

Form No. J.(2)
Item No.1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 11.08.2023

DELIVERED ON: 11.08.2023

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNAM
AND**

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 1185 of 2023

With

I.A. No. CAN 1 of 2023

M/s. Geeta Ganesh Promoters Private Limited

Vs.

Union of India & Ors.

Appearance:-

Mr. J.K. Mittal

Mr. Pratyush Jhunjnuwala

Mr. Rishi Raju

Mr. Mrigank Kejriwal

Ms. Divya Chatterjee

.....for the appellant

Mr. Anirban Ray, Ld. GP

Mr. T.M. Siddique

Mr. S. Sanyal

.....for the State

Mr. Vipul Kundalia

Mr. Tapan Bhanja

.....for the Union of India

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 23rd June, 2023 in W.P.A. 13600 of 2023. In the said writ petition,

the appellant has prayed for issuance of a writ of declaration to declare rule 42(3) of the CGST Rules, 2017 as *ultra vires* the Constitution of India. The appellant has also challenged the show cause notice dated 10th May, 2023 issued by the 3rd respondent under section 73 of the WBGST Act. The learned single Bench had entertained the writ petition sofar as the challenge to the Constitutional validity of rule 42(3) of the CGST Rules, 2017. However, with regard to the challenge to the show cause notice, the learned writ Court was not inclined to interfere or interdict the show cause notice and directed the appellant to file an appeal. Aggrieved by such order, the appellant has preferred the present appeal.

2. We have heard Mr. J.K. Mittal, learned counsel appearing for the appellant, Mr. T.M. Siddique, learned Government counsel for the State and Mr. Vipul Kundalia, learned standing counsel for the Union of India. The sheet-anchor of the argument of the learned counsel appearing for the appellant is that the show cause notice is devoid of any reason, it is not specific, it is vague, it is not signed and does not contain the requisite details and it can never be regarded as a valid show cause notice in the eye of law. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Division Bench of the High Court at Delhi in **Marg ERP Limited, through its Auth. Representative Mr. Mahender Singh vs. Commissioner of Delhi Goods and Service Tax, Delhi & Anr.** reported in **2023 SCC OnLine Del. 714**. For the same proposition, reliance was placed on the decision of High Court of Allahabad in **Apparent Marketing Pvt. Ltd. vs. State of U.P.** reported in **2022(59)G.S.T.L. 399 (All.)** and the decision of the Division Bench of this Court in **Delta International**

Limited vs. Commissioner of Customs reported in **2012 (281) E.L.T. 400 (Cal.)**.

3. Further, it is submitted that the input tax availed by the appellant till completion certificate was issued for the building promoted by the appellant is not required to be reversed and this aspect of the matter also will render the impugned show cause notice as bad in law. In support of his such contention reliance was placed on the decision of the High Court of Gujarat in **Principal Commissioner vs. Alembic Ltd.** reported in **2019 (29) G.S.T.L. 625 (Guj.)**.
4. Further, it is submitted that the impugned show cause notice is also bad in law on account of lack of pecuniary jurisdiction on the part of the authority viz. the 3rd respondent, who issued the show cause notice and in this regard reference has been made to the circular issued by the Central Board of Excise and Customs in Circular No. 31/05/2018-GST dated 9th February, 2018.
5. We have heard Mr. T.M. Siddique, learned Government counsel on the above submission. The show cause notice dated 10th May, 2023 has been issued under section 73 of the WBGST Act. In the said show cause notice, the demand details have been mentioned and the name of the Deputy Commissioner, who issued the show cause notice has also been furnished. The show cause notice is in a statutory format, which has been forwarded to the registered e-mail I.D of the appellant/assessee along with the statutory form viz. GST DRC-01, which is the summary of the show cause notice. Interestingly, along with the show cause notice, a report in the matter of the appellant/assessee dated 8th May, 2023 has been appended.

It is the submission of the learned advocate for the appellant that the show cause notice is dated 10th May, 2023 but the report is dated 8th May, 2023 and therefore, the same cannot be treated as a show cause notice. However, it is seen that much prior to issuance of the show cause notice dated 10th May, 2023 the report dated 8th May, 2023 was forwarded to the assessee along with form GST DRC-01A dated 20th April, 2023. In the said notice, the appellant was advised to pay the tax as ascertained along with the amount of applicable interest in full by 5th May, 2023, failing which, show cause notice will be issued.

- 6.** Further, the appellant was granted liberty to file its submission against the ascertainment, which was done in the notice by 5th May, 2023. Thereafter, another notice was issued on 4th May, 2023. On the same date i.e. on 4th May, 2023 the assessee had submitted a representation to the Deputy Commissioner of Revenue, Office of the Charge Officer, Park Street Charge, Kolkata. In the said representation they have acknowledged the intimation received under section 73(5) of the CGST Act, 2017. The assessee stated that they do not agree with the allegations and the demand of tax along with interest for the alleged inadmissible ITC. They further stated that they shall submit their defence in case, the department will proceed to issue any show cause notice as required under law. Thus, in terms of the requests made by the assessee, show cause notice dated 10th May, 2023 has been issued along with the statutory form viz. GST DRC 01 dated 10th May, 2023 in which the report has been appended.
- 7.** On a perusal of the report, it is seen that it has been explicitly stated that the appellant is required to show cause as to why it should not pay the

amount specified in the table in the said report along with the interest payable and penalty leviable thereon. Therefore, the assessee should treat the annexure to the notice i.e. the report dated 8th May, 2023 as the material based on which they are called upon to show cause as to why the tax, which has been computed should not be recovered along with the interest and penalty.

- 8.** Thus, we are fully convinced that the show cause notice is neither vague nor lacking in particular and it is for the appellant/assessee to raise all contentions in its reply, which will include the contention regarding the pecuniary jurisdiction and the authority, which has issued the show cause notice.
- 9.** In the decision in *Marg ERP Ltd. (supra)*, the factual position was slightly different, as could be noted from paragraph 8 of the judgment and therefore, the Court came to the conclusion that the show cause notice does not spell out the allegations, which are required to be addressed by the petitioner therein. The case on hand is entirely different as we have set out in the preceding paragraphs. Equally is the decision in the case of *Apparent Marketing Pvt. Ltd. (supra)* and *Delta International Ltd. (supra)*.
- 10.** In any event, the issue as to whether a show cause notice is bad and lacks detail or is unintelligible to qualify to be a show cause notice cannot be put in a straight-jacket formula and has to be decided considering the facts and circumstances of the cases on hand.
- 11.** Therefore, we are fully convinced that the learned single Bench rightly refused to interdict the show cause notice. Accordingly, the appeal fails and the same is hereby dismissed along with the connected application. The

appellant is granted 15 days time from the date of receipt of server copy of this judgment and order to submit its reply to the show cause notice in which all contentions with regard to the facts as well as law can be raised by the appellant and the authority concerned shall decide all issues, which have been raised by the appellant in accordance with law and pass a reasoned and speaking order.

12. No costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(T.S. SIVAGNANAM)
CHIEF JUSTICE**

I agree.

(HIRANMAY BHATTACHARYYA, J.)