

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 6027 of 2024

LIMRA TRADERS (Legal Name-Laxmi Dubey) (a proprietorship concern), having its Place of Business at Shop No.1, Ground Floor, Near T.O.P., Naya Bazar, Ram Tekri Road, Town Jamshedpur, P.O. & P.S. Jugsalai, District- East Singhbhum, PIN- 831006 (Jharkhand), through its proprietor, namely Laxmi Dueby, aged about 46 years, wife of Sandip Dubey, resident of Near T.O.P. Ram Tekri Road, Town Jamshedpur, P.O. & P.S. Jugsalai, District East Singhbhum, PIN- 831006 (Jharkhand).

.... Petitioner

-VERSUS-

1. **The State of Jharkhand**, through Commissioner of State Tax Department, having its office at Utpad Bhawan, Kanke Road, P.O. Ranchi University, P.S. Gonda, Town Ranchi, District Ranchi, PIN- 834008 (Jharkhand).
2. **The Additional Commissioner of State Tax, (Administration), Jamshedpur Division, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District East Singhbhum, Pin-831001 (Jharkhand).
3. **The Deputy Commissioner of State Tax, Bureau of Investigation, Jamshedpur Division, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District East Singhbhum, Pin-831001 (Jharkhand).
4. **The Joint Commissioner of State Tax, Singhbhum Circle, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District East Singhbhum, PIN- 831001 (Jharkhand).
5. **The Assistant Commissioner of State Tax, State Tax, Singhbhum Circle, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District- East Singhbhum, PIN- 831001 (Jharkhand).

6. **A. S. Enterprises**, through its Proprietor, having its office at 0024, West Ramdas Bhatta Busti Area, Town Jamshedpur, P.O. & P.S. Sakchi, District East Singhbhum, (Jharkhand).

.... Respondents

WITH

W.P.(T) No. 6028 of 2024

LIMRA TRADERS (Legal Name-Laxmi Dubey) (a proprietorship concern), having its Place of Business at Shop No.1, Ground Floor, Near T.O.P., Naya Bazar, Ram Tekri Road, Town Jamshedpur, P.O. & P.S. Jugsalai, District- East Singhbhum, PIN- 831006 (Jharkhand), through its proprietor, namely Laxmi Dueby, aged about 46 years, wife of Sandip Dubey, resident of Near T.O.P. Ram Tekri Road, Town Jamshedpur, P.O. & P.S. Jugsalai, District East Singhbhum, PIN- 831006 (Jharkhand).

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2. **The Additional Commissioner of State Tax, (Administration), Jamshedpur Division, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District East Singhbhum, Pin-831001 (Jharkhand).
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4. **The Joint Commissioner of State Tax, Singhbhum Circle, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District East Singhbhum, PIN- 831001 (Jharkhand).

5. **The Assistant Commissioner of State Tax, State Tax, Singhbhum Circle, Jamshedpur**, having its office at Sakchi, P.O. & P.S. Sakchi, Jamshedpur, District- East Singhbhum, PIN- 831001 (Jharkhand).
6. **M/s. Vansh Enterprises**, through its Proprietor, having its office at Sonari Bustee Area, B-Block, Sonari, Town Jamshedpur, P.O. & P.S. Sonari, District East Singhbhum, PIN-831011 (Jharkhand).

.... Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : Mr. Sumeet Gadodia, Advocate
Ms. Shruti Shekhar, Advocate
For the State : Mr. Piyush Chitresh, A.C. to A.G.
Mr. Sahbaj Akthar, A.C. to A.A.G.-III
For Resp. No.6 : Mr. Mukesh Kumar Sinha, Advocate
Mr. Nisith Kumar Sahani, Advocate

CAV On 19.02.2025

Delivered on 04 /03/2025

J U D G M E N T

1. These writ petitions involve identical facts and the same are disposed of by this common order.
2. The petitioner-firm has approached this Court for quashing of the adjudication order including summary of demand passed by adjudicating authority i.e. 5th Respondent, wherein adjudication orders have been passed under Section 74 of the Jharkhand Goods and Services Tax Act, 2017 [hereinafter referred to as 'JGST Act, 2017' for short] without granting any opportunity of personal hearing to the petitioner which is in utter defiance of statutory provisions i.e. JGST Act, 2017.

