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CASE LAW UPDATE

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*M/s Narsingh Ispat Ltd V/s Union of India & Others
High Court of Jharkhand*

W.P. (T) No. 177 of 2021 With W.P. (T) No. 1261 of 2020 With W.P. (T) No. 161 of 2021

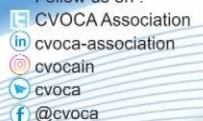
❖ **Summary –**

- Summary Order cannot be passed without issuing a proper show cause notice under Sections 73 and 74 of the Act. The levy of interest u/s 50 is not automatic without addressing objections raised by the taxpayer.
- Writ petition is maintainable as principles of natural justice are violated in view of order being passed without issue of show cause notice or being given opportunity of being heard.

❖ **Facts –**

- Taxpayer had filed GSTR 3B returns with some delay from the due date for such filing for periods from July, 2017 to December, 2019. However, tax had been paid within time in certain cases.
- Proper Officer issued statement in Form DRC-01A dt. 28-01-2020 intimating tax ascertained as payable along with interest failing with show cause notice (SCN) shall be issued.
- Assessee filed reply dt. 03-02-2020 objecting interest liability amongst other points in Form DRC-01B.
- Proper officer thereafter proceeded to issue Summary order in for DRC-07 on 26-02-2020.
- Assessee then moved to file writ petition to quash Summary order.

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❖ Taxpayers Argument –

- Tax Payer has contended that the petition is maintainable as the Summary order has been served without issuing show cause notice.
- In doing so the Tax Payer has relied on judgements in case of:-
 1. Magadh Sugar & Energy Ltd. Versus State of Bihar & others [2021 SCC Online SC 801]
 2. Mahadeo Construction Co. Versus Union of India [2020 (36) G.S.T.L 343 (Jhar.)]
 3. Godavari Commodities Ltd. Versus Union of India [2020 (33) G.S.T.L 16 (Jhar.)]

❖ Department`s Argument –

- Revenue has argued the maintainability of the petition on grounds that the Act provides for an alternative remedy of statutory appeal under Section 107 which the petitioner has not availed.

❖ Judgement –

- The Honourable High Court took into the account the procedure laid down in Rule 142(1A) which provides for communication of liability to the assessee in Form DRC-01A after which they can either pay said liability or respond with objections to the same. In the present case, the Proper Officer has issued the statement in Form GST DRC-01A upon the petitioner intimating him to pay the amount of tax ascertained along with the amount of applicable interest in full by 05.02.2020, failing which show-cause notice will be issued under section 73(1). Petitioner instead of making the payment, filed a reply before the proper officer which has been enclosed and acknowledged by the Respondent in their counter affidavit also. However, no show-cause notice under section 73(1) was issued thereafter.
- Instead, the Summary of the Order was issued in Form GST DRC-07 on 26.02.2020 indicating the amount of interest payable by the petitioner in terms of the adjudication order dated 26.02.2020 for the tax period in question. Therefore, it is clear that though the petitioner did not pay the amount of tax and interest intimated to him in Form GST DRC-01A and instead submitted his reply thereto, the Respondent despite the stipulation contained in Form GST DRC-01 failed to issue any show-cause notice upon him under section 73(1) of JGST Act, 2017. When the petitioner had disputed the demand of interest intimated to him, the adjudication order could not have been passed without proper show-cause notice.



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- Thus, Respondents have failed to follow the principles of natural justice and the procedure prescribed under section 73(1) of JGST Act before issuing the Summary of the Order in Form GST DRC-07. The writ petition is therefore, maintainable under Article 226 of Constitution of India on the proposition well settled by the Apex Court.

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