

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 3279 of 2023

M/s. K.P. Indane Service Petitioner
Versus

1. The State of Jharkhand.
2. The Commissioner of State Taxes having its office at Project Bhawan, Dhurwa, Ranchi Jharkhand.
3. The Deputy Commissioner of State Taxes, Adityapur Circle, Jamshedpur, having its office at Rd Number 19, Adityapur-1, Jamshedpur. Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. N. K. Pasari, Adv.
Ms. Sidhi Jalan, Adv.
For the Respondents : Mr. Ashok Kr. Yadav, Sr. S.C.I

CAV on :-23.01.2024

Pronounced on:-20/02/2024

Per Deepak Roshan, J.

The instant application has been preferred

for the following reliefs: -

- (i) *For issuance of an appropriate writ(s), order(s) or direction(s) holding that the service of a Show Cause Notice under sub-Section (1) of Section 73 of the Jharkhand Goods and Services Tax Act, 2017 is a condition precedent for issuance of a Summary of the Show Cause Notice in FORM GST DRC-01 under clause (a) to sub- Rule (1) of Rule 142 of the Jharkhand Goods and Services Tax Rules, 2017.*
- (ii) *For issuance of an appropriate writ(s), order(s) or direction(s) holding that in the absence of the service of the Show Cause Notice to be issued under sub-Section (1) of Section 73 of the Jharkhand Goods and Services Tax Act, 2017, the Summary of the Show Cause Notice issued under clause (a) to sub-Rule (1) of Rule 142 of the Jharkhand Goods and Services Tax Rules, 2017 in FORM GST DRC-01 is void ab initio and accordingly null and void and entire proceeding thereunder is liable to be quashed.*
- (iii) *For issuance of an appropriate writ, order or direction, holding and declaring that extension of an effective and reasonable opportunity of hearing is a condition precedent before fastening any liability upon the Assessee under the Act, 2017.*
- (iv) *For issuance of an appropriate writ, order or direction, for quashing the order/notice dated 14.07.2020 purported to have been passed under Section 61 of the Act without issuing mandatory*

Show Cause Notice and without making over the relied upon documents and the statements recorded by the designated Authority and the said order has been passed violating the principles of natural justice, which contemplates reasonable and an effective opportunity of hearing as also the rebuttal of allegation in terms of show cause notice and in absence of which, the entire proceedings becomes ab initio void.

- (v) For issuance of an appropriate writ, order or direction, holding and declaring that issuance of GST DRC-07 vide reference No.ZD2007200010020 dated 16.07.2020 issued under Rule 100 (1), 100(2), 100(3) & 142 (5) of the Act of Jharkhand Goods and Service Tax Act, 2017, is ab initio void and is not contemplated under the Act in the manner it has been issued.*
- (vi) For issuance of writ(s) of quo warranto and/or any appropriate writ, order or direction, directing and/or calling upon the Respondents, to show cause as to how and under what authority of law, a Summary Notice and a Summary Order under Rule 100(1), 1(2), 100(3) & 142 (5) of the JGST Rules, could be issued, without issuance of any show cause notice and initiation of adjudication proceedings under the provisions of the Act, and/or without providing any opportunity of defence/ rebuttal to the Petitioner.*
- (vii) For issuance of an appropriate writ/ order/ direction, directing upon the Respondents to show cause as to under what authority of law the Cash Credit and Current Account of the Petitioner has been attached, when admittedly it is only the Commissioner, who can decide to attach any property including bank accounts in terms of the provision under Section 83 of the Act and for which an order in Form GST DRC-22 is a pre-requisite, that too, after compliance of section 73/ 74 of the Act.*
- (viii) Consequent, upon showing cause, if any, and on being satisfied that the Respondent No.3 has exceeded its jurisdiction in usurping the jurisdiction & powers of the Ld. Commissioner, the said Respondent be directed to forthwith recall the letter of attachment/ freezing bank account of the petitioner being account no.07180500010245 with the UCO Bank, Tata Kandra Rd. Dist. Saraikela-Kharsawa, Jharkhand.*
- (ix) For issuance of any other appropriate direction(s) or order(s), holding and declaring that the Cash Credit Account of an Assessee cannot be attached in any circumstances whatsoever, since the same being a loan account and the benefit extended to an Assessee to run the business in the event of requirement of Cash.*

