Annexure-16 in W.P.(T) No. 1594 of 2019] and impugned summary of order contained in GST DRC-07 dated 24.10.2018 [Annexure-16 to W.P.(T) No. 2091 of 2019; dated 02.02.2019 [Annexure-16 to W.P.(T) No. 1593 of 2019] and summary of the order contained in GST DRC-07 and the adjudication order in W.P.(T) No. 1594 of 2019 as Annexure 21 and 21/1 dated 02.02.2019 are quashed.

However, liberty is granted to the competent authority/ proper officer to initiate fresh proceeding by issuing a proper show cause notice upon the petitioners in accordance with law.

Let it be made clear that that writ petitions have been decided only on the ground of violation of principles of natural justice and failure to follow the procedure prescribed under the Act. We have not commented on the merits of the case of the parties. We also make it further clear that quashing of the impugned notices and the summary of the order passed by the State Tax authorities would not come into the way of the respondent DDGI to proceed against the petitioners in the pending proceedings in accordance with law.

10. All the writ petitions are allowed in the manner and to the extent indicated herein above. Pending I.A.s are closed.

**(Aparesh Kumar Singh, J.)**

**(Deepak Roshan, J.)**