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NADIM MOHLE

2026:CGHC:30167

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPT No. 109 of 2021**

N.N. Wires And Steels Private Limited Having Its Registered Office At Shop No. 201, 2nd Floor, Akash Tower, Telghani Naka Chowk, Raipur 492001 Chhattisgarh. Acting Through Its Director / Authorized Representative Narendra Kishore Agrawal, S/o Radheshyam Agrawal Aged About 39 Years, Resident Of Mahesh Colony Gali No. 2, Gudihyari, Shrinagar, Raipur, District : Raipur, Chhattisgarh.

--- Petitioner**versus**

1 - The Assistant Commissioner State Tax Circle - 2, Behind Rajbhawan, Civil Lines Raipur District : Raipur, Chhattisgarh.

2 - The Commissioner Commercial Tax Gst North Block Sector 19, Atal Nagar Nawa Raipur, District : Raipur, Chhattisgarh.

--- Respondent(s)

For Petitioner : Mr. Pankaj Singh, Advocate

For Respondent(s)/State : Ms. Aradhana Jain, Deputy Government
Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****16/07/2026**

1. The petitioner has filed this petition seeking the following relief(s):-

“10.1. Appropriate Writ(s) and/or order(s) and/or direction(s) to the Respondents to serve upon the Petitioner with detailed Show cause Notice with copies of RUD's in accordance with 74(1) of Chhattisgarh Goods and Services Tax Act, 2017 read with 74(1) of Central Goods and Services Act, 2017 and allow them reasonable opportunity to submit their defense reply with a reasonable opportunity of being heard;

10.2. Appropriate Writ(s) and/or order(s) and/or direction(s) restraining the Respondent from taking any action in pursuance of impugned Summary of Show Cause Notice issued in Form GST DRC-01 bearing Ref. No. ZD220620013571 dated- 26.06.2020 (Annexure-P/1) and/or matters connected thereto till the pendency of this writ petition before this Hon'ble Court;

10.3. Appropriate Writ(s) and/or order(s) and/or direction(s) restraining the Respondent from taking any action in pursuance of Order dated-01-09-2020 (Annexure-P/4) and/or matters connected thereto till the pendency of this writ petition before this Hon'ble Court;

10.4. Appropriate Writ(s) and/or order(s) and/or direction(s) restraining the Respondent from taking any action in pursuance of Letter bearing No. 316, dated-02-02-2021 (Annexure-P/5) and/or matters connected thereto till the pendency of this writ petition before this Hon'ble Court;

10.5. pass any order(s), direction(s), writ(s) or any other relief or relief(s) this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

10.6. Allow the writ with cost;

10.7. Grant Ad-interim reliefs in terms of prayer under Para. 10.2, 10.3 and 10.4 above. And for this act of kindness, the Petitioner shall, as in duty bound, every pray.”

2. The instant petition has been directed against the notice issued under Section 74 (1) of the CG GST Act, 2017 (for short, the Act, 2017) dated 26.06.2020 (Annexure P/1), subsequent order of recovery issued on 01.09.2020 (Annexure P/4) and order of attachment of bank account dated 02.02.2021 (Annexure P/5).

3. Learned counsel appearing for the petitioner would submit that the notice under Section 74 (I) of the Act, 2017 was not issued in accordance with the provisions of said Section, therefore, said notice, subsequent notice and order are bad in law. He would contend that respondent authorities were under obligation to demonstrate as to how the petitioner failed to pay tax properly. He would pray to allow this petition.
4. On the other hand, Ms. Jain, learned counsel appearing for the respondents would submit that there is efficacious alternative remedy to prefer an appeal under Section 107 of the Act, 2017, therefore, this petition is not maintainable. It is also contended that the petitioner purchased goods from the non-existing dealers and claimed bogus ITC from bogus dealers and when these facts were brought into the notice of the respondent authorities, impugned notice & order were issued. She would submit that though the petitioner applied for relevant documents from the department, but failed to participate in the further proceedings, therefore, the order of recovery and order of attachment were passed against him; thus, she would pray that this petition deserves to be dismissed.
5. Section 74 of the Act, 2017 is reproduced as under:-

Section 74. Determination of tax ²[, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly

availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five

per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

²[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

Explanation 1.- For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under 1[sections 122 and 125] are deemed to be concluded.

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

*Enforced w.e.f. 1st July, 2017.

1. Substituted (w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 113 of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for "sections 122, 125, 129 and 130".

2. Inserted by section 137 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024.

6. Bare perusal of the above quoted provision would make it clear that the authority concerned has to specify reasons in accordance with Section 74 of the Act, 2017, but in the notice impugned, the authority concerned reproduced the provision of Section 74 of the Act, 2017. It is also not in dispute that the petitioner approached the department to supply relevant documents but those documents were not provided, therefore, the petitioner could not participate in the subsequent proceedings.

7. Hon'ble Supreme Court in the matter of ***Ritesh Tewari and Another v. State of Uttar Pradesh and Others*** [(2010) 10 SCC 677] in paragraph 32 has held as under :-

"32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits."

8. From bare reading of the above quoted judgment, it is apparent that if something is done illegally from the very beginning, it can not become legal later on. In other words, if provisions of law have not been complied with at the foundational stage, it can not be rectified at appellate stage or revisional stage.

9. As the notice under Section 74 of the Act, 2017 was not issued strictly in accordance with law and documents were not supplied to the

petitioner to defend his case, subsequent order of recovery and attachment of bank account cannot be held valid. Accordingly, this petition is **allowed** and the impugned notices & /attachment order are hereby **quashed**.

10. The matter is remitted back to the authorities concerned to issue fresh notice under Section 74 of the Act, 2017 with specific reason and thereafter the competent authorities would be at liberty to take proper decision, if so advised.

Sd/-

Rakesh Mohan Pandey
JUDGE

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