2. The brief fact of the case is that the petitioner is a registered dealer under the provision of Goods & Services

Tax Act, 2017 and is registered with Goods & Services Taxes Department vide GSTIN No.20AOHPS2775K1ZO. The petitioner firm is involved in the business of trading of Containers for Compressed or Liquefied Gas of Iron or Steel, Petroleum Gases and other Gaseous Hydrocarbon Stoves, Ranges, Grates, Cookers and has been carrying out the business activity and has discharged its tax liability under the Act without fail.

3. The case of the petitioner is that vide Notice dated 05.02.2020, the Respondent No. 3 informed the Petitioner to furnish its return for the supplies made or received and to discharge resultant tax liability for the period under dispute, otherwise the tax liability may be assessed under section 62 of the Act.

Vide Impugned order dated 14.07.2020, the Respondent No. 3 completed the Provisional Assessment under section 61 of the Act. The Petitioner was issued with the GST DRC-07 manually on 16.07.2020, fastening the liability under the head taxes, interest and penalty.

The Petitioner after completing its actual calculation on the basis of invoices, paid its tax liability for the period under dispute i.e., August, 2019 to December, 2019 in Form GSTR-3B.

On 16.01.2021, the Respondent No. 3, also issued notice to the Branch Manager of UCO Bank, Tata

Kandra Rd., Dist.- Saraikela - Kharsawa, Jharkhand under section 79 (1) (c) of the Act to pay a sum of Rs. 24,47,660.71/- from the bank account of the Petitioner and to discharge liability towards the petitioner. Vide letter dated 10.02.2021, the Branch head of the UCO Bank, Gamaria Branch informed the petitioner that a sum of Rs.24,47,660.71/- is due as state GST requested to deposit the same in, so that the amount can be remitted to the Deputy Commissioner of State Tax, Adityapur.

4. The further case of the petitioner is that vide circular dated 23.02.2021, the Ministry of Finance, Department of Revenue, had issued guidelines for provisional attachment of property under Section 83 of the CGST Act, 2017 and through the same notification it was informed that every provisional attachment shall cease to have effect after the expiry of a period of one year from the date of provisional attachment.

5. Mr. Nitian Pasari, learned counsel for the petitioner assisted by Ms. Sidhi Jalan, Advocate submits that the Petitioner was never served with mandatory Show Cause Notice under Section 73(1) of the Jharkhand Goods and Services Tax Act, 2017 and the Petitioner is served with only "Summary of Show Cause Notice" under Rule 142(1) of the Jharkhand Goods and Services Tax Rules, 2017. Further, the Petitioner was issued with the GST DRC-07

manually on 16.07.2020, fastening the liability under the head taxes, interest and penalty.

He contended that Section 73(1) of the Jharkhand Goods and Services Tax Act, 2017 mandates service of a show cause notice stating the charges and material relied upon on the Assessee requiring him to show cause as to why he should not pay the proposed tax, interest and penalty indicated therein. The Rule 142(1) of Jharkhand Goods and Services Tax Rules, 2017 mandates service of a summary of show cause notice along with a show cause notice under Section 73(1) of the Jharkhand Goods and Services Tax Act, 2017.

He further contended that the show cause notice under Section 73(1) of the Jharkhand Goods and Services Tax Act, 2017 is jurisdictional notice and the "proper officer" defined under Section 2(91) under the Act/Rules acquires jurisdiction in the subject matter and over the registered person only after service of show cause notice.

In the instant case the respondent no.3 never served mandatory Show Cause Notice upon the petitioner stating the specific charges nor supplied adverse material intended to be used against the petitioner in accordance with the mandatory provisions of Section 73(1) of the Jharkhand Goods and Services Tax Act, 2017.

