

(2024) 08 RAJ CK 1123

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 13167 Of 2024

M/S Shri Sharma Steeltech India Pvt. Ltd.

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 13-08-2024

Acts Referred:

Indian Penal Code, 1860 — Section 420, 406, 384, 388, 379, 389, 120(B)

Citation : (2024) 08 RAJ CK 1123

Hon'ble Judges : Arun Monga, J

Bench : Division Bench

Advocate : Trilok Singh, Vikram Sharma, Kailash Choudhary

Final Decision : Allowed

Judgement

Pankaj Bhandari, J

1. The petitioner has preferred this writ petition aggrieved by non-consideration of the reply given pursuant to the notice given under GST DRC-01A.
2. It is contended by learned counsel for the petitioner that as per Rule 142(1A) of the Rajasthan Goods & Service Tax (RGST)/Central Goods & Service Tax (CGST) Rules, 2017 (for short "Rules of 2017"), notice is to be served and if reply is given under Rule 142(2A) of the Rules of 2017, the authorities are required to consider the reply before issuing show cause notice under Rule 142(1)(a).
3. It is also contended that there is no provision under the Rules or the Act for affording an opportunity of hearing. The Calcutta High Court has interpreted the provisions and has held that in pre show cause intimation also, the authorities are required to afford an opportunity of hearing before issuing a show cause notice under Rule 142(1)(a) of Rules of 2017. Reliance, in this regard, has been made on the judgment passed by Calcutta High Court in the case of Eden Real Estate Pvt. Ltd. & Anr. Vs. The Senior Joint Commissioner of Revenue Kolkata South Circle, WBGST & Ors.: WPA No.1025/2024 decided on 07th February, 2024 as well as on the judgment passed in the case of Diamond Beverages Private

Limited & Anr. Vs. The Assistant Commissioner of CGST & CX, Taltala Division II Kolkata South Commissioner & Ors.: M.A.T. 1948/2023 in I.A. No.CAN 1 of 2023 decided on 15 th February, 2023.

4. It is contended by learned counsel for the petitioner that the case before Calcutta High Court is not different from that of the case before this Court and reply to the intimation was given in the present case also, but the same has not been considered. The only prayer made by learned counsel for the petitioner is that the authorities may be directed to consider the reply filed by the petitioner and then notice under Rule 142(1)(a) of the Rules of 2017 may be issued, if required.

5. Learned Additional Advocate General has put in appearance on advance notice.

6. It is contended by learned Additional Advocate General that provision under the Rule 142(1A) of the Rules of 2017 only provides for giving a communication, that too, is not mandatory, as the word used is "proper officer may". It is also contended that Rule 142(2A) of the Rules of 2017 provides that if a person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.

7. It is further contended that there is no provision under the Rules for affording an opportunity of hearing or hearing the person referred to in sub-rule (1A) of Rule 142 of the Rules of 2017. It is contended that after a show cause notice is issued under Rule 142(1)(a) and reply of the same is received, there is a provision for affording an opportunity of hearing, but there is no such provision under Rule 142(1A) and Rule 142(2A) of the Rules of 2017.

8. Learned Additional Advocate General has placed reliance on judgment passed by the Apex Court in the case of Commissioner of Central Excise, Haldia Vs. Krishna Wax Private Limited: (2020)12 SCC 572, relevant paragraphs of which are quoted here under for ready reference:

"13. It must be noted that while issuing a show cause notice under Section 11-A of the Act, what is entertained by the Department is only a prima facie view, on the basis of which the show cause notice is issued. The determination comes only after a response or representation is preferred by the person to whom the show cause notice is addressed. As a part of his response, the concerned person may present his view point on all possible issues and only thereafter the determination or decision is arrived at. In the present case even before the response could be made by the respondent and the determination could be arrived at, the matter was carried in appeal against said Internal Order. The appellant was therefore, justified in submitting that the appeal itself was premature.

14. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a

petition under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in *Union of India v. Guwahati Carbon Ltd.*, it was concluded; "The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution", while in *Malladi Drugs & Pharma Ltd. vs. Union of India*, it was observed:-

"...The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court.....in our view, the High Court was absolutely right in dismissing the writ petition against a mere show-cause notice."

15. It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter."

9. It is also contended that the judgments referred to by learned counsel for the petitioner are on different facts, as in those cases, show cause notice was issued and in the present case before this Court, show cause notice has not yet been issued to the petitioner.

10. We have considered the contentions made by learned counsel for the parties.

11. A plain reading of Rule 142(1A) and 142(2A) of the Rules of 2017 would go to show that it is discretionary for the proper Officer to either issue communication or not to do so. However, in the present case, a communication is issued and the person to whom communication is sent, has filed submissions against the proposed liability. In Form GST DRC-01A or in Part – B of Form GST DRC-01A, there is no provision under the Rules for adjudication regarding submissions made by the person referred to in sub-rule (1A) of Rule 142 of Rules of 2017.

12. We beg to differ from the judgments referred to by learned counsel for the petitioner for the very reason that the Rules does not provide for giving an opportunity of hearing and for deciding the submissions made against proposed liability. Rule 142(1A) of the Rules of 2017 is, basically, only a communication, which the 'proper officer', if he feels so, may give. The right of the assessee arises only after issuance of a show cause notice under Rule 142(1)(a) of the Rules of 2017, in which case there is provision under the Rules for affording an opportunity of hearing. Affording opportunity of hearing at different stages was not contemplated by the legislature and thus, we beg to differ from the

judgments cited at bar, by learned counsel for the petitioner. The RGST/CGST Act and Rules having financial implications have to be interpreted in the manner as promulgated. The Apex Court in the case of Ajmera Housing Corporation & Ors. Vs. Commissioner of Income Tax:2010 INSC 535 observed that it is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. In interpreting a taxing statute, the Court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute.

13. Since in the present case, only communication has been given, there is no reason to entertain the present writ petition and the same appears to have been filed just to stall the proceedings, which are pending before the authorities.

14. Consequently, we do not find any force in the writ petition, hence, the same is dismissed.

15. The stay application and/or any other pending application, if any, also stands disposed of.