

THE HIGH COURT OF MADHYA PRADESH

W.P. No.16117/2020
(Akash Garg Vs. State of M.P.)

Gwalior, Dt. 19.11.2020

Shri Pankaj Ghiya, learned counsel for the petitioner.

Shri Ankur Mody, learned AAG for the respondent No.3/State.

Learned counsel for the rival parties are heard through video conferencing.

1. Instant petition invoking writ and supervisory jurisdiction of this Court under Articles 226 and 227 of Constitution prays for following reliefs:-

“(i) This Hon'ble Court may kindly be pleased to call for the record from the office of respondents for its kind perusal.

(ii) That, a writ of certiorari or any other writ or writs may kindly be issued quashing the impugned order in Form GST DRC-07 dated 18.09.2020 for the year 2018-19 and 2019-20 and orders as referred in the said order i.e. order under section 74 dated 10.06.2020 passed by the respondents.

(iii) That, a writ of mandamus or any other writ or writs may kindly be issued quashing the impugned order in Form GST DRC-07 dated 18.09.2020 and orders as referred in the said order i.e. order under section 74 dated 10.06.2020 passed by the respondents.

(iv) Direct the respondents to comply with the provisions of GST Act and upload notices and orders only on the GSTN Portal as mandated under law.

(v) Any other relief considered expedient and just under the facts of the case by the Hon'ble Court may kindly be allowed to the petitioner.”

2. Grievance of the petitioner is that while raising the demand of tax vide summary of order dated 18.09.2020 vide Annexures P/1 and P/2 (at page 17 and 18 of the writ petition), the foundational show-cause notice/orders No.11 and 11a dated 10.06.2020 qua financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, was never communicated to the petitioner who is an individual registered under GST Act.

3. As such on the question of violation of principle of natural justice on the anvil of Rule 142 of Central Goods and Services Tax Act, 2017 (for brevity “CGST Act”), this Court requisitioned reply of the State.

4. State has filed reply on 11.11.2020 disclosing that show-cause notice/orders No.11 and 11a dated 10.06.2020 was communicated to petitioner on his E-mail address and despite receiving the same the petitioner failed to file any response. Copy of show-cause notice/orders No.11 and 11a dated 10.06.2020 is Annexure R/1 filed alongwith the reply.

5. Learned counsel for the petitioner has drawn the attention of this Court to the provision of Rule 142(1) of CGST Act to contend that the said provision statutorily obliges the revenue department to

communicate show-cause notice/orders by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the aggrieved person to avail alternative remedy before the higher forum under CGST Act.

6. For ready reference and convenience, Rule 142 of CGST Act is reproduced below:-

“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.] 274;

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under subrule (1A),]275he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or

desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.] 276

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.]”

6.1 A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.

7. The State in its reply has provided no material to show that show-cause notice/orders No.11 and 11a dated 10.06.2020 were

uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/orders were communicated to petitioner by E-mail and were not uploaded on website of the revenue.

8. It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

9. In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18.09.2020 vide Annexure P/1 and P/2 pertaining to financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, deserves to be and is struck down.

10. Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

(Sheel Nagu)
Judge

(Rajeev Kumar Shrivastava)
Judge