

Assessment proceedings suffer from major procedural flaws due to the lack of a proper SCN

The Hon'ble Jharkhand High Court in *M/s. Solex Energy Limited v. the State of Jharkhand and Ors. [W.P (T) No. 404 of 2022 dated January 31, 2023]* has set aside the summary of order issued in **Form GST DRC-07** to the assessee by the Revenue Department on the grounds of non-issuance of a proper Show Cause Notice ("**SCN**"). Held that, the assessment proceedings suffer from serious procedural errors in absence of a proper SCN, where there were serious discrepancies in the proceedings. Thus, the entire proceedings are vitiated.

Facts:

M/s. Solex Energy Limited ("**the Petitioner**") is engaged in the business of Engineering, procurement and construction of solar power generating system and is also a manufacturer of solar panels. After filing return in **Form GSTR-3B** for the month of October, 2020, the Petitioner noticed that an amount of INR 39,77,727/- was debited from its electronic credit ledger and INR 21,060/- was debited from its electronic cash ledger. Upon enquiry, it was found that the amount was recovered against an outstanding demand created vide summary of order in **Form GST DRC-07** dated January 21, 2019 ("**the Impugned Summary Order**") passed by the Revenue Department ("**the Respondent**"), which the Petitioner had no knowledge of.

Subsequently, the Petitioner preferred an application under the Right to Information Act, 2005 ("**the RTI Act**") seeking information regarding the copy of Summary of SCN in **Form GST DRC-01**, summary of statement in **Form GST DRC-02** and other relevant documents related to the Impugned Summary Order and the same was provided to it.

The Petitioner claimed that it had not received the summary of notice and summary of statement related to the Impugned Summary Order and none of the documents were signed by any authority nor any detailed order was issued.

Being aggrieved, this petition has been filed.

Issue:

Whether the Impugned Summary Order passed by the Respondent and the consequent recovery was in accordance with law?

Held:

The Hon'ble Jharkhand High Court in ***W.P (T) No. 404 of 2022*** held as under:

- Noted that, there were differences in the documents furnished under RTI Act with the Impugned Summary Order as contained in the original records and this kind of discrepancy creates a doubt regarding the regularity of the adjudication proceedings which has led to imposition of liability of tax, penalty and interest upon the Petitioner to the tune of INR 1,74,66,875.40/-.
- Further noted that, the Impugned Summary Order does not precede with a proper adjudication order.
- Relied on the judgment in the earlier matter of ***M/s. Nkas Services Private Limited v. the State of Jharkhand & Ors. [W.P. (T) No.2444 of 2021 dated October 6, 2021]*** wherein it was held that if the ingredients of the SCN are not proper, principles of natural justice are violated.
- Opined that, the assessment proceedings suffer from serious procedural errors in absence of a proper SCN.
- Held that, there were serious discrepancies in the proceedings and in absence of a proper SCN the entire proceedings are vitiated.
- Set aside the Impugned Summary Order.
- Remitted the matter back to the Respondent for fresh consideration in accordance with law after issuing a proper SCN.

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