

No violation of the principles of natural justice if the taxpayer is aware of the transaction under scanner – Madhya Pradesh HC

6 September 2022



Summary

The authorities served show cause notice (SCN) upon the petitioner for alleged input tax credit (ITC); however, they had not disclosed the details of the transaction. The Madhya Pradesh High Court (HC) found the reply submitted by the petitioner unequivocal, which shows that the petitioner was aware of the transactions under the scanner. In this respect, the HC upheld the order passed by the Revenue authorities wherein the tax liability was imposed on the petitioner on the ground that the petitioner knew of the alleged transaction. The HC opined that the petition filed by the petitioner is baseless and the grounds raised are ill-founded. The HC did not find any substance in the writ petition and, therefore, dismissed the same.

Facts of the case

- The petitioner¹, registered under GST, is engaged in the ferrous waste and scrap business.
- The petitioner was served with an SCN² dated 13 March 2019, against which an order was passed confirming the tax and penalty. The petitioner preferred an appeal, against such order, before the appellate authority (AA), which was dismissed. Therefore, the aggrieved petitioner filed the present writ petition.
- While issuing notice, the authorities alleged ITC availed by the petitioner; however, has not disclosed the transactions on which the petitioner availed of the benefit. The authorities submitted that the petitioner had availed the benefit of some ineligible ITC on inward supply from the supplier. Accordingly, the value of goods and the ITC amount were mentioned in the SCN dated 11 March 2019.
- The petitioner contended that this is a violation of the principle of natural justice. Moreover, the petitioner could not defend himself due to a lack of clarity in the description of the

transaction. Thus, the petitioner submitted that the impugned order had been passed in a mechanical manner and should be set aside.

Madhya Pradesh H.C. observations and ruling³:

- **Petitioner was aware of the transaction:** The HC noted that the petitioner was aware of the details of the transaction⁴ for which the liability has been created on the petitioner. The petitioner had submitted the reply and disclosed the transaction dealing with V.K. Enterprise along with documents relevant to the transactions. The reply submitted by the petitioner is unequivocal and apparently shows that the petitioner was aware of the transactions under the scanner.
- **Ill-founded grounds of the petitioner:** The HC noticed that the petitioner had made a futile attempt and raised ground of no information of transactions. The act of the petitioner was questionable and doubtful in the eyes of authorities. The HC stated the grounds of the petitioner as ill-founded. The HC did not find any

¹ M/s Dhara Enterprises

² Section 74(1) of the CGST Act 2017

³ Writ Petition No.27676 of 2019

⁴ Reference to notice dated 13 March 2019

substance in the petition and, therefore, dismissed the appeal.

Our comments

SCN is the foundation for the recovery of tax, penalty and interest. If a particular allegation is not raised in the SCN, it cannot be raised later. The SCN should not be issued on assumptions and the allegation raised in the SCN should be supported by documentary evidence. Further, the principle of natural justice is an essential part of the administration of justice and the same must be followed to make a fair order.

Earlier, the Jharkhand HC, in the case of M/s NKAS Services Private Limited,⁵ had held that proceedings initiated for evasion of tax with malafide intention have a serious connotation due to punitive consequences. In the case where SCN lacks clear charges/allegations, the person alleged would be denied proper opportunity to defend himself. This violates the principles of natural justice, and thus, the SCN is held to be invalid.

However, contrary to the above ruling, in the present case, the HC held that since the taxpayer was already aware of the transaction which attracted the proceedings⁶, thus, absence of detail of transaction in the notice, on which the assessee availed ITC, is not a violation of natural justice.

⁵ W.P.(T) No. 2444 of 2021

⁶ Section 74 of CGST Act 2017.

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