

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 22106 of 2024

Reserved on : 02.12.2024
Pronounced on: 13.12.2024

M/s Jyoti Tar Products Private Limited & Anr.
...Petitioners

-Vs-

The Deputy Commissioner, State Tax, Shibpur, WBGST & Ors.
...Respondents

Present:-

Mr. Ankit Kanodia
Mr. Megha Agarwal
Mr. Piyush Khaitan
... ... for the petitioner
Mr. A. Roy
Mr. Md. T.M. Siddiqui
Mr. Nilotpal Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal
... ... for the State

Rajarshi Bharadwaj, J:

1. The Petitioners in the present writ petition have approached this Hon'ble Court under Article 226 of the Constitution of India, 1950, seeking the quashing and setting aside of the Show Cause cum Demand Notice bearing reference No. ZD190824018001Q dated August 08, 2024 (hereinafter referred to as the "*Impugned SCN*"). The notice was issued under Section 74 of the

Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as "WBGST Act") for the financial year 2023–2024 by the Learned Deputy Commissioner, State Tax, Shibpur Charge, Howrah Commissionerate herein respondent no.1.

2. The Impugned SCN demands payment of ₹36,04,552/-, comprising ₹18,02,276/- as CGST and an equivalent amount as WBGST, along with applicable interest and penalties. The notice alleges wrongful availment of Input Tax Credit (ITC) by the Petitioners on inward supplies from suppliers allegedly found to be either unregistered, non-existent or not conducting business at their registered places.

3. The Impugned SCN blatantly disregards Section 16 of the CGST Act, 2017, which lays down the criteria for availing ITC. Further, it ignores the Central Board of Indirect Taxes and Customs (CBIC) Press Release dated 04.05.2018, which clarifies that ITC reversal from buyers is not automatic and recovery of unpaid tax should be made from defaulting suppliers unless exceptional circumstances exist (e.g., missing dealer or closure of business).

4. The Petitioners assert that all necessary criteria under Section 16 of the CGST/WBGST Act for availing ITC were met, including holding valid tax invoices and receiving goods from the suppliers. The alleged suppliers had also filed requisite returns, and their registrations were later cancelled retrospectively without the Petitioners having prior knowledge of such cancellations.

5. The Petitioners highlight that they had submitted a detailed reply to the pre-show cause notice issued in Form GST DRC-01A, refuting the allegations. However, Respondent No. 1 did not take any recovery action against the defaulting suppliers, which is a statutory prerequisite for demanding disputed ITC from the recipient and also failed to consider the submissions and issued the Impugned SCN without applying its mind, making the entire adjudication

process a mere formality thereby leading to the preference of the present petition.

6. The Learned Counsel appearing on behalf of the petitioner submits that Section 16 of the CGST/WBGST Act provides specific conditions for availing ITC, including possession of valid tax invoices, receipt of goods, and payment of taxes to the suppliers. The Petitioners contend that they have fulfilled all these conditions in good faith and availed ITC based on self-assessment of their books of accounts.

7. The Petitioners emphasize that they, as buyers, have no mechanism to verify whether the suppliers have deposited the collected taxes with the government. Once the payment, including tax, is made to the suppliers, the Petitioners' obligations are deemed fulfilled under the law.

8. The Petitioners argue that the retrospective cancellation of GST registrations of the suppliers does not render the transactions invalid. The suppliers had filed all relevant returns for the period in question, and the Petitioners had no prior knowledge of the eventual cancellations.

9. The Petitioners assert that they had filed a comprehensive reply to the pre-show cause notice, substantiating their claims with judicial precedents and legal provisions. However, Respondent No. 1 issued the Impugned SCN without addressing their submissions, violating the principles of natural justice.

10. The Petitioners rely on the CBIC Press Release dated 04.05.2018, which explicitly states that recovery of unpaid tax should primarily be made from defaulting suppliers. Reversal of ITC from buyers is permissible only in exceptional circumstances, none of which exist in the present case.

11. The Petitioners cite several judicial precedents, including the judgments in ***Diamond Beverages Private Limited v. Assistant Commissioner (MAT 1948 of 2023 of Hon'ble Calcutta High Court)*** and ***Suncraft Energy***

Private Limited v. Assistant Commissioner reported in **2023 SCC OnLine Cal 2226**, where the Hon'ble Courts held that recovery actions must first be initiated against defaulting suppliers before seeking ITC reversal from buyers. The Petitioners argue that Respondent No. 1 acted arbitrarily and in violation of these principles.

12. The Petitioners state that the Impugned SCN is vague and fails to provide a clear rationale for disregarding their submissions. Such an approach renders the SCN unsustainable in law.

