



IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 396 of 2021

M/s Bla Projects Pvt. Ltd. through its authorized signatory
through Sajal Ghosh --- --- Petitioner

Versus

1. The State of Jharkhand through the Secretary-cum-Commissioner,
State Taxes Department, Ranchi
2. Deputy Commissioner of State Taxes, Godda Circle, Godda --- Respondents

CORAM: Hon'ble Mr. Justice **Aparesh Kumar Singh**

Hon'ble Mr. **Justice Deepak Roshan**

Through: Video Conferencing

For the Petitioner: M/s N.K. Pasari, Sidhi Jalan, Advocates

For the Respondents: Mr. Sachin Kumar, A.A.G-II

05 / 02.03.2022 Heard learned counsel for the petitioner Mr. N.K. Pasari and Mr. Sachin Kumar, learned A.A.G-II appearing for the Respondent State.

2. Writ petition has been preferred for the following relief (s):
 - a. For issuance of an appropriate writ, order directions, directing upon the respondents to show cause as to how and under what authority of law, **Summery Order under Rule 142 could be issued without issuance of any show cause and initiation of adjudication proceedings in terms of Sections 62, 67,70, 73, 74, 76 & 79 of the Act of 2017** and without providing of opportunity of hearing, the Summery Order dated 14.12.2020 could be passed.
 - b. For issuance of an appropriate writ, order directions, directing upon the respondents to show cause as to how and under what circumstances, order has been passed by the Respondent Department in GST DRC-07 (Annexure 7. levying tax, interest and penalty to the tune of Rs.14,36,896/-, on the purported allegation of the petitioner having claimed excess ITC, without affording any opportunity of hearing to the petitioner company and without looking into the records/online entries from the portal on the Petitioner.
 - c. Consequently, upon showing cause if any and being satisfied that the department has acted illegally and arbitrarily by passing order dated 4.12.2020, the same may be quashed and set aside.
 - d. For issuance of an appropriate writ, order or directions, directing upon the respondents to show cause as to how and under what circumstances, the amount of Input Tax Credit lying in the credit of electronic ledger account, has been blocked by the department, without any intimation to the petitioner.
 - e. Consequent upon showing cause, if any, and on being satisfied that the department has acted illegally and arbitrarily in blocking the Input Tax Credit, the respondents be directed to unblock the amount of Input Tax Credit lying in the credit of electronic ledger.

2.

3. Petitioner, a registered GST Dealer involved in the business of Works Contracts and mining related activities, is registered with the State Taxes Department, Government of Jharkhand under Jharkhand Goods and Services Tax Act, 2017 ('JGST' for short). It has utilized the amount of Input Tax Credit (ITC) against output tax liability on the amount of taxes paid on purchase, as per GSTR-3B. However, his return were scrutinized for the Financial Year 2018-19 and discrepancy of Rs. 6.17 lakhs was found on account of mismatch / difference between GSTR-2A and GSTR-3B which he was asked to explain by notice issued in Form GST ASMT-10 dated 18.10.2019 (Annexure-2). Petitioner replied on 04.11.2019 enclosing Summary of Difference between GSTR-3B and GSTR-2A claiming that it is only Rs. 44,303/- and not Rs. 6.17 lakhs, as claimed by the Department. However, no response was received from the Department for more than a year. But the petitioner was surprised to receive a Summary of Show Cause Notice in Form GST DRC-01 dated 20.10.2020 alleging that he has claimed excess ITC for the period April 2018 to March 2019 and was asked to reply as to why tax, interest and penalty to the tune of Rs. 14,36,896/- be not imposed upon him. A show notice under section 73 of JGST Act, 2017 was also served upon the petitioner on the same day 20.10.2020 (Annexure-4) directing him to furnish a reply with supporting documents. Petitioner furnished its reply on 29.10.2020 requesting the Respondents to re-calculate the difference in GSTR-2A and GSTR-3B and agreed to pay any excess ITC claimed by him, if it was in excess of the taxes paid. According to the petitioner, discrepancy mentioned in GST ASMT-10 differs from the demand details in the Summary of Show Cause Notice (Annexure-4) and Show Cause Notice under section 73 (Annexure-5). However, according to the petitioner, without taking notice of the reply, a summary order has been issued in Form GST DRC-07 on 14.12.2020 imposing tax, interest and penalty to the tune of Rs. 14,36,896/- on account of excess ITC availed. Petitioner has further averred that its Electronic Credit Ledger has been blocked to the extent of Rs. 12,30,238/- on 05.03.2020 and again an amount of Rs. 4,21,698/- was blocked. Such ITC remains blocked for more than a year in teeth of Rule 86A(3) of JGST Rules, 2017.

