

(2022) 09 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (T) No. 2972 Of 2021

M/s. Ujjain Steel Processors

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Jharkhand Goods And Services Tax Rules, 2017 — Rule 142(1), 142(1)(a)
Jharkhand Goods And Services Tax Act, 2017 — Section 73, 73(1), 73(9), 74(1),
75(4), 75(5)

Citation : (2022) 09 JH CK 0020

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Amrita Sinha, Sachin Kumar

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred for following reliefs:-

(i) For issuance of an appropriate writ/order/direction for quashing/setting aside the show cause notice issued under Reference no. 98 dated 30.07.2020 (Annexure-5,) under section 73(1) and Rule 142(1) of the Jharkhand Goods and Services Taxes, (JGST) Act

(ii) For issuance of further appropriate writ/order/direction for quashing/setting aside the ex-parte order being Reference no. 201 dated 15.09.2020 under section 73(9) of the JGST Act and DRC-07 dated 18.09.2020 (Annexure-10 & 11 respectively.

(iii) For unblocking credit ledger which was blocked on 14.02.2020 to the tune of Rs. 5,18,731/- even before serving the show cause notice under the JGST Act.

3. The brief facts of the case as disclosed in the writ application is

that the Petitioner is a Partnership Firm, engaged in trading of iron and steel and is duly registered under the provision of GST Act being registration no. 20AAEFU1474E1ZM. The petitioner for the furtherance of his business activity, purchase steel from many other business entity; one of such is M/s Maa Kali Steel, Purlia Road, Chas, Bokaro being a registered supplier/dealer under the then JVAT and also under the present GST Act, having GSTIN no. 20BJYPS5228Q1ZA.

During March'18, the Petitioner has purchased steel worth Rs.34,00,571/- (inclusive of SGST and CGST amounting to Rs.5,18,725.50). The goods have been purchased after making payment of entire tax liability. On 04.02.2020, the petitioner was in receipt of a Form GST DRC-01A along with letter no.3985 dated 11.11.2019, wherein pursuant to administrative direction of the superior authority, an intimation of liability u/s 73(5) /74(5) of the JGST Act, alleging therein that the Petitioner has entered into a business transaction with a non-existing business entity namely, M/s Maa Kali Steel and directed to reverse the wrongly availed ITC with interest and penalty and thereby calculated penalty u/s 74 of the Act and was directed to pay the amount including interest and penalty, failing which SCN u/s 74(1) of the JGST be issued.

On 14.02.2020, without any information/notice the Respondent department suo motu blocked the credit ledger account of the Petitioner. On 30.07.2020, though the Respondent although dropped a proceeding under section 74(1) of the JGST Act; however, initiated proceeding under section 73(1) of the JGST Act and straightaway issued a show cause notice.

4. Ms. Amrita Sinha, learned counsel for the petitioner submits that the initiation of proceeding u/s 73 of the Act itself certifies the fact that no fraud or any willful misstatement or suppression of fact is there while availing ITC. She further contended that from the SCN, it is evident that so called non-existing supplier has duly obtained registration certificate from the Respondent department and has also filed GSTR-1 and GSTR-3B for the period under consideration and has duly paid the tax and there is no mismatch in the figure as declared by the supplier in its return as that declared by the Petitioner.

She further submits that merely on the intelligence note, the entire proceeding has been initiated without even supplying the copy of the documents relied upon by the respondent-Department. Learned counsel further draws attention towards Annexure-6 and 7 which is the copy of GSTR-1 and GSTR-3B of the so called non-existing dealer as downloaded from the web portal.

It is submitted that the said non-existing dealer was duly in existence till 26.06.2019 and that only on 27.06.2019, its registration was cancelled as evident from the government portal. Meaning thereby; during the period under consideration i.e., March'2018, M/s Maa Kali was duly having its registration and was in existence according to law and an active registered taxable person.

She contended that without giving any opportunity of hearing to the Petitioner as

per section 75(4) of the Act and even without appreciating the documents on record and without verifying the electronic uploaded forms and information, merely on the behest of the superior authority, the adjudication order under section 73 of the JGST Act has been passed that too without recording its own reasoning and issued consequential notice being DRC-07.

