

TAX INFO

Dated 12/08/2022

Latest update on GST Law: **Where the principles of natural justice is at stake, words such as deemed, tantamount etc. hold no merit and deemed SCN is void in eyes of law**, as given in judgement by **Jharkhand High Court**.

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Name of Petitioner	M/s.Shyam Hardware Store
Name of Respondent	Joint Commissioner of State Tax
Court	Jharkhand High Court
Date of Judgement	11/07/2022
Appeal No.	W.P.(T) No. 1117 of 2021

Brief Facts of the Case Law:

On the order of Joint Commissioner of State Tax, an inspection was conducted by Investigation Bureau in the premises of the petitioner on 11.01.2020 and an Inspection Report was prepared directing the petitioner to appear on 17.1.2020 before the Joint Commissioner of State Tax failing which proceeding under Sections 73, 50(1) and 125 of JGST Act would be initiated. In the Inspection Report, the inspecting team has alleged three discrepancies against the petitioner. The petitioner was served summary of the order in Form GST DRC-07 dated 04.12.2020 wherein alleged amount of tax, interest and penalty have been levied against the petitioner in spite of the fact that the petitioner was regularly appearing before the Department pursuant to the said inspection. The petitioner was also served rectification order as well as summary of rectification/withdrawal order in Form GST DRC-08 dated 07.12.2020.

Contention of the Petitioner:

No pre-show cause notice in form of Form GST DRC-01A was issued intimating him of the liability of tax, interest applicable and/or penalty which if not paid would lead to initiation of adjudication process as contemplated under Section 73 of JGST Act. The petitioner was debarred from filing his objection in part B of Form GST DRC-01 A against the same. No show-cause notice was issued in this regard to the petitioner under Section 73(1) of the JGST Act. The proper officers, as a matter of fact, has not initiated the adjudication process as contemplated under Section 73 of the JGST Act and the petitioner has been highly prejudiced because of violation of principle of natural justice.

Contention of the Department:

The inspection report dated 11.1.2020 itself provides the information as regard to the notices under Sections 73, 50(1) and Section 125 of the JGST Act and as such it should be treated that notice under Section 73 has already been issued and served upon the petitioner. Therefore, the notices u/s 73, 50(1) and 125 were deemed to have been issued to the petitioner proprietor on the day of inspection i.e., 11.01.2020.

Decision of the Court:

The petitioner has never ignored the directions given in the inspection report rather it appears that the petitioner has not only appeared on the date as prescribed in the inspection report but also on various dates as required by the adjudicating officer.

The contention of the Department that the direction shall be treated as notice under Section 73 already being issued and served upon the petitioner is nothing but an attempt to misrepresent the facts and is not accepted by this Court. The Department has averred that the direction in the inspection report is a deemed notice. **However, in the matter where the principles of natural justice is at stake, words such as deemed, tantamount etc. hold no merit.** Moreover, under Rule 142 of JGST Rules, 2017 procedure of notice under Section 73 has already been prescribed; hence any other such deemed notice, can be treated no notice in the eyes of law.

Since the inspection report does not fulfil the ingredients of a proper show-cause notice it amounts to violation of principles of natural justice. Consequently, the summary of the order as contained in Form GST DRC-07 dated 04.12.2020 as well as summary of rectification/withdrawal order as contained in Form GST DRC-08 dated 07.12.2020 was set aside. However, the Department are at liberty to initiate fresh proceedings from the stage of issuing proper show-cause notice as laid down in the JGST Act, 2017 by following principles of natural justice.

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