4. Mr. Pasari, learned counsel for the petitioner has, at outset, taken a plea that the proceedings under Section 73 of the Act are not in accordance with law as the show-cause notice under section 73 issued on 20.10.2020 (Annexure-5) by the Deputy Commissioner, Godda does not indicate any contravention



3.

committed by the petitioner. **The SCN is in a format and none of the irrelevant grounds have been struck off.** He submits that Summary of Show Cause Notice in Form GST DRC-01 cannot be a substitute of show cause notice statutorily required to be issued under Section 73(1) of the Act. Learned counsel for the petitioner has relied upon the decision of this Court rendered in the case of **M/s NKAS Services Private Limited versus The State of Jharkhand and others** vide order dated 06.10.2021 passed in W.P (T) No. 2444/2021 and also in the case of the same petitioner in W.P (T) No. 2659/2021 vide order dated 09.02.2022 relating to the similar show cause notice issued under sections 74 and 73 of JGST Act, 2017 in the respective writ petitions. Learned counsel for the petitioner submits that the writ petition is maintainable despite availability of statutory remedy available under section 107 of the Act **as there is violation of principles of natural justice and procedure prescribed in law to initiate such a proceeding under section 73 of the Act.** In support of his submission, he has placed reliance upon the opinion of the Apex Court rendered in the case of **Assistant Commissioner of State Tax and Others versus Commercial Steel Limited** reported in [2021 SCC OnLine 884, para-11]. Besides referring to the provisions of Rule 86A(3) of JGST Rules, 2017, he has also relied upon the judgment of Gujarat High Court in the case of **Alfa Enterprise versus State of Gujarat** reported in [2019 (31) G.S.T.L 592 (Guj.), para-6 & 8] relating to blocking of ITC. Reliance has also been placed on the judgement of Uttarakhand High Court rendered in the case of **Vimal Petrothin Pvt. Ltd. Versus Commissioner, CGST** reported in [2021 (53) G.S.T.L 130 (Uttarakhand)]. He submits that ITC cannot remain blocked for more than one year, as per restrictions contained in Rule 86A (3) of JGST Rules, 2017. Learned counsel for the petitioner submits that the order passed under section 73 of the Act has not even been brought on record through counter affidavit by the Respondents. **An appeal could have been preferred only if proper order under section 73 of the Act is passed instead of Summary of the Order being uploaded in Form GST DRC-07.**

5. Respondents have appeared and filed counter affidavit. Learned counsel for the Respondents has referred to the contents of the counter affidavit and the Gazette Notification dated 10.02.2020 issued by the Government of Jharkhand which brought into force Rule 86A into the statute book which empowers blocking of Electronic Credit Ledger on condition specified under sub-rule (1) thereof. Learned counsel for the Respondents however, does not dispute that the



4.

Electronic Credit Ledger of the petitioner has remained blocked for more than one year. Learned counsel for the Respondents has submitted that on account of difference or mismatch in the amount of Rs. 6,17,515.03 in GSTR-2A and return filed in GSTR-3B, show-cause notice was issued on the petitioner. Summary of the Order in Form GST DRC-07 was issued after service of notice upon the petitioner, against which remedy of appeal lies. However, learned counsel for the Respondents does not dispute that the case of the petitioner stands covered by the decision of this Court in the case of **M/s NKAS Services Private Limited versus The State of Jharkhand and others** passed in W.P (T) No. 2444/2021 in relation to a show-cause notice issued under section 74 of JGST Act, 2017 and also in the case of the same petitioner in W.P (T) No. 2659/2021, wherein this Court has categorically held that the impugned notice lack in fulfilling the ingredients of proper show-cause notice under section 73 of the Act. This Court has also held that Summary of Show Cause Notice issued in Form GST DRC-01 in terms of rule 100 (2) and 142(1) (a) of JGST Rules, 2017 cannot substitute the requirement of proper show cause notice. Learned A.A.G-II submits that in that event, **matter may be remanded to the State Tax Officer to initiate fresh proceeding in accordance with law after service of a proper show-cause notice under section 73 of the Act.**

6. We have considered the submissions of learned counsel for the parties and taken note of the rival pleas in the factual gamut of the case of the petitioner raised from the pleadings on record. The impugned show-cause notice at Annexure-5 is as under:

Annexure-5
Office of Deputy Commissioner
Jurisdiction: Godda: Dumka: Jharkhand
State/UT: Jharkhand

Reference No: ZD201020025216G Date: 20/10/2020

To
GSTIN/ID: 20AACCB0089R1ZL
Name: BLA PROJECTS PRIVATE LIMITED
Address: N/A, N/A, N/A, N/A, GODDA, Godda Jharkhand, 814165
Tax Period: APR 2018-MAR 2019 F.Y. 2018-2019
ARN-NA Date-NA
(Voluntary Payment Intimation details, if applicable)

Act/Rules Provisions:
JGST Act, 2017

Show Cause Notice under Section 73

It has come to my notice that tax due has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed or utilized by you or the amount paid by you through the above referred application for intimation of voluntary payment for the reasons and other details mentioned in annexure for the aforesaid tax period.



