

Issuance of pre-SCN intimation mandatory when the SCN relates to the period prior to amendment in CGST Rules – Andhra Pradesh HC

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Summary

The Andhra Pradesh High Court (HC) has held that intimation under Goods and Services Tax (GST) Demand and Recovery Form (DRC) 01A should mandatorily be issued before issuing a show cause notice (SCN) when the tax period pertinently covers the period during which it was a mandatory requirement. Initially, in terms of Rule 142(1A) of the Central Goods and Services Tax Rules 2017 (CGST Rules) (impugned provision), it was mandatory to communicate the details of the tax penalty as ascertained by the Proper Officer (PO) in GST DRC 01A. The requirement was made discretionary w.e.f. 15 October 2020 by amendment in the impugned provision. Owing to the above, the HC set aside the impugned order, holding that in case of any ambiguity in the provisions, the benefit shall be given to the taxpayer.

Facts of the case

- M/s. New Morning Star Travels (the petitioner) has challenged the combined assessment order for the period from 01 July 2017 to 31 March 2021, levying tax, interest and penalty on the ground that the details of the above demand were not communicated to the petitioner in GST DRC 01A before issuing the show cause notice (SCN) was required in terms of Rule 142(1A) of the CGST Rules.
- The petitioner stated that prior to amendment in the impugned provision w.e.f. 15 October 2020, it was mandatory to issue GST DRC 01A to intimate the details of the tax, interest and penalty as ascertained by the Proper Officer (PO).
- The petitioner contended that the major part of the tax demanded pertained to the pre-amendment period, and accordingly, the intimation should have been issued by the department in accordance with the unamended provision.
- Further, owing to such a violation of the department, the petitioner was deprived of the valuable opportunity to make submissions before the issuance of the SCN. In view of the above, the petitioner submitted that the impugned order would not be sustainable in law.
- The department (respondents), on the contrary, contended that initially, intimation was issued by the Assistant Commissioner (AC); however, no action was taken thereafter in pursuance of the same. Subsequently, upon transfer, the Deputy Commissioner (DC) directly issued the SCN under GST DRC 01 without issuing GST DRC 01A. Again, no action was taken by the DC in pursuance of the SCN till the passing of the impugned order.
- The department argued that some part of the period pertained to post-amendment, and upon amendment of the impugned provision, the issuance of GST DRC 01A was a discretionary measure and no longer a mandate. In view of the above, the order cannot be invalidated.

Andhra Pradesh HC observations and judgement [Writ Petition No. 12850/2022; Order dated 12 October 2023]

- **GST DRC 01A was a mandatory requirement prior to amendment:** The HC observed that prior to amendment in the impugned provision, it was mandatory for the PO to intimate the details of tax, interest and penalty ascertained in Part A of the FORM GST DRC 01A. Further, the

SCN can be issued only if there is no response from the taxpayer. However, after the amendment, the requirement to issue DRC 01A was made discretionary.

- **Tax demand covers both pre and post-amendment periods:** The HC emphasised that the SCN pertained to the tax period from 01 July 2017 to 31 March 2021 and thereby covered both the pre-amendment period as well as the post-amendment period. Pertinently, most of the tax period is related to the

pre-amendment period. In view of the above, the HC held that since no action was taken by the AC after initially issuing DRC 01A, it was obligatory upon the DC to ensure that GST DRC 01A was issued prior to proceeding with the SCN.

The HC opined that in case of an ambiguity with respect to any provision, the benefit should be given to the taxpayer. Therefore, the HC set aside the impugned order and directed the DC to issue a fresh intimation under DRC 01A.

Our comments

This has been a burning issue for a long time. Post amendment in the impugned provision, the mandatory requirement of issuing intimation under GST DRC 01A was made discretionary upon the assessing authority. However, the present judgement makes the requirement mandatory if the tax demand pertains to most of the pre-amendment period, thereby upholding the intention of such mandate.

Earlier, the Allahabad HC, in the case of Nanhey Mal Munna Lal, had categorically clarified that GST DRC 01A is a 'pre-show cause notice' intimation which is issued with the intention of providing the opportunity to the assessee to resolve the dispute either by depositing the amount demanded or in case of disagreement, by going through the adjudication proceedings. It, therefore, takes into account the principles of natural justice at the pre-SCN stage. Further, the HC asserted that such an opportunity at a pre-SCN stage is not only beneficial to both the assessee and the department but also reduces litigation.

Taxpayers can take benefit of this judgement to contest the validity of show cause notices issued on similar grounds.

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