

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 404 of 2022

M/s Solex Energy Limited --- --- Petitioner

Versus

1. The State of Jharkhand
2. The Commissioner of State Tax, Ranchi.
3. The Deputy Commissioner of State Tax,
Ranchi West Circle, Ranchi. --- --- Respondents

CORAM: Hon'ble the Acting Chief Justice
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Ms. Arpita Sinha, Advocate
For the State : Mr. Ashok Kr. Yadav, Sr.S.C.-I

12/31.01.2023 Heard learned counsel for the parties.

2. Writ petition was preferred with the following prayers :-

- a) To issue an appropriate writ, order or direction to quash and set aside the summary order in Form GST DRC-07 dated 21.01.2019 (Annexure-1), the summary notice in Form GST DRC-01 dated 03.12.2018 and summary of statement in form GST DRC-02 dated 03.12.2018 as they are violative of provisions of the CGST / JGST Act, principles of natural justice and also being non-reasoned and non-speaking order and remand the matter back to the respondents to issue a notice u/s 73 along with summary thereof in Form GST DRC-01 as per the law and thereafter issue an order u/s 73 as per the law after providing an opportunity of being heard;

And / Or

- b) To issue an appropriate writ, order or direction to refund the amount of Rs.39,77,727/- which was recovered from the Electronic Credit Ledger and the amount of Rs.21,060/- which was recovered from the Electronic Cash Ledger by the respondents along with the interest at such rate as the Hon'ble Court deems fit;

And / Or

- c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to stay the recovery proceedings and any coercive actions against the petitioner.

3. Petitioner company is engaged in the business of Engineering, procurement and construction of solar power generating system and is also a manufacturer of the solar panel having its registered office at Ranchi and having GSTIN as 20AAVCSO328R1ZV. After filing return in Form GSTR-3B for the month of October 2020 petitioner noticed that an amount of Rs.39,77,727/- was debited from its electronic credit ledger and Rs.21,060/- was debited from its electronic cash ledger (Annexure-3 and 4). On

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examining the electronic liability ledger, it was found that the said amount has been recovered against the outstanding demand ID which was created vide summary of order in Form GST DRC-07 dated 21.01.2019. According to the petitioner, he came to know about the proceedings for the first time. Petitioner sought copies of the orders from respondent no.2 vide letter dated 12th June 2021 and 26th May 2021. Copies of the documents were issued to him in relation to summary order in Form GST DRC-07 on 21.01.2019. However, he claims that he was never in receipt of any notice in relation to DRC-07 dated 21st January 2019. Petitioner thereafter preferred an application under RTI Act 2005 before the Public Information Officer, Ranchi requesting him to provide information regarding copy of DRC-01A, DRC-01, show cause notice and other relevant documents vide application dated 3rd August 2021. In response to the said application, information under RTI through letter dated 23rd September 2021 was received wherein he was provided the copy of Form GST DRC-01 for F.Y. 2017-18 dated 03.12.2018, Form GST DRC-02 for F.Y. 2017-18 dated 03.12.2018, Form GST DRC-07 dated 21.01.2019 and Form GST RFD-06 dated 24.07.2018 (Annexure-9). Petitioner complains that he was never in receipt of the summary notice in Form GST DRC-01 and summary of statement in Form GST DRC-02, either electronically or physically at any time before. None of the documents i.e. summary notice in Form GST DRC-01, summary of statement in Form GST DRC-02, summary order in Form GST DRC-07 were signed by any authority nor any detailed order was issued. Therefore, the petitioner being aggrieved has approached this Court.

4. Upon hearing learned counsel for the parties, this Court vide order dated 5th December 2022, extracted hereunder, directed the respondents to produce the records of assessment proceedings certified to be true from the original :

The writ petition assails the summary of the order contained in GST DRC-07 dated 21st January 2019 (Annexure-1) and also the initiation of the proceedings through a summary of show-cause notice in GST DRC-01 and a summary of statement dated 3rd December 2018 in GST DRC-02. However, no intimation of tax under GST DRC-01A was ever issued. The proceedings relate to the tax period July 2017 to March 2018. The proceedings were initiated on the basis of an inspection. Petitioner thereafter approached the authorities for issuance of the certified copy of

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the adjudication order and the notices which have been supplied but no adjudication order has been supplied.

Learned counsel for the respondent has taken a plea that the petitioner was in receipt of the summary of the order in GST DRC-07 issued on 21st January 2019, but the writ petition has been filed after considerable delay on 29th January 2022 which should not be entertained. Respondents in their counter affidavit have stated that the petitioner's contention cannot be accepted as in similar circumstances when show-cause notice was issued to the petitioner related to its refund application, it had replied on 30th July 2018 though much after the order of rejection was passed on 24th July 2018. The petitioner has suppressed the said fact to make a separate ground to challenge the demand notice under form GST DRC-07. Petitioner has only approached this Court after part of the tax liability has been deducted from his electronic cash ledger.

Having regard to the nature of averments and rebuttals by the parties, it is deemed proper that the records of assessment proceedings certified to be true from the original, be produced by respondent no.3. Learned counsel for the respondents should also keep the original records. Matter be listed on 3rd January 2023."

5. Respondents had by that time filed a counter affidavit also. However, the question whether any adjudication order was passed in relation to the instant proceedings or not, still remained unanswered. Therefore, a direction was issued to produce the original records with a true copy thereof for consideration of this Court.

6. Learned counsel for the State today does not dispute that the original records does not contain any adjudication order. There are differences in the documents furnished under RTI (Annexure-9) with the summary of notice in Form GST DRC-01 as contained in the original records. This kind of a discrepancy in the records does create a doubt regarding the regularity of the adjudication proceedings which has led to imposition of liability of tax, penalty and interest upon the petitioner to the tune of Rs.1,74,66,875.40.

7. Learned counsel for the petitioner has relied upon the decision rendered by this Court in the case of ***M/s Nkas Services Private Limited Vrs. The State of Jharkhand & Ors.*** W.P.(T) No.2444 of 2021, judgment dated 6th October 2021 in support of the contention that in absence of a proper show cause notice the entire proceedings are vitiated.

8. Having considered the submissions of learned counsel for the parties, the pleadings on record and the documents enclosed thereto, we are of

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the considered opinion that the assessment proceedings suffer from serious procedural errors in absence of a proper show-cause notice. The summary of order issued in Form GST DRC-07 dated 21st January 2019 does not precede with a proper adjudication order either. As such, considering the ratio rendered by this Court in the case of *M/s Nkas Services Private Limited (supra)* and the fact that there are serious discrepancies in the proceedings, the impugned summary of order contained in Form GST DRC-07 is set aside. The matter is remitted to the adjudicating authority respondent no.3 to proceed in accordance with law afresh after issuing a proper show cause notice.

9. The writ petition is allowed in the manner and to the extent indicated herein above. I.A. No.936 of 2023 seeking extension of time stands closed. Let it be made clear that we have not gone into the merits of the case of the parties.

(Aparesh Kumar Singh, A.C.J)

(Deepak Roshan, J)

Shamim/