5.

Therefore, you are directed to furnish a reply along with supporting documents as evidence in support of your claim by the date mentioned in table below

You may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below.

Please note that besides tax, you are also liable to pay interest and penalty in accordance with the provisions of the Act.

If you make payment of tax stated above along with up to date interest within 30 days of the issue of this notice with applicable penalty then proceeding may be deemed to have been concluded.

Details of personal hearing etc.

Sr. No.	Description	Particulars
1.	Section under which show cause notice/statement is issued	73
2.	Date by which reply has to be submitted	29/10/2020
3.	Date of personal hearing	NA
4.	Time of personal hearing	NA
5.	Venue where personal hearing will be held	NA

Demand Details-

(Amount in Rs.)

Sr. No	Tax Rate (%)	Turn over	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	others	Total
			From	To							
1	0	0.00	APR 2018	MAR 2019	CGST	NA	3,16,497.00	85,454.00	3,16,497.00	0.00	7,18,448.00
2	0	0.00	APR 2018	MAR 2019	SGST	NA	3,16,497.00	85,454.00	3,16,497.00	0.00	7,18,448.00
Total							6,32,994.00	1,70,908.00	6,32,994.00	0.00	14,36,896.00

Signature

Name: Arjun Bakshi

Designation: Deputy Commissioner

Jurisdiction: Godda: Dumka; Jharkhand

Summary of Show Cause Notice at Annexure-4 is as under:

Annexure-4

FORM GST DRC-01

[See rule 100 (2) & 142 (1) (a)]

Reference No: ZD201020025216G

Date: 20/10/2020

To

GSTIN/ID: 20AACCB0089R1ZL

Name: BLA PROJECTS PRIVATE LIMITED

Address: N/A, N/A, N/A, N/A, GODDA, Godda Jharkhand , 814165

Tax Period: APR 2018-MAR 2019

F.Y.2018-2019

Date 20/10/2020

SCN Reference No. ZD201020025216G

Section / sub-section under which SCN is being issued - 73

Act/Rules Provisions:

JGST Act, 2017

Summary of Show Cause Notice

(a) Brief Fact of the case: Difference between GSTR-3B and 2A

(b) Grounds: Difference between GSTR-3B and 2A

(c) Tax and other dues

(Amount in Rs.)

Sr. No.	Tax Rate (%)	Turn over	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	others	Total
			From	To							
1	0	0.00	APR 2018	MAR 2019	CGST	NA	3,16,497.00	85,454.00	3,16,497.00	0.00	7,18,448.00
2.	0	0.00	APR 2018	MAR 2019	SGST	NA	3,16,497.00	85,454.00	3,16,497.00	0.00	7,18,448.00
Total							6,32,994.00	1,70,908.00	6,32,994.00	0.00	14,36,896.00

Signature

Name: Arjun Bakshi

Designation: Deputy Commissioner

Jurisdiction: Godda: Dumka; Jharkhand



6.

7. A perusal of the impugned show-cause notice (Annexure-5) issued under section 73 of the Act shows that it completely lacks in fulfilling the ingredients of proper show cause notice under section 73 of the Act. It does not indicate as to the contravention committed by the petitioner. It has been issued in a format without striking off the irrelevant particulars. In the case of **M/s NKAS Services Private Limited (Supra)** in W.P (T) No. 2444/2021 concerning the SCN issued under section 74 of the Act and also in the case of the same petitioner in W.P (T) No. 2659/2021 relating to a similar vague show cause notice issued under section 73 of the Act, this Court vide detailed judgment dated 06.10.2021 and 09.02.2022 quashed the notices impugned in those writ petition and granted liberty to the Respondents to initiate fresh proceeding from the same stage in accordance with law within a period of four weeks from the date of the order. For the same reasons, we are inclined to quash the impugned show cause notice issued under section 73 of the JGST Act and Summary of the Show Cause Notice issued in Form GST DRC-01. Since the breach relates to violation of principles of natural justice and mandatory procedure prescribed in law, as per the principles laid by the Apex Court in the case of **Magadh Sugar & Energy Ltd. Versus State of Bihar & others** reported in [2021 SCC OnLine SC 801, para-24 and 25], as also in the case of **Assistant Commissioner of State Tax and Others (supra) para-11**, we are of the view that the writ petition is maintainable. Accordingly, the impugned notices at Annexure-4 and Annexure-5 dated 20.10.2020 are quashed. Consequently, summary of the order issued in Form GST DRC-07 dated 14.12.2020 (Annexure-7) also cannot survive. Accordingly, it is quashed. Since the Court has not gone into the merits of the case of the parties, Respondents are at liberty to initiate fresh proceedings from that stage in accordance with law within a period of four weeks from today.

8. Writ petition is allowed in the manner and to the extent indicated hereinabove.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/