

Crucial Role of Authentication and Hearing Opportunity in Tax Proceedings

An important judgement is passed in the matter of **Construction Catalysers Private Limited vs. The State of Assam and Ors.- 2024 (10) TMI 279 - Gauhati High Court**, wherein the attachment to both the Summary of the Show Cause Notice ('SCN') as well as the Summary of the Order uploaded in GST DRC-01 and GST DRC-07 were not authenticated by putting signatures of the Proper Officer.

The present judgement made analysis and determination on the following issues:

- i. Whether SCNs were issued prior to passing the Impugned Order under Section 73 (9) of the Assam Goods and Services Tax Act, 2017 ('State Act')?
- ii. Whether the determination of tax as well as the Order attached to the Summary of the SCN in GST DCR-01 and Summary of the Order in GST DCR-07 can be said to be the SCN and Order respectively?
- iii. Whether the impugned orders under Section 73 (9) of the State Act is in conformity with Section 75 (4) of the State Act and is in consonance with the principles of natural justice?

The Petitioner relied upon the judgement of **M/s Silver Oak Villas LLP vs. the Assistant Commissioner ST- WP(C) No. 6671/2024**, wherein Telangana High Court held that the impugned order, being an unsigned document, lost its validity according to Rule 26 (3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') and the State Act, along with its associated rules. The Petitioner has also placed reliance on the judgement of **A.V. Bhanoji Row vs. Assistant Commissioner (ST) & Others, reported in (2024) 123 GSTR 432**.

Furthermore, the Petitioner cited the case of Jharkhand High Court, in the matter of **Nkas Services Private Limited vs. State of Jharkhand & Others- (2022) 99 GSTR 145**, wherein the Hon'ble Court ruled that the summary of the SCN as issued in Form GST DRC-01 cannot be a substitute to the requirement of a proper SCN.

The Petitioner also made additional submissions that there is no mention about the date of hearing in the summary of SCN and relied on the judgement of **Mahindra & Mahindra Limited vs. Union of India and Others- WA No.172/2024**, wherein the Chhattisgarh High Court has examined the scope and implications of Section 75 (4) of the Central Goods and Services Tax Act, 2017 ('CGST Act') and noted that when the statute mandates a hearing—essentially embodying the principle of natural justice—it cannot be overlooked or treated leniently.

The Hon'ble Gauhati High Court, in the present case, disposed of the writ petitions and determined every issue separately and held as follows:

- (i) **Whether summary of SCN issued in DRC-01 can be said to be SCNs issued prior to passing the Impugned Order under Section 73 (9) of the State Act?**

The Hon'ble High Court held that the Summary of the SCN, along with the tax determination attachment, does not constitute a valid initiation of proceedings under Section 73 of the CGST Act without a proper SCN being issued. The Court asserts that the Summary is supplementary to the required proper Notice. Consequently, it finds that the challenged orders in the writ petitions violate both Section 73 of the CGST Act and Rule 142(1)(a) of the CGST Rules, as these orders were issued without a valid SCN.

- (ii) **Whether without authentication the determination of tax as well as the Order attached to GST DCR-01 and GST DCR-07 be said to be the SCN and Order respectively?**

The Hon'ble High Court has held that failure to properly authenticate SCN, Statement, and Order, issued under Section 73 of the CGST Act, renders them ineffective. While the Act specifies the requirement for these actions, it does not detail the authentication process except in Chapter III of the CGST Rules. The Court insists that until the Rules are amended to clarify this process, the authentication requirements in Rule 26(3) of the CGST Rules must be adhered to when the Proper Officer issues notices or orders.

- (iii) **Whether the impugned orders under Section 73 (9) of the State Act is in conformity with Section 75 (4) of the State Act and is in consonance with the principles of natural justice?**

The Court held that when the statute clearly mandates an opportunity for a hearing, it must be provided. The Form GST DRC-01 shows that while a deadline for submitting replies is specified, other crucial details regarding the personal hearing – such as date, time, and venue – are marked as 'NA'. This suggests the Proper Officer may have intended to adjudicate based on the reply. However, if no reply is submitted, it raises the question of whether the Proper Officer can issue an adverse order without offering a hearing.

This judgement underscores the mandate of proper authentication of legal documents, such as SCNs and Orders for their validity. Without proper signatures from the Proper Officer, these documents are rendered ineffective, reinforcing the importance of adhering to statutory requirements. Furthermore, the court reiterates that a clear opportunity for a hearing is a statutory right that cannot be overlooked. The absence of essential details in the Summary of the SCN, such as hearing dates, raises significant concerns about whether a fair process was followed. This reflects a broader commitment to the principles of natural justice, which dictate that parties must have a fair opportunity to present their case before adverse decisions are made.

In conclusion, the ruling emphasizes the necessity of procedural rigor in administrative actions, ensuring that legal requirements are met and that individuals are afforded their rights to a fair hearing.