13. In light of the above, the Petitioners pray for the quashing of the Impugned SCN, as it is arbitrary, unreasonable, and in violation of statutory provisions and judicial pronouncements. They also request this Hon'ble Court to direct the Respondents to comply with the established legal framework for ITC disputes, including taking appropriate action against the defaulting suppliers.

14. Submissions of the Learned Counsel appearing for the respondent authorities is that it is a well-settled law that a writ petition is ordinarily not maintainable against a Show Cause Notice unless it is wholly without jurisdiction or ex-facie perverse. The petitioners have failed to demonstrate that the issuing authority acted beyond jurisdiction or that the Show Cause Notice is without jurisdiction or perverse. Reliance is placed on by the respondent authority in **Special Director and Another vs. Mohd. Ghulam Ghouse and Another** reported in **(2004) 3 SCC 440**.

15. The petitioners allege that the impugned Show Cause Notice is an exact replica of the notice issued in FORM GST-DRC-01A dated 10th July 2024 i.e., the intimation before Show Cause Notice. They further contend that their reply to FORM GST-DRC-01A was not considered by the proper officer, who proceeded to issue the Show Cause Notice, stating that the reply was unsatisfactory. It is submitted by the respondent authority that such

contentions are baseless. The petitioners cannot rely solely on the first two lines of the Show Cause Notice but must consider the notice in its entirety, which reflects that the petitioners wrongfully availed Input Tax Credit (ITC) based on the purported supplies from non-existent registered tax persons (RTP).

16. The petitioners' argument that the Show Cause Notice must adjudicate upon the reply to FORM GST-DRC-01A is misplaced and contrary to the provisions of Section 74(1) read with Section 74(5) of the GST Act. Under these provisions, an intimation under FORM GST-DRC-01A is merely to inform the taxpayer of the amount payable. If the taxpayer fails to pay such amount, the proper officer is obligated to issue a Show Cause Notice under Section 74(1). The petitioners' interpretation of these provisions is legally untenable.

17. It has been further submitted that by the respondent authority that even if it is considered that the reply to FORM GST-DRC-01A was not taken into account properly, the petitioner still cannot maintain this writ petition. All grounds can be raised before the proper officer during adjudication under Section 74(9), where an adequate opportunity of hearing is provided. Therefore, the judgments cited by the petitioner's counsel are inapplicable to the present case and should be disregarded.

18. After providing sufficient opportunity to the petitioners to respond to the draft audit report on 21st March 2017, the respondent issued the final report on 22nd December 2017. The report addressed the petitioners' rebuttals point by point, conclusively denying their claims. The allegation of violation of natural justice is therefore, baseless and untenable.

19. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court dismisses the writ petition on the grounds that a Show Cause Notice (SCN) issued under Section 74 of the CGST Act and WBGST Act is merely the

initiation of an adjudicatory process and does not warrant judicial interference unless it is shown to be issued wholly without jurisdiction or is ex-facie perverse. This Court relied on the principles established in **Special Director and Another (supra)** emphasizing that writ jurisdiction can be invoked only when the SCN is issued wholly without jurisdiction wherein it has been held by the Hon'ble Supreme Court that:

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order, it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection not granted.”

20. Therefore, this Court holds that the Petitioners failed to demonstrate that the SCN lacked jurisdiction or was perverse in its issuance. It reiterated that procedural grievances, including alleged non-consideration of the reply to FORM GST-DRC-01A, could be effectively addressed during the adjudication process as per Section 74(9). This Court emphasizes that the statutory framework under the GST Acts provides sufficient opportunity for taxpayers to raise their defences during the adjudication process and bypassing this statutory mechanism through writ jurisdiction is impermissible.

21. Further, this Court noted that the Petitioners' reliance on the CBIC Press Release dated May 04, 2018 does not absolve buyers of their responsibilities under Section 16 of the CGST/WBGST Act to ensure compliance with statutory conditions for availing Input Tax Credit (ITC). The retrospective cancellation of the suppliers' GST registrations did not invalidate the transactions, nor did it absolve the petitioners of the need to verify the authenticity of their claims for ITC.

22. For the foregoing reasons, this Court finds no merit in the allegations of jurisdictional error or procedural impropriety in the issuance of the show cause notice and dismissed the writ petition, reinforcing the need for taxpayers to adhere to the statutory adjudication process rather than seeking premature judicial intervention.

25. All pending applications are accordingly disposed of.

26. There shall be no order as to costs.

27. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

13.12.2024

PA (BS)