2024:PHHC:085840-DB

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-14791-2024
Reserved on: 04.07.2024
Pronounced on: 11.07.2024

A.V. ENTERPRISES .....Petitioner

Versus

STATE OF HARYANA AND ANR. ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Deepak Gupta, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana.

****

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the assessee-petitioner herein seeks the quashing of show cause notice dated 21.05.2024 (Annexure P-1), notice whereof is issued in Form DRC-01 under Section 73 of the Goods and Services Tax Act, 2017 (hereinafter for short refer to as the 'Act of 2017'). The said notice was issued for the financial year 2019-20. The writ petitioner-assessee also seeks the quashing of the subsequent thereto corrigendum dated 30.05.2024 (Annexure P-2).

2. The learned counsel for the respondent, does not dispute the fact, that the show cause notice was issued upon the petitioner-assessee in respect of his liabilities towards tax, as related to the financial year 2019-20.

3. The learned counsel for the respondent, does not wrangle over the fact, that as such the provisions as embodied in Rule 1A of Rule 142 of the Goods and Services Tax Rules, 2017 (hereinafter for short called as the 'GST Rules of 2017'), provisions whereof become extracted hereinafter, rather did require their strictest compliance, at the instance of the Department of Revenue, given the said provisions becoming couched in a mandatory phraseology.

> *" CHAPTER XVIII*
> *DEMANDS AND RECOVERY*
> *[142. Notice and order for demand of amounts payable under the Act.-*
> *(1) The proper officer shall serve, along with 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.*
> ***[(1A) 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.];***

4. Since a deep incisive reading of the hereinabove extracted Sub Rule, reflects that it has been cast in a mandatory phraseology, thereby it became incumbent upon the Department, to before serving an assessment notice, upon the assessee to ensure the makings of echoings thereins or of graphic communications thereins, thus relating to the

detailings of any tax interest and penalties ascertained by the officer, in part A of Form GST DRC-01A.

5. Before proceeding to determine whether as contended by the learned counsel for the petitioner, the issuance of show cause notice (Annexure P-1) and the consequent thereto corrigendum (Annexure P-2) are in derogation of the above mandatory requirement cast, upon the department, besides to determine whether thereby there is an open defiance to the judgment rendered by the Madras High Court in case titled as ***M/s Shri Tyres represented by its proprietor Mr. Ramesh Chand No. 28, Ground Floor, Shri Hasti Towers GST Roads, Pallavaram* Chennai** Versus ***State Tax Officer, Chromepet Assessment Circle Commercial Tax Department Nandanam, Chennai – 600035,*** thus it is deemed incumbent to extract the contents of Annexure P-1 and P-2, Annexures whereof are ad verbatim extracted hereinafter.

" **Annexure P-1**

DRC-01

RFN : MA060524073416W dated 21/05/2024

Name	:	A.V.ENTERPRISES
Legal Name	:	VIVEK KUMAR JAIN
Address	:	C-28, Nehru Ground, NIT Faridabad, Haryana, 121001.
GSTIN	:	06ABUPJ6958P2ZH
Email	:	vivekkkumarjain1963@gmail.com
Phone	:	9312200556
F.Y.	:	2019-20

Show cause notice under Section 73 of HGST/CGST/IGST.

FY 2019-20

Brief fact of the case :-

Whereas M/s A.V.ENTERPRISES having principal place of business at C-28, Nehru Ground NIT Faridabad, Haryana, 121001 (herein after referred to as "the tax payer") is registered with ward 05, Faridabad (North), Haryana.

Whereas the tax payer is engaged in trading of iron and steel etc. The HSN code available on the portal are 2849, 7301, 8421, 8207,7208. The aforesaid goods are leviable to GST under HGST Act, CGST Act and IGST Act, 2017.

On examination of the information furnished in the return and also in the information furnished in the GSTR 1, Eway bill and other records available in this office it was found that you have not declared your correct tax liability in the return. The details of short tax paid/ excess ITC availed/ inadmissible ITC, failure to furnish Annual Return is as follows:-

1. As per comparison Report of tax liability, Taxpayer liability is greater than GSTR 1 (outward tax liability) as compared to the tax liability discharged in GSTR 3B. Therefore, it is evident that the tax payer has discharged short output tax liability amounting to Rs. 2,03,611.22/- (Rs. 96,285.82 of IGST and Rs. 53,662.70/ each in CGST & SGST). Hence, Taxpayer is required to pay the differential tax liability, along with interest under section 50 (1), and applicable penalty u/s 73(1) through FORM GST DRC-03 as under :-

