

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

WRIT PETITION No. 26693 of 2022

BETWEEN:-

RAYMOND LIMITED A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956 AND HAVING ITS REGISTERED OFFICE AT B-1, AKVN, BORGOAN INDUSTRIAL GROWTH CENTRE KAILASH NAGAR, BOREGAON, CHHINDWARA, MADHYA PRADESH -480106 THROUGH ITS AUTHORIZED SIGNATORY MR. MANISH ARORA S/O R.K. ARORA, AGED ABOUT 44 YEARS, R/O EASTERN MAJESTY, MULUND EAST, MUMBAI -400 081 (MAHARASHTRA) OCCUPATION - SERVICE

.....PETITIONER

(BY SHRI GOPAL MUNDHRA – ADVOCATE, MS GINITA BADHANI – ADVOCATE AND SHRI ROHAN HARNE - ADVOCATE)

AND

- 1. UNION OF INDIA REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110001**
- 2. STATE OF MADHYA PRADESH THROUGH THE SECRETARY, DEPARTMENT OF FINANCE, JABALPUR (M.P.)**

3. DEPUTY COMMISSIONER OF STATE TAX,
CHHINDWARA -2, CHHINDWARA DIVISION,
JABALPUR (M.P.)
4. COMMISSIONER OF STATE TAX
CHHINDWARA-2, CHHINDWARA DIVISION,
JABALPUR ZONE (M.P.)

.....RESPONDENTS

*(RESPONDENTS/STATE BY SHRI DARSHAN SONI – GOVERNMENT
ADVOCATE)*

Reserved on : 31.08.2023

Pronounced on : 20.11.2023

*This petition having been heard and reserved for orders,
coming on for pronouncement this day, Hon'ble Shri Justice Sheel
Nagu pronounced the following:*

ORDER

This petition invoking writ jurisdiction of this Court under Article 226 of Constitution of India assails the show cause notice dated 03.09.2022 (Annexure P/2) and the subsequent order of demand dated 12.09.2022 (Annexure P/3) both issued u/S.73 of the Central Goods and Services Tax Act, 2017 (for short "the **CGST Act**").

2. Pertinently, this Court while taking cognizance of this matter on 01.12.2022 restrained the respondents from taking coercive steps against

petitioner pursuant to impugned show cause notice (Annexure P/2) and impugned order of demand (Annexure P/3).

3. Learned counsel for rival parties are heard on the question of admission so also final disposal.

4. Shri Gopal Mundhra, learned counsel for petitioner has though pleaded several grounds but restricts his arguments to the ground of denial of reasonable opportunity arising from the fact that despite show cause notice dated 03.09.2022 (Annexure P/2) affording 30 days' time for the petitioner to respond, the impugned order u/S.73 was passed on 12.09.2022 i.e. within nine (9) days.

4.1 A further ground is raised that show cause notice dated 03.09.2022 (Annexure P/2) is not self-contained inasmuch as failing to inform about material of adverse nature which constituted the foundation of show cause notice thereby disabling the petitioner to respond. In this manner, it is urged that principle of *audi alteram partem* stood violated. Lastly, it is urged that opportunity of personal hearing was also not afforded.

4.2 This Court thus restricts its adjudicatory scrutiny to the aforesaid two grounds thereby leaving it to petitioner to raise the other ground not decided by this Court, if occasion arises; and, if law permits before the appropriate forum.

5. A bare perusal of show cause notice u/S. 73 of CGST Act reveals that the same was issued on 03.09.2022 affording opportunity to petitioner to make payment of tax with admissible penalty within 30 days. For ready

reference and convenience, relevant Section 73 of CGST Act is reproduced below :

“73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) *The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

(6) *The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

(7) *Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

(8) *Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*

(9) *The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.*

(10) *The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.*

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”

(emphasis supplied)

5.1 The aforesaid provision of Section 73 is a part of Chapter XV relating to “Demand And Recovery”. Section 73 applies in cases other than cases of fraud or wilful misstatement or suppression of facts, for determination of unpaid /short paid tax or erroneous refund or wrongful availing or utilization of input tax credit.