W.P.(T) No. 6027 of 2024

3. The brief facts of the case are that petitioner is primarily engaged in the business of trading of lubricant, bearing scraps and different type of iron materials and is registered under the provisions of Goods and Services Act. For the period 2023-24, petitioner purchased goods from various registered dealers including the 6th Respondent-M/s. A.S. Enterprises and duly discharged liability of GST of Rs.

33,24,615/-. The purchase of said goods were through banking channel and necessary tax invoices, e-way bills, lorry receipts etc. were issued by the selling dealer and petitioner availed Input Tax Credit of the tax amount of Rs. 33,24,614.90. However, Input Tax Credit availed by the petitioner was initially blocked under Rule 86A(1)(a)(i) of Jharkhand Goods and Services Rules, 2017 on the ground that the 6th Respondent-M/s. A. S. Enterprises, is a non-existing dealer.

4. Thereafter, inspections were carried out in the business premises of petitioner and, subsequently, vide Process No. 581 dated 05.06.2024, show cause notice was issued to the petitioner under Section 74(1) of JGST Act, 2017, directing the petitioner to show cause as to why Input Tax Credit amounting to Rs. 33,24,614.90 be not recovered from it along with interest and penalty. In the said show cause notice, date of compliance was fixed on 4th July, 2024 and, thereafter, on 10th July, 2024 itself adjudication order was passed fastening liability of tax, interest and penalty upon the petitioner.

W.P.(T) No. 6028 of 2024

5. The facts of the present writ application are almost identical to facts of W.P.(T) No. 6027 of 2024. Petitioner-firm for the period 2023-24, purchased goods from the 6th respondent and duly discharged the tax liability through banking Channel and on the strength of tax invoices, e-way bills, lorry receipts etc. availed Input Tax Credit of Rs. 7,35,097.20/-.

6. Initially, Input Tax Credit of the petitioner was blocked by the 5th Respondent under Rule 86A(1)(a)(i) of Jharkhand Goods and Services Rules, 2017 and, thereafter, the 5th Respondent issued show cause notice dated 04.04.2024 to the petitioner under Section 74(1) of JGST Act, 2017, directing to show cause as to why Input Tax Credit availed by the petitioner for a sum of Rs. 7,35,097.20/- be not recovered from the petitioner along with interest and penalty. In the said show cause notice, date of compliance was fixed on 3rd May, 2024 and, pursuant thereto, adjudication order dated 05.06.2024 was passed.

7. Counsel appearing for the petitioners invited attention of this Court to the order-sheets in both the cases and highlighted that the order-sheets including adjudication orders would reveal that adjudication orders were passed in flagrant violation of the principles of natural justice as on the first date fixed pursuant to show cause notice itself adjudication orders were passed. While referring to the order-sheet in W.P.(T) No. 6027 of 2024, it was submitted that although show cause notice was issued on 05.06.2024 fixing first date of compliance on 4th July, 2024, but from the order-sheet, it would transpire that alleged date of compliance was recorded as 5th July, 2024 and on the aforesaid first date itself i.e. 05.07.2024 an *ex-parte* adjudication order was passed.

8. Further, while relying upon the order-sheet in W.P.(T) No. 6028 of 2024, it was submitted that show cause notice was issued on 04.04.2024 fixing date of compliance on 3rd May, 2024, and, from the order-sheet, it would transpire that on 3rd May, 2024, no proceedings were undertaken and, for the first time, proceedings were undertaken on 5th June, 2024 and, on the said date itself *ex-parte* adjudication order was passed.

9. Reference was made to the decision dated 18.04.2022 of this Court passed in the case of *M/s. Godavari Commodities Limited v. The State of Jharkhand & Ors. [W.P.(T) No. 3908 of 2020]* and it was submitted that this Court, while interpreting provisions of Sections 75(4) and 75(5) of JGST Act, 2017 clearly held that sufficient opportunity of personal hearing is required to be granted before passing an adjudication order, but, despite said authoritative pronouncement of this Court, adjudication orders have been passed in utter violation of the principles of natural justice.

10. Per contra, learned counsel appearing for Respondent-State defended the adjudication orders by contending, *inter alia*, that prior to issuance of show cause notice, an inspection was made in the premises of the petitioner-firm and spot summons were issued to the petitioner under Section 70 of JGST Act, 2017 and even DRC-01A were issued to

the petitioner which would demonstrate that there were sufficient compliance of principles of natural justice.