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*96286*	*53663*	*53663*	*203612*
Interest	*71320*	*39749*	*39749*	*150818*
Penalty	*10000*	*10000*	*10000*	*30000*
Total	*177606*	*103412*	*103412*	*384430*

2. As per comparison Report of ITC taken in 2A vs 3B, Tax payer has taken excess ITC of Rs. 58,212.94/- (Rs. 29,106.47/- each in CGST & SGST). Therefore, Taxpayer is required to pay said amount alongwith interest u/s 50(3) and penalty u/s 73(1) as under :

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*0*	*29107*	*29107*	*58214*
Interest	*0*	*22005*	*22005*	*44010*
Penalty		*10000*	*10000*	*20000*
Total	*0*	*61112*	*61112*	*122224*

3. On examination of GSTR 2A, it is revealed that Taxpayer has made purchases on which ITC involvement of Rs. 19,36,765/- (Rs. 959382.27/ each in CGST & SGST and Rs. 18,000/- in IGST) from cancelled supplier whose registration has been cancelled before the date of invoice. (Annexure A attached). Therefore, you are directed to provide the proof of ITC claimed by you and provide copy of invoice, proof of movement of goods/transportation and proof of payment to these suppliers through bank. In case of failure to do so your ITC will be disallowed as follow and will be recovered with applicable interest u/s 50 (3) and penalty u/s 73(1):-

Particular	IGST	CGST	SGST	Total
TAX	18000	959382	959382	1936765
Interest	13608	745405	745405	1504417
Penalty	10000	95938	95938	201876
Total	41608	1800725	1800725	3643058

4. On examination of GSTR 2A, it is revealed that Taxpayer has availed ITC of Rs. 1,05,775/- (Rs. 52,887/ each in CGST & SGST) on supplies which appears to be ineligible for ITC under section 17(5) of GST. (Refer Annexure B attached). Therefore, it is evident that the said ITC is inadmissible and liable to reversed by the tax payer. Therefore, Taxpayer is required to pay said amount along with interest u/s 50(3) and Penalty u/s 73(1) as under: -

Particular	IGST	CGST	SGST	Total
TAX	0	52887	52887	105775
Interest	0	40824	40824	81647
Penalty	0	10000	10000	20000
Total	0	103711	103711	207422

5. On examination of GST return by the tax payer, it was found that the tax payer has filed GSTR 3B late for the month of December 2019 and hence tax payer is liable to pay interest on delayed payment of cash component of tax in the delayed return as per provision of Section 49 r/w Rule 85 of CGST/SGST Act r/w Section 20 of IGST Act, 2017. Therefore, Taxpayer is required to pay interest u/s 50(1) as under: -

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*0*	*0*	*0*	*0*
Interest	*244*	*0*	*0*	*244*
Penalty	*0*	*0*	*0*	*0*
Total	*244*	*0*	*0*	*244*

6. The provision of section 44 reads as under :-

Section 44. Annual return r/w Section 47(2) -

xxxx xxxx xxxx

7. On perusal of E-Way bill record, it is observed that there is mismatch between E-Way Bill generated and 3B Liability amounting to Rs. 14,98,950/-. The tax payer is required to pay GST with interest and penalty.

Sr. No.	***Particulars (FY 2019-20)***	***Amount (Rs.)***
A	*E-Way Bill Total Liability*	*97,63,104*
B	*GST R3B Total Liability*	*82,64,154*
A-B	*Mis-Match (E-Way Bill – GSTR 3B Liability)*	*14,98,950*

Further, the above difference is accounted equally in all three heads as under :-

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*499650*	*499650*	*499650*	*1498950*
Interest	*235068*	*235068*	*235068*	*705205*
Penalty	*49965*	*49965*	*49965*	*149895*
Total	*784683*	*784683*	*784683*	*2354050*

2. *The consolidated summary of the tax due as per below mentioned table :-*

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*114286*	*1095040*	*1095040*	*2304365*
Interest	*85416*	*847982*	*847982*	*1781380*
Penalty	*20000*	*184742*	*184742*	*389484*
Total	*219702*	*2127764*	*2127764*	*4475230*

3. Whereas, any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded as per the provision of the Section 73(8) of CGST/SGST Act, 2017 r/w Section 20 of IGST Act, 2017.

4. The noticee should produce at the time of showing cause, the evidence, documentary or otherwise, on which they intend to rely in support of their defence. They should also mention in their written explanation whether they wish to be heard in person or through their legal representative/counsel before adjudication of the case. If no such mention is made in their written explanation, it will be presumed that they do not wish to be heard in person.