5.2 Sub-section (1) of Section 73 stipulates service of notice on such person chargeable with tax not paid or short paid or being beneficiary of erroneous refund or wrongful availing or utilization of input tax. It further requires the show cause notice to specify the amount of unpaid tax. The amount of these omissions/commissions are subject to stipulation that the same would be charged with interest other than one chargeable u/S.50 and levy of penalty in accordance with the Act and Rules framed thereunder.

5.3 A notice u/S.73 (1) is mandated to be issued at least three months prior to the time limit specified in sub-section (10) of Section 73.

5.4 Sub-section 73(3) stipulates next step that after issuance of notice u/S.73(1) the proper officer may serve a statement containing details of tax not paid /short paid/erroneous refund or input tax credit wrongly availed or utilized for such period other than those covered under sub-section (1).

5.5 Section 73(5), (6), (7) and (9) relate to opportunity to be given by show cause notice to the noticee to deposit tax interest and benefit as specified in the notice, within 30 days and the eventuality of compliance, part compliance or non-compliance.

6. From the language employed in Section 73, it is obvious that Section 73(1) affords opportunity to noticee to show cause which means to respond as to why he should not pay the amount specified in the notice with interest and penalty, if any.

6.1 Though no time period is stipulated in Section 73 for the noticee to respond but it is obvious that the statute contemplates affording of reasonable opportunity to reply to show cause notice.

6.2 In the considered opinion of this Court, concept of reasonable opportunity demands that reasonable period of time to reply to the notice should be not less than 15 days, if not more.

6.3 However, since the time period provided for paying tax, interest and penalty specified in the show cause notice is statutorily prescribed to be thirty days in Section 73 (8), the reasonable period within which show cause notice is to be responded to, ought to be treated as thirty days.

7. In view of aforesaid findings, it is evident that the time gap provided between show cause notice dated 03.09.2022 (Annexure P/2) and impugned order dated 12.09.2022 (Annexure P/3) was only 8 clear days which in the considered opinion of this Court falls desperately short of satisfying the concept of reasonable opportunity of being heard.

8. Another ground raised by counsel for petitioner is that the statement prescribed u/S. 73(2) has not been afforded to petitioner thereby keeping the

petitioner in dark as regards the foundational material which persuaded the show cause notice issuing Authority to form a *prima facie* opinion against petitioner.

8.1 The obligation of the Proper Officer to serve a statement on the noticee as per Section 73(3) is only in such cases which are not covered u/S.73(1).

8.2 From bare perusal of the impugned show cause notice (Annexure P/2) and order (Annexure P/3), it is not evident as to whether show cause notice was issued in cases covered by Section 73(1) or not.

8.3 Thus, it would be appropriate to leave this aspect for the competent authority to decide it at its level.

9. The third ground raised by the petitioner is that the impugned show cause notice (Annexure P/2) is not pregnant enough as regards foundational material to enable a reasonable opportunity to petitioner to respond effectively to the same. Meaning thereby that the impugned show cause notice is vague, sketchy and lacking in material particulars.

9.1 In this regard, this Court merely observes that any show cause notice whether u/S.73 or otherwise can withstand the test judicial scrutiny only when the same contains enough and adequate material which motivated the notice issuing Authority to take a *prima facie* view against the noticee. If the contents of impugned show cause notice are lacking in material particulars or are vague in regard to any of the entries contained therein then such show caused notice becomes vulnerable to judicial review.

10. Thus, in conspectus of above discussion, what comes out loud and clear is that the show cause notice not only falls short of the minimum period

of 30 days to afford reasonable opportunity to noticee to respond but also appears to be lacking in material particular.

10.1 Consequently, the impugned show cause notice dated 03.09.2022 (Annexure P/2) and impugned order of demand dated 12.09.2022 (Annexure P/3) both passed u/S.73 of CGST Act are set aside with liberty to the Revenue to issue fresh legal and valid show cause notice and thereafter proceed in the matter if so advised after affording reasonable and sufficient opportunity of being heard to petitioner.

10.2 The petitioner shall be entitled for the cost of this petition quantified at **Rs.10,000/- (Rupees Ten Thousand)** which shall be paid by respondents by depositing the same in the bank account of petitioner through digital transfer with compliance report to be filed in Registry within a period of 60 days from today, failing which the matter be listed under the caption of "**Direction**" as PUD for execution *qua* cost.

11. With the aforesaid liberty, writ petition stands **allowed**.

(SHEEL NAGU)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE