Pepsico India Holdings Pvt. Ltd. vs. Union of India & 3 Ors.

Whether issuance of a Demand-cum-Show Cause Notice under Section 73(1) of the CGST Act, 2017 without prior issuance of Form GST ASMT-10 under Section 61 read with Rule 99 of CGST Rules, 2017 is legally valid and jurisdictionally competent.

Date of Order: February 13, 2023
Case Law No: GIB-GHC-2023-08
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The Department issued a Demand-cum-Show Cause Notice under Section 73(1) of the CGST Act alleging wrongly availed Input Tax Credit amounting to Rs. 19.51 crores for Financial Year 2017-18. The alleged discrepancy was that the petitioner-assessee had not submitted information in Table 14 of Form GSTR-9C, resulting in a mismatch with details in Form GSTR-9. The assessee challenged the notice before the High Court contending that Table 14 of GSTR-9C had been made optional for FY 2017-18 onwards by a series of Government Notifications, and more crucially, that the mandatory pre-condition of issuing Form GST ASMT-10 under Section 61 read with Rule 99 was never complied with before jumping directly to the SCN under Section 73(1). The Department admitted non-issuance of Form GST ASMT-10 but argued that CAG letters had been sent to the assessee and that natural justice was not violated since the SCN itself provided an opportunity of hearing.

CRUCIAL COURT OBSERVATIONS (Verbatim)

"*Prior to issuance of a show cause notice under Section 73[1] of the CGST Act, 2017, it is mere discrepancy. At that stage, the alleged discrepancy would only be a discrepancy simplicitor but at the stage of issuance of Demand-cum-Show Cause Notice under Section 73[1] of the CGST Act, 2017, there is formation of a prima facie opinion on the part of the Proper Officer that there is an act, which is in violation of the statutory obligation cast on the noticee.*"

"*The issues raised in the present writ petition, prima facie, are not relatable to any disputed questions of fact. The petitioner has raised a contention that the statutory prescriptions contained in Section 61 and Section 73 of CGST Act, 2017 r/w Rule 99 of the CGST Rules, 2017 have not been*

adhered to and without adherence to the conditions precedent, that is, issuance of notice to the registered person in Form GST ASMT-10 to provide the noticee either to accept or not to accept the discrepancy or to furnish an explanation for the discrepancy in Form GST ASMT-11 or not to furnish any explanation, at a period of time anterior to the impugned Demand-cum-Show Cause Notice, the Proper Officer could not have assumed jurisdiction to issue the Demand-cum-Show Cause Notice under sub-section [1] of Section 73 of the CGST Act, 2017."

"Prima facie, this Court finds force in the above contentions advanced by the petitioner that an act of issuance of the impugned Demand-cum-Show Cause Notice dated 05.09.2023 under Section 73[1] of the CGST Act, 2017 by the Proper Officer was without compliance of the mandatory conditions precedent, prescribed under the CGST Act, 2017 and the CGST Rules, 2017, more particularly, the provisions of Section 61 of the CGST Act, 2017 r/w Rule 99 of the CGST Rules, 2017, to derive jurisdiction to issue such a Demand-cum-Show Cause Notice under Section 73[1] of the CGST Act, 2017."

FINAL VERDICT

The High Court stayed the operation of the impugned Demand-cum-Show Cause Notice, finding prima facie force in the petitioner's contention that issuance of Form GST ASMT-10 is a mandatory condition precedent before invoking Section 73(1) and its non-compliance goes to the root of jurisdiction.

ADDITIONAL FOOTNOTES

CASES REFERRED

- Union of India v. Polar Marmo Agglomerates Ltd.
- Union of India v. Coastal Container Transporters Association
- Magadh Sugar & Energy Ltd. v. State of Bihar
- Whirlpool Corporation v. Registrar of Trademarks, Mumbai
- Harbanslal Sahni v. Indian Oil Corporation Ltd.

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