5. The noticee should also note that if no cause is shown against the action proposed to be taken within the stipulated period of 30 days or if they do not appear before the adjudicating authority when the *case is posted for hearing, the case will be decided ex-parte on the basis of evidence already available on record."*

ANNEXURE P-2

CORRIGENDUM

RFN : MA060524133131H dated 30/05/2024

Name	:	A.V.ENTERPRISES
Legal Name	:	VIVEK KUMAR JAIN
Address	:	C-28, Nehru Ground, NIT Faridabad, Haryana, 121001.
GSTIN	:	06ABUPJ6958P2ZH
Email	:	vivekkkumarjain1963@gmail.com
Phone	:	9312200556
F.Y.	:	2019-20

Corrigendum to SCN/DRC-01 issued vide ARN: ZD060524017143U dated : 21.05.2024 for FY 2019-20

This is to inform you that the undersigned issued you a show cause notice as dated : 21.05.2024 and due to a calculation error, the two exhibits attached in the two paras in the said notice were incorrect, which are to be read as below :-

2. The para 1.7 shall be read as :-

7. On perusal of E-Way Bill record, it is observed that there is mismatch between E-Way Bill generated and 3B Liability amounting to Rs. 14,98,950/-. The tax payer is required to pay GST with interest and penalty.

Sr. No.	***Particulars (FY 2019-20)***	***Amount (Rs.)***
A	*E-Way Bill Total Liability*	*97,63,104*
B	*GSTR3B Total Liability*	*82,64,154*
A-B	*Mis-Match (E-Way Bill – GST 3B Liability)*	*14,98,950*

Further, the above difference is accounted equally in all three heads as under :-

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*499650*	*499650*	*499650*	*1498950*
Interest	*415189*	*415189*	*415189*	*1245566*
Penalty	*49965*	*49965*	*49965*	*149895*
Total	*964804*	*964804*	*964804*	*2894411*

The total tax, interest and penalty proposed is of Rs. 28,94,411/- and not 23,54,050/-.

3. Further, in para 2, containing summary of demand, shall be read as :-

Particular	***IGST***	***CGST***	***SGST***	***Total***
TAX	*613936*	*1594690*	*1594690*	*3803315*
Interest	*500361*	*1263171*	*1263171*	*3026702*
Penalty	*69965*	*234707*	*234707*	*539379*
Total	*1184262*	*3092567*	*3092567*	*7369397*

And the total demand along with tax, interest and penalty proposed is of Rs. 73,69,397/- and not 44,75,230/- as mentioned in the original notice.

4. Rest of the notice remains the same........"

6. It is also incumbent to delve into besides adjudicate upon the factum, that despite availability of an alternative remedy, to the assessee qua its appealing against the impugned notices (supra), whether yet this Court can befittingly declare the instant writ petition to be maintainable or the same being well constituted.

7. In settling the above, it is necessary to refer to the expostulations of law, as carried in the judgments appended with the instant writ petition and to which respectively Annexures P-3 and P-4 are assigned.

8. In-so-far as the reliance placed by the learned counsel appearing for the petitioner, upon Annexure P-3, is concerned, the reliance thereons is inapt. The reason being, that a deep reading of the judicial precedent as set forth in paragraph No. 17 thereof, para whereof becomes extracted hereinafter, relates to thereins their being a completely jurisdictionally void show cause notice, as qua the period or the phase relating to the assessment of tax, there was a dire necessity upon the department, to issue a notice to the assessee under Rule 142 (1A) of the 'GST Rules of 2017', than issuing the same under the un-amended provisions. Therefore, in the instant case when for reasons stated (supra), there is no wrangle amongst the parties at contest before this Court, that on the above ground, there is no jurisdictional defect in the issuance of the extant show cause notice, thereby the expostulation of law as set forth in the above extracted paragraph, as carried in the judgment (supra), rather is inapplicable vis-a-vis the instant case. Therefore, the said Annexure P-3, but also is distinguishable vis-a-vis the facts at hand. Resultantly rather no leverage can be drawn therefroms by the learned counsel appearing for the assessee-petitioner.

> *"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.."*

9. Now, in-so-far as the reliance as becomes placed by the learned counsel for the petitioner upon Annexure P-4, is concerned, yet the said reliance as placed thereons, is also a mis-placed reliance. The reason being that, the expostulation of law as set forth in paragraph No.12 thereof, para whereof becomes extracted hereinafter, does with crisp clarity and lucidity, speak about prejudice emanating to the assessee, thus arising from the evident fact, that the mandatory provisions expressed in Rule 142 of the GST Rules, 2017 became breached by the department, in the latter issuing the show cause notice upon the petitioner-assessee thereins, thus without the apposite complete details being expressed thereins nor such apposite details becoming communicated to the assessee thereins. Contrarily when for reasons hereinafter the said omission is not forthcoming in the instant case. Reiteratedly therebys the expostulation of law as set forth in paragraph No. 12, is completely not applicable to the instant case.

