

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

AND

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

WRIT PETITION No.12850 of 2022

ORDER:

Heard Sri G.Narendra Chetty, learned counsel for the petitioner and learned Government Pleader for Commercial Tax for the respondents.

02. The challenge in the writ petition is to the order, dated 31.03.2022, which is a combined assessment order for tax, penalty and interest, passed by the 1st respondent for the assessment period from 01.07.2017 to 31.03.2020 for the financial year 2017-18, 2018-19, 2019-20 & 2020-21. Inter alia, the main thrust of argument of learned counsel for the petitioner is that no show cause notice was issued in terms of Rule 142 (1A) of the Central Goods and Services Tax (CGST) Rules, 2017, as per which, the proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-Section (1) of Section 73 or sub-Section (1) of Section 74, as the case may be, communicate the details of

any tax, interest and penalty as ascertained by the said officer, in Part A of Form GST DRC-01A. It is argued, in the said provision, which stood before amendment with effect from 15.10.2020, the word 'shall' is employed and therefore, issuance of communication before the service of notice under Section 74(1) is mandatory in terms of Rule 142 (1A) of the CGST Rules.

03. Learned counsel would further submit that as the major part of the tax demanded relates to pre-amendment period of Rule 142(1A) of the CGST Rules, the 1st respondent should issue communication to the person chargeable with tax in terms of un-amended Rule 142(1A) of CGST Rules, but in the instant case, the said communication was not made to the petitioner. In view of the said violation, the petitioner lost a valuable opportunity to make his submission, even before the issuance of notice under Section 74(1) of CGST/ APGST. Due to violation of Rule, he would argue, the impugned order fell foul of law and therefore, the same is liable to be set aside and fresh communication may be directed to be issued in terms of

Rule 142(1A) of CGST/ APGST Rules to enable the petitioner to submit his reply.

04. When enquired, the learned Government Pleader, while opposing the writ petition, would submit that the 3rd respondent, at first issued Form GST DRC-01A intimation to the petitioner under Rule 142(1A) of CGST Rules for the assessment period from July 2017 & 2018-19 on 22.09.2020 but no action has been taken by him pursuant to the aforesaid notice. While so, some time thereafter, the concerned file was transferred to the 1st respondent, who issued a show cause notice in FORM GST DRC-01 under Section 74(1) of APGST Act, 2017 to the petitioner on 05.11.2021 for the period from 01.07.2017 to 31.03.2021 and thereafter no further action was taken. Learned Government Pleader would further submit that the petitioner filed a reply on 22.12.2021 and thereafter, the 1st respondent passed the impugned assessment order, dated 31.03.2022, narrating the irregularity in payment of GST.

05. Learned Government Pleader has fairly admitted that after receiving the file, the 1st respondent straight away issued notice under Section 74(1) of APGST Act, 2017 on 05.11.2021

in FORM GST DRC-01 for the assessment period from 01.07.2017 to 31.03.2021, but he did not issue the intimation under Rule 142(1A) of CGST Rules before issuing show cause notice under Section 74(1) of APGST Act, 2017. However, learned Government Pleader sought to support the action of the 1st respondent on the ground that some part of the period covered under the notice dated 05.11.2021 was relating to the post amendment period.

06. Learned Government Pleader would further submit that Rule 142(1A) of CGST Rules, 2017 was amended with effect from 15.10.2020. In Rule (1A), for the words 'proper officer shall', the 'proper officer may' has been substituted and in that view, the issuance of intimation under Rule 142(1A) is only a discretion on the part of the concerned authority, but not mandatory.

07. Referring to the said Rule 142(1A) of the CGST Rules, 2017 and also referring to the assessment period i.e., 01.07.2017 to 31.03.2021, learned Government Pleader would submit that some part of the tax period from 15.10.2020 to 31.03.2021 relates to post amendment period, for which

issuance of intimation is not mandatory and thus supported the action of the 1st respondent.

08. The point for consideration is, whether the impugned assessment order, dated 31.03.2022, passed by the 1st respondent is invalid for the reason that show cause notice dt.05.11.2021 was issued straight away, without issuing a prior intimation under Rule 142 (1A) of CGST Rules, 2017?

POINT:

09. We perused the notice issued at first by the 3rd respondent and later by the 1st respondent and the impugned order passed by him and also the relevant provision under Rule 142(1A) of CGST Rules, 2017.

