

Grounds of SCN is a must – Jharkhand High Court

11 March 2022



Summary

The Jharkhand High Court (HC) has held that the Show Cause Notice (SCN) does not fulfill the ingredients of a proper SCN and amounts to a violation of principles of natural justice. The HC observed that the impugned SCN was completely silent on the contraventions made by the petitioner which infringed the petitioner's right to defend himself. Therefore, the SCN is unsustainable. The HC stated that a summary of SCN cannot substitute the SCN as it fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner.

Facts of the case

- A SCN, along with a summary of such SCN, was issued to the petitioner¹. The SCN stated that the liability reflected in the Goods and Services Tax (GST) returns is less than the sum received from the government treasury against the work contract. Further, penalty and interest were levied on the same.
- It was contended by the petitioner that SCN² is vague as it does not specify the contravention committed. The authorities submitted that since the SCN has to be issued in a format on the GSTN portal, hence details, facts and charges cannot be uploaded or inserted by them.
- The petitioner contended that the authorities have disbelieved that the ingredients of a SCN have been replaced by a summary of such SCN.
- The aggrieved petitioner filed the writ petition requesting to quash the SCN.

Jharkhand High Court observations and ruling³:

- **Ingredients of a proper SCN:** It was observed that the SCN was issued without format and it did not detail the contraventions committed by the petitioner. Even the summary of SCN did not disclose the information of works contract service against which the liability is not paid/disclosed.

- **Summary of SCN cannot substitute SCN:** The grounds for issuance of SCN needs to be specifically mentioned in the notice. Further, the connection between the facts and the contravention shall also be established. In the instant case, the summary of SCN did not disclose the information received from the headquarter/government treasury. Therefore, a summary of SCN cannot replace the SCN itself.
- **Violation of principles of natural justice:** As per GST provisions⁴, no tax, interest or penalty can be imposed if a SCN does not specify grounds. As the SCN is completely silent on the alleged contravention or violation, this entails violation of principles of natural justice, which cannot be entertained.

Our comments

Recently, the Department of Trade and Taxes (Delhi) had issued indicative

¹ Nkas Services Private Limited

²Section 73 of JGST Act, 2017

³Order Dated 9 February 2022

⁴Section 75(7) of the JGST Act, 2017

guidelines⁵ for issuance of SCN which are strictly to be adhered by the proper officers to avoid violation of provisions. Similar guidelines may be issued by other state authorities also to avoid equivocal notices.

It has been observed that the authorities are contemplating the principle of natural justice by issuing circulars and rulings for nullifying vague notices and redundant adjudication process.

On a similar front, the Madras HC⁶ had also provided a ruling beyond GST rules and facilitated issuance of SCN via both registered post and web portal, till the technical glitches of the portal are encountered.

Further to streamline proper adjudication process, recently the Jharkhand HC⁷ also held that recovery of interest cannot be initiated without initiating the adjudication proceedings.

⁵ Dated 1 Feb 2022

⁶ Pushpam Reality vs State Tax Officer

⁷ W.P.(T) No. 1404 of 2020, Order Dated 16 February 2022

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