Further, Section 73(9) read with Section 75 of the

Jharkhand Goods and Services Tax Act, 2017 provides for passing of adjudication order by the proper officer upon considering the replies/representation/objection of the Assessee in response to the show cause notice issued under Section 73(1) of the JGST Act, 2017 and thereupon determine the amount of tax, interest and penalty due from such person.

6. He further submits that the Central Board of Excise & Customs, New Delhi (known as Central Board of Indirect Taxes and Customs) constituted under Central Board of Revenue Act 1963 (54 of 1963) and as defined under Section 2(16) of the Jharkhand Goods and Services Tax Act, 2017, has issued Master Circular No.1053/2/2017-CX dated 10-03-2017 in exercise of powers under Section 37B of the Central Excise Act, 1944/Section 83 of the erstwhile Chapter V of the Finance Act, 1944 setting out detailed guidelines for the authorities under the Act as to how a show cause notice under Section 11A of the Central Excise Act, 1944/Section 73 of the Chapter V of the Finance Act, 1944 should be issued.

He contended that the provision of Section 11A of the Central Excise Act, 1944 and Section 73 of the Chapter V of the Finance Act, 1994 are *pari materia* to Section 73/Section 74 of the Jharkhand Goods and Service Tax Act, 2017 and hence, in accordance with Section 6 thereof and

Section 27 of the Bihar and Orissa General Clauses Act, 1917, the said Circular will apply with regard to issuance of show cause notice under the Act.

7. Mr. Pasari further submits that on 06.10.2020, the Petitioner after completing its actual calculation on the basis of invoices, paid its tax liability for the period under dispute i.e., August, 2019 to December, 2019; however, the Respondent No. 3, issued notice to the Branch Manager of UCO Bank, Tata Kandra Rd., Dist. Saraikela - Kharsawa, Jharkhand under section 79 (1) (c) of the Act to pay a sum of Rs. 24,47,660.71/- from the bank account of the Petitioner and not to discharge liability towards the Petitioner. Vide letter dated 10.02.2021, the Branch head of the UCO Bank, Gamaria Branch informed the Petitioner that a sum of Rs. 24,47,660.71/- is due against the State GST and further requested to deposit the same in so that the amount can be remitted to the Deputy Commissioner of State Tax, Adityapur.

Learned counsel strenuously contended that vide Circular dated 23.02.2021, the Ministry of Finance, Department of Revenue had issued guidelines for provisional attachment of property under section 83 of the CGST Act, 2017 and through the same notification it has been informed that every provisional attachment shall cease to have effect after the expiry of a period of one year from

the date of provisional attachment.

Relying upon the aforesaid submissions he prays for setting aside the impugned orders.

8. Learned counsel for the respondent submits that the recovery proceeding under the provision of Section 79 has been initiated in pursuance of the order passed under the provision of Section 62 of the Act and the resultant intimation of the order in FORM GST ASMT-13 as well as a Summary thereof in FORM GST DRC-07 has been served under the provisions of Rule 100(1) of the JGST Rules, 2017 and certainly not under the provisions of Rule 142 of the JGST Rules, 2017.

It is quite evident that neither in passing the order nor in initiation of proceeding for recovery has been done in violation of principles of natural justice. Mention of Section 61 of the Act in the body of the order is an inadvertent mistake because just after Section 61 the word “Assessment” has come. The proceeding of Recovery has been rightly initiated under provisions of Section 78 & 79 of the Act. The Notice served to the bank has been served under Section 79(1)(c) and not under the provisions of Section 83 of the JGST Act, 2017. As such, the instant writ application deserves to be dismissed.

9. Having heard learned counsel for the parties and after going through the averments made in the respective

affidavits and the documents annexed therein it transpires that Goods & Services Tax Act came into being repealing all the acts & laws concerning Central Excise Act, Finance Act, 1994, the respective Value Added Tax Act for the reasons that the existing tax system on Goods & Services was facing several difficulties.

It further transpires that the Petitioner is a registered dealer under the provisions of GST Act, 2017 and is registered with GST Department vide GSTIN No. 20AOHPS2775K1ZO.