> *"**12.** A careful perusal of Section 73 of the CG&ST Act in conjunction with Rule 142 makes it clear that non adherence to Rule 142 had caused prejudice to the writ petitioner qua impugned order and therefore it is a rule which necessarily needs to be adhered to, if prejudice is to be eliminated in the case on hand. In other words, it is not a mere procedural requirement but on the facts and circumstances of this case, it becomes clear that it tantamount to trampling the rights of writ petitioner."*

10. Be that as it may, the further reason for not accepting the applicability of the said judicial precedent to the factual situation as

exists in the instant case, is grooved in the hereinafter extracted reasons:

A) Though the writ petition has been declared to be maintainable, even when there is an alternative remedy available to the assessee but the principles which are required to be borne in mind, for bestowment of writ jurisdiction upon the High Court, despite availability of an alternative thereto remedy, thus are encapsulated in a judgment rendered by the Hon'ble Apex Court in case titled as '***PHR Invent Educational Society Versus UCO Bank and Others***' reported in ***2024 SCC Online SC 528,*** relevant paragraph No. 29 thereof becomes extracted hereinafter.

"29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question ;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice."

B) Besides the above, it is also propounded by the Hon'ble Apex Court in judgment rendered in case titled as ***Oryx Fisheries Pvt.Ltd vs Union Of India & Ors.***, (Arising out of Special Leave Petition (C) No.27615/08) **decided on 29.10.2010**, relevant paragraphs no. 23 to 28 whereof, stand extracted hereinafter, that the issuance of show cause notice, is not an ideal formality, but requires a complete and fullest intimation to the assessee to enable him, to thus face all the materials as set forth in the show cause notice, as thereupon, but naturally he would become provided an ablest opportunity to contest the materials echoed in the show cause notice. Contrarily, if the fullest intimations besides graphic detailings of the materials rather are not spoken in the show cause notice, thereupon but obviously the assessee is debarred from exercising the fullest opportunity of contesting those materials which are not reflected in the show cause notice, and which he is asked to surprisingly face. In sequel, therebys there would be a gross breach to the principles of Audi Alteram Partem.

> *"23. This Court finds that there is a lot of substance in the aforesaid contention.*
>
> *24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.*
>
> *25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes.*
>
> *26. A Constitution Bench of this Court in* ***Khem Chand v. Union of India and others, reported in AIR 1958 SC 300****, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.*

27. Chief Justice S.R. Das speaking for the unanimous Constitution Bench in Khem Chand (supra) held that the concept of `reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is: "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;"

28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

C) Having set forth the above expostulations relating to the exceptions to the normal principle against the accessing of writ jurisdiction of the High Court, despite availability of an alternative remedy to the show cause notice, thus this Court is required to be determining whether the above extracted show cause notice, does therebys omit to unfold the complete details qua all the tax liabilities which the petitioner is required to be liquidating to the revenue.

11. A keenest perusal of the above extracted show cause notice and subsequent thereto corrigendum, thus candidly unfolds that all the detailings of the tax liabilities as contemplated under the 'GST Rules of 2017', become ad nauseum detailed therein, besides they are detailed

with utmost clarity, thereby the petitioner-assessee became fully enlightened with the facts, which he is required to be contesting. Resultantly thereby there would be the fullest opportunity to the assessee- petitioner to ably contest the facts relating to its purportedly omitting to liquidate its tax liabilities to the department.

12. In sequel, thereby there is no breach to the principles of natural justice. As but a natural corollary thereto the exception (supra), as carved in the judgment (supra), whereby on proof thereof, the assessee-petitioner, even without availing the alternative remedy of his appealing against the impugned Annexures (supra), could redress his grievances, through his instituting a writ petition before this Court, rather are not satisfied at all.

FINAL ORDER OF THIS COURT.

13. In aftermath, this Court at this stage, finds no merit in the writ petition, and, with the above observations, the same is dismissed. However, liberty reserved to the petitioner to avail the alternative remedy of filing a statutory appeal against the impugned Annexures, before the Appellate Authority concerned.

14. In case the said appeal is time barred, thereupon in case any application, under Section 14 of the Limitation Act, 1963 is appended with the statutory appeal, thereupon valid speaking orders be made thereons by the Appellate Authority concerned and subsequently the appeal be registered and a speaking decision be made thereons but within two months thereafter and after hearing all affected persons concerned.

15. No order as to costs.

16. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

11.07.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No