Relying upon the aforesaid facts and submissions Ms. Sinha prays that the ex-parte impugned order be quashed and the matter may be remitted back to adjudicate the case after following principle of natural justice and procedure of law.

5. Mr. Sachin Kumar, learned AAG-II submits that in terms of the intelligence notes and on scrutiny of the returns filed and others related documents/registers of the petitioner, it was found that the petitioner had fraudulently availed the forwarded ITC by a nonexistent dealer (M/s. Maa Kali Steel). He further submits that due to prima facie case of fraudulent availment/utilization of ITC against the petitioner, an intimation under Rule 142 (1) (a) having reference no.40 dated 29.02.2020 was sent to the petitioner along with the letter no. 3985 dated 11.11.2019 requesting the petitioner to pay amount mention therein. However, despite the above issuance of intimation, the petitioner did not paid the tax liability as determined. As such, vide reference no. 98 dated 30.07.2020, a show cause notice was issued to the petitioner under section 73 (1) of the GST Act and Rule 142 (1) of the GST Rule. Form GST DRC-01 was also sent to the petitioner and uploaded on the GSTN portal. It is further stated that an order under Section 73 (9) of the JGST Act was passed vide reference no. 201 dated 18.09.2020 for financial year 2017-18.

Learned counsel further submits that the plea of the petitioner that no proper opportunity of hearing was granted prior to passing the assessment orders dated 18.09.2020 is completely false and denied. Rather, it is apparent from the facts of the case that the petitioner was given ample opportunity to produce the documents/register and plead its case. He further contended that the instant application should be dismissed as there is provision of Appeal under the Act and the petitioner can very well approach the appellate authority.

However, learned counsel could not show any document that opportunity of personal hearing was granted to this petitioner.

6. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavit, it appears that no relied upon documents were ever provided to the petitioner nor opportunity of personal hearing was granted. The law casts an obligation upon the parties to serve the documents/inspection report/intelligence note which has been relied upon by either of the parties in a proceedings. In the instant case, as stated hereinabove, no document has ever been served upon the Petitioner and/or no opportunity of hearing was given being in violation of Principles of Natural Justice and also the mandate of the Act.

The Hon'ble Supreme Court in the case of Ayaubkhan Noorkhan Pathan Versus State of Maharashtra & Ors., reported in (2013) 4 SCC 465 has held that in a case where the respondents have relied upon the documents obtained during inspection in the premises of the petitioners on the basis of intelligence note, it should be given to the petitioners to enable them to properly answer the charges there passed upon.

In the case at hand, it clearly transpires that the impugned adjudication order dated 15.09.2020, has been passed in utter violation of principles of natural justice and also in utter defiance to the provisions of section 75(4) and section 75 (5) of the JGST Act.

7. Interestingly, no order sheet has been drawn in the present matter, as this Court vide order dated 09.05.2022, specifically directed the counsel for the respondent to bring the true copy of the proceeding on records. The matter was again listed on 13.07.2022, wherein the counsel for the respondent specifically submitted that no record of assessment proceeding has been maintained by State Tax, Bokaro Circle, Bokaro.

As a matter of fact, in the instant case the ex-parte adjudication order under section 73 of the JGST Act has been passed without giving any opportunity of hearing to the Petitioner as per section 75(4) of the Act and even without appreciating the documents on record and without verifying the electronically uploaded forms and information, merely on the behest of the superior authority.

8. Section 75(4) of the JGST Act specifically deals with grant of opportunity of hearing before passing any adverse decision against any person. Reference in this regards may be made to the decision of this Court rendered in the case of M/s. Godavari Commodities Ltd. Vs. The State of Jharkhand & Ors, [W.P.(T) No. 3908 of 2020 with W.P.(T) No. 3909 of 2020].

9. Looking to the overall facts and circumstances of the case, since opportunity of personal hearing was not given to the petitioner nor relied upon documents were provided; interest of justice would suffice by remitting the matter back to the authority for compliance of the necessary provision especially Section 75(4) of the JGST Act.

Consequently, adjudication order dated 15.09.2020 is quashed and set aside. The matter is remitted back to the concerned respondent who shall issue a fresh notice to the petitioner for personal hearing and after providing relied upon documents and hearing the petitioner following proper principle of natural justice pass a fresh order.

10. As a result, the instant writ application stands allowed and disposed of.