

### **Mandatory to upload SCN on website, mere e-mail to the taxpayer would not suffice**

The Hon'ble Madhya Pradesh High Court, in ***Akash Garg vs. State of M.P. [W.P. No.16117/2020 (dated, November 19, 2020)]***, held that statutory procedure prescribed for communicating show-cause notice ("SCN") or order under Rule 142(1) of Central Goods and Services Tax Rules, 2017 ("CGST Rules") is required to be followed mandatorily by the revenue, which prescribes the manner to upload the SCN on website. Thus, a mere e-mail of SCN to the taxpayer would not suffice. Upload of such notices on the website of the revenue is mandatory.

#### **Facts:-**

Akash Garg ("**Petitioner**"), who is an individual registered under Central Goods and Services Tax Act, 2017 ("**CGST Act**"), received an order in Form GST DRC-07 dated September 18, 2020, for the year 2018-19 and 2019-20 along with other orders. The grievance of the Petitioner is that while raising the demand of tax vide summary of the order dated September 18, 2020, the foundational SCN was never communicated to the Petitioner.

#### **Issue:-**

Whether the communication of SCN through an e-mail is in violation of principle of natural justice on the anvil of Rule 142 of CGST Rules?

#### **Held:-**

The Hon'ble Madhya Pradesh High Court, in ***W.P. No. 16117/2020 dated, November 19, 2020*** held as under:

- Observed that, the provision of Rule 142(1) of CGST Rule, statutorily obliges the revenue department to communicate SCN/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.
- Stated that, 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.

- Held that, the Court has no manner of doubt that statutory procedure prescribed for communicating SCN/order under Rule 142(1) of CGST Rules having not been followed by the revenue, therefore the demand is struck down. Accordingly, allowed the petition with the liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Rules by communicating the SCN to the Petitioner by appropriate mode thereafter to proceed in accordance with the law.

**Relevant provision:-**

**Rule 142 of CGST Rules:**

*“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 may, 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, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.*

*(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 sub-rule (1A), he 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.*

*(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (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.”*

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