10. For convenience, it is expedient to extract Rule 142 (1A) as it stood prior to the amendment which reads thus:

“the proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.”

11. Thus, as can be seen, prior to the amendment, Rule 142(1A) of CGST Rules, 2017 reads that the proper officer shall, before service of notice on the person chargeable with tax, interest and penalty under Section 73(1) or 74(1) of CGST/APGST Act, communicate him the details of tax, interest and penalty as ascertained by the said officer in FORM GST DRC-01. The employment of the word 'shall' in Rule 142(1A) would indicate that the officer shall necessarily follow the procedure prescribed under Rule 142(1A) of the Act, meaning thereby, an intimation of tax shall be issued in terms of Rule 142(1A) at first and if there is no response from the tax payer, then he can issue a show cause notice under Section 74(1) of CGST/APGST Act.

12. Be that at it may, Rule 142(1A) of CGST Rules,2017 has been amended as stated supra by virtue of notification No. 79/2020-CT dt.15.10.2020 and by virtue of the said amendment, the words 'proper officer shall' has been substituted with the words 'proper officer may' as appearing in Rule 142(1A). Thus, post amendment, the issuance of intimation under Rule

142(1A) is not mandatory, but discretionary on the part of the assessing authority.

13. Be that as it may, admittedly, the 3rd respondent promptly issued FORM GST DRC-01A in terms of Rule 142(1A) on 22.09.2020 to the petitioner for the tax period 2017-18 and 2018-19 and subsequently the file was transferred to the 1st respondent and he straight away issued show cause notice on 05.11.2021 under FORM GST DRC-01 in terms of Section 74(1) of APGST for the tax period from 01.07.2017 to 31.03.2021. However, admittedly, he did not take any further action in that regard.

14. Needless to emphasize the aforesaid tax demand covers both the pre-amended and post-amended period of Rule 142(1A) of CGST Rules. It appears that the petitioner submitted a reply dt.22.11.2021 and thereafter the impugned assessment order dated 31.03.2022 came to be passed by the 1st respondent.

15. In this backdrop, now the contention of the petitioner is mainly against the show cause notice dt.05.11.2021 issued by the 1st respondent for the tax period 01.07.2017 to

31.03.2021. His contention is that since the said show cause notice covers both pre-amended and post-amended period, the 1st respondent ought to have issued a tax intimation under Rule 142(1A) before issuing the impugned show cause notice dt.05.11.2021 and since the said tax intimation had not preceded the show cause notice, the impugned assessment order fell foul of law. The submission of the learned Government Pleader, as noted supra is that, since some part of the tax period relates to the post amendment period of Rule 142(1A) and issuance of show cause notice was also subsequent to the amendment to Rule 142(1A), non issuance of tax intimation will not hit the assessment order.

16. On a conspectus, we are unable to agree with the submission of learned Government Pleader for the reason that admittedly show cause notice dt.05.11.2021 covers the tax period 01.07.2017 to 31.03.2021, meaning thereby, it covers both pre and post-amended Rule 142(1A). However, most of the tax period relates to the pre-amended period of Rule 142(1A). In that view, though the 3rd respondent issued tax intimation for the period from 2017-19, since no action has been taken

thereafter, the 1st respondent after taking reins of the file, ought to have issued the tax intimation under Rule 142 (1A) (pre-amended) for the entire period and thereafter only ought to have issued show cause notice under Section 74(1) of the CGST/APGST Act.

17. It is a trite law that whenever any ambiguity arises with regard to any provision, the benefit must go to the tax payer. In the instant case, since admittedly the tax period related to 01.07.2017 to 31.03.2021 which covers the pre and post amended period of Rule 142(1A), in our considered view, the 1st respondent ought to have issued tax intimation to the petitioner under Rule 142 (1A). Since it was not done, as rightly argued by the learned counsel for the petitioner, the assessment order, dated 31.03.2022, fell foul of law and is liable to be set aside.

18. Accordingly, the writ petition is allowed and the impugned assessment order, dated 31.03.2022, passed by the 1st respondent is set aside with a direction to the 1st respondent to issue a fresh tax intimation to the petitioner in terms of Rule 142(1A) (pre amended Rule 142 (1A)) within two weeks from the

date of receipt of copy of this Order and take up further course of action as per law and pass appropriate orders. No costs.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

A V RAVINDRA BABU, J

Date:12.10.2023

BV

Note: Issue CC by 16.10.2023.