It also appears that the Central Board of Indirect Taxes and Customs has issued Master Circular No. 1053/2/2017-CX setting out detailed guidelines for the authorities under the Act as to how a show cause notice under Section 11A of Central Excise Act, 1944/ Section 73 of the Chapter V of the Finance Act, 1994 should be issued. In accordance with Section 6 thereof and Section 27 of the Bihar and Orissa General Clauses Act, 1917, the said circular will apply in the case of issuance of show cause notice under the Act.

10. It further transpires from record that an admission in the hands of the answering deponent has been made to the effect that no opportunity of hearing was extended to the Petitioner. It is a settled proposition of law that any proceeding which has civil and penal

consequences, principle of natural justice has to be read into before issuing a final order.

From record it appears that the order impugned is dated 14.07.2020, which has never been served upon the petitioner in the manner prescribed under the Act and that too during the Covid-19 period.

Further, the due taxes have already been deposited way back in October 2020 itself. State Taxes department while intimating the liability to the Petitioner vide Form DRC 001-A, claimed only the interest, since, the department is conscious of the fact that the tax liability has been discharged. Being aware with the said facts, without any communication to the Petitioner and soon thereafter the Cash Credit and Current Account of the Petitioner has been attached to recover the entire amount in absence of any order passed by the Commissioner in Form GST DRC-01, which is beyond jurisdiction as also in teeth with the fact acknowledged by the Respondents themselves that GSTR-3B has been filed by the Petitioner herein.

11. At best, only the interest amount can be recovered from the petitioner for delayed filing of returns but the demand of the entire amount is against the principle of natural justice and is liable to be quashed at the threshold. The provision mentioned in the order passed was Section 61 and accordingly, the grievances raised by

the petitioner were with respect to the same and thus, are maintainable in the eyes of law.

12. Further, the power to attach the bank account has to be only by way of an order passed by the Commissioner in order to protect the interest of government revenue and the cash credit account not being as asset of the petitioner, the same could not have been attached in any eventuality. The exercise of power purportedly under Section 79 is nothing else, but a misuse of power vested in the authority under the Act.

The respondents have failed to say and satisfy as to how the authority of law has been followed and when the petitioner has never been extended any opportunity of hearing before passing of the order complained of, nor have been communicated before attachment of the bank account.

13. Now it is a settled principle of law that any authority has to follow the principle of natural justice and in the instant case the alleged show cause notice in terms of DRC-01 has been issued under Rule 142 of JGST Rule 2017, demanding tax, interest and penalty. However, from record it would transpire that the summary show cause notice in terms of Rule 142 (1) has not been complied with which is mandatory under Section 73/74 of JGST Act 2017.

In other words, the provisions of 73 and 74 of the Act

are mandatory in nature and from bare perusal it appears that DRC-01 and 142(1) has not been complied as such on this score alone the impugned order deserves to be set aside.

14. So far as attachment of bank account is concerned; it is profitable to extract Section 83 (2) of CGST Act which give the power of attachment read as under:

- “83 Provisional attachment to protect in certain cases*
- (1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.*
 - (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”*

15. It is clear from the plain language of Section 83(2) of the CGST Act that the operation of an order provisionally attaching the bank account would cease to be operative after the expiry of the statutory period of one year.

As stated hereinabove at best only the interest can be recovered from the petitioner for delay filing of return but demand of the entire amount is illegal and liable to be quashed and set aside.

16. In view of the aforesaid discussions, the impugned order/notice dated 14.07.2020 and subsequent

GST DRC-07 dated 16.07.2020, are hereby, quashed and set aside. Consequently, the letter of attachment/ freezing bank account of the petitioner being account no.07180500010245 with the UCO Bank, Tata Kandra Rd. Dist. Saraikela-Kharsawa, Jharkhand, is also quashed.

The matter is remitted back to the Adjudicating Authority to issue statutory notice to the petitioner and pass a fresh order with respect to interest after verifying the records after following due process of law strictly in accordance with the provisions of the Act.

17. Accordingly, the instant writ application stands allowed. Pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Fahim/-
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