

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision:30.01.2023

CWP-10560-2021

M/s. New Hanumat Marbles

....Petitioner

V/s.

State of Punjab and others

....Respondents

CWP-10568-2021

M/s. Shri Mahesh Marble

....Petitioner

V/s.

State of Punjab and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Sandeep Goyal, Advocate with
Ms. Nazuk Singhal, Advocate and
Mr. Ishaan Loomba, Advocate
for the petitioner.

Mr. Saurabh Kapoor, Addl.A.G., Punjab.

Ritu Bahri, J. (Oral).

This order shall dispose of two writ petitions i.e. CWP-10560-2021 and CWP-10568-2021 as the issue involved in both the petitions is identical. For the sake of brevity, facts are being extracted from CWP-10560-2021.

The petitioner is seeking quashing of order in Form GST DRC-07 dated 12.03.2021 (Annexure P-6) and detailed order dated 10.03.2021 (Annexure P-7) passed under Section 74(5) of the Central GST Act/Punjab GST Act, 2017.

Heard learned counsel for the parties.

The short question for consideration in the present writ petition

is as to whether show cause notice as contemplated under Rule 142(1) of Central Goods and Services Tax Act, 2017 (for brevity “CGST Act”) was mandatory to be followed before passing order under Section 74(5) of the Central GST Act/Punjab GST Act, 2017.

Learned counsel for the petitioner, while referring to the impugned order dated 12.03.2021 (Annexure P-6) and detailed order dated 10.03.2021 (Annexure P-7) has argued that the search was conducted in the premises of the petitioner on 03.01.2018 and some documents were seized from his office. Thereafter, he was issued notice and his lawyer Naresh Chawla appeared and submitted his power of attorney on 21.06.2018. Mr. Naresh Chawla, Advocate also asked for copy of panchnama which was provided to him and he submitted his written submissions and the case was adjourned for 12.07.2018. In the order dated 10.03.2021 (Annexure P-7), it is further noticed that on 08.01.2021, this case was allotted to some other officer and that officer issued summon No. 1554 dated 19.02.2021 under Section 70 of the Punjab/Central GST Act, 2017.

The grievance of the petitioner is that before passing final order on assessment, Rule 142(1) of the CGST Act is mandatory to be followed and GST DRC-01 has to be uploaded electronically on the website.

Learned counsel for the respondents has argued that summon/notice dated 19.02.2021 was given to the petitioner before initiating proceedings of passing assessment order under Section 74(5) of the Central GST Act/Punjab GST Act, 2017. Thereafter, on 05.03.2021, another notice under Section 70, 50 and 74 of Central/Punjab GST Act, 2017 read with Section 20 of IGST Act, 2017 was issued for 10.03.2021 and served through email (Annexure R-3). On 10.03.2021 also, the

petitioner did not appear and, thereafter, the case was decided on merits.

Reply by way of affidavit of the State Tax Officer-cum-Proper Officer, Mobile Wing, Jalandhar has been filed on behalf of respondents No. 1 to 3 dated 06.08.2021 wherein, it has been emphasized that after the documents were seized, several notices (Annexure R-2) were issued to the petitioner to come and appear alongwith account books for verification, which he did not do so. The Authority had no option but to pass order since the petitioner, after affording several opportunities, did not appear and the case was disposed of on the basis of material available on the record and keeping in view the interest of the revenue.

Learned counsel for the petitioner has referred to the judgment passed by the High Court of Madhya Pradesh in ***M/s. Shri Shyam Baba Edible Oils Vs. The Chief Commissioner and another***, decided on 19.11.2020 in which the High Court of Madhya Pradesh was examining a case where show cause notice had been issued to the petitioner. However, as per the stand taken by the State, show cause notice dated 10.06.2020 was communicated to the petitioner on his email address. Reference was made to Rule 142(1) of the CGST Act and it was observed that the only mode prescribed for communicating to the show cause notice/order is by way of uploading the same on the website of the revenue. The writ petition was allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 (1) of the CGST Act and impugned demand dated 18.09.2020 is struck down. Rule 142(1) of the CGST Act is reproduced as under:-

“142. Notice and order for demand of amounts payable under the Act.

(1) The proper officer shall serve, alongwith the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02,

specifying therein the details of the amount payable.”

In the facts of the present case, it is nowhere stated in the reply dated 06.08.2021 filed by the respondents that they had uploaded the notice on the website of the revenue as per Rule 142(1) of the CGST Act, 2017 before passing final orders dated 12.03.2021 and 10.03.2021 (Annexures P-6 and P-7). Hence, the present writ petitions are allowed and orders dated 12.03.2021 (Annexure P-6) and detailed order dated 10.03.2021 (Annexure P-7) are set aside and the matter is remanded back to the Assessing Officer to pass fresh orders after issuing notice as contemplated under Rule 142(1) of the CGST Act and afford opportunity of hearing to the petitioner(s) in accordance with law.

(RITU BAHRI)
JUDGE

30.01.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No