11. However, counsel for Respondent-State could not dispute the admitted documents including date of issuance of show cause notice, the date of compliance as well as the fact that on the first date of compliance itself, final adjudication orders were passed *ex-parte*.

12. Having heard counsel for the parties and after going through the documents available on record, this Court is of the firm opinion that adjudication orders passed by the adjudicating authority i.e. the 5th Respondent, are in utter violation of the principle of natural justice and are also contrary to the provisions of Sections 75(4) and 75(5) of JGST Act, 2017. The provisions of Sections 75(4) and 75(5) of JGST Act, 2017 was considered by this Court in the case of *M/s. Godavari Commodities Limited (supra)* and after considering the said provisions, it was held as under:-

‘21. At this stage, we deem it appropriate to quote the provisions of Section 75(4) and 75(5) of the CGST/JGST Act:-

“75. General provisions relating to determination of tax

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted for more than three times to a person during the proceedings.”

22. A conjoint reading of the provisions of Sections 75(4) and 75(5) would reveal as under:-

- (i) Opportunity of hearing’ shall be granted on request.*
- (ii) Opportunity of hearing shall be granted where any adverse decision is contemplated.*
- (iv) If sufficient cause is shown, the proper officer can adjourn the hearing for reasons to be recorded in writing.*
- (v) However, no such adjournment shall be granted for more than three times during the proceedings.’*

13. In the said judgment, this Court vide paragraph 27 further directed, *inter-alia*, as under:-

'27. The original records produced before us leave no iota of doubt that the present adjudication proceedings have been carried out by the authorities of the State Tax Department in stark disregard to the mandatory provisions of GST Act and the well-known procedures for conduct of proceedings have been completely disregarded. We refrain ourselves from saying any further, but we direct the Commissioner of State Tax Department to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure and process of law.'

14. Despite aforesaid directions issued by this Court, it appears that State Tax authorities are continuing to conduct adjudication proceedings in utter disregard to the mandatory provisions of the Act and in violation of the principles of natural justice.

15. We reiterate our view that due to procedure being not followed by State Tax authorities in conduct of adjudication proceedings, huge revenue of the State is otherwise lost which could have been protected, if due procedure is followed while passing adjudication orders.

16. The facts pertaining to W.P.(T) No. 6027 of 2024 clearly reveal that show cause notice was issued on 05.06.2024 having date of compliance as 04.07.2024, but, from order-sheet, it appears that alleged date of compliance was noted as 05.07.2024 and, on the first date of compliance, *ex-parte* order was passed against petitioner.

17. Likewise, facts of W.P.(T) No. 6028 of 2024 would reveal that although show cause notice was issued on 04.04.2024 fixing date of compliance on 03.05.2024, but, on 03.05.2024, no proceedings were held and first proceeding was held on 05.06.2024 and, on the said date itself an *ex-parte* order of adjudication was passed. Thus, facts of both the cases clearly reveal that proceedings have been conducted in utter violation of the principle of natural justice including the mandatory provisions as contained under Sections 75(4) and 75(5) of JGST Act, 2017.

18. We take judicial notice of the fact that several similar writ petitions are repeatedly being filed before this Court, wherein adjudication orders are being challenged solely on the ground

that the same have been passed in violation of the principles of natural justice.

19. As indicated above, this Court in the case of *M/s. Godavari Commodities Limited (supra)* have already issued directions in the year 2022 itself directing Commissioner of State Tax Department to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by State Tax authorities regarding the manner of issuance of show cause notice, adjudication and recovery proceedings, so that proper procedure is followed by State Tax authorities in conduct of the adjudication proceedings. It appears that the aforesaid directions passed by this Court have not been complied with.

20. Having regard to the aforesaid discussion, we deem it appropriate to allow both these writ applications by imposing cost as adjudication orders have been passed blatantly ignoring the statutory provisions. Accordingly, both these writ petitions are allowed and the impugned adjudication order including summary of order dated 05.06.2024 and impugned adjudication order including summary of order dated 10.07.2024 w.r.t. both these petitions, passed by the 5th Respondent, is hereby, quashed and set aside.

The Respondents are further directed to pay a cost of Rs. 1,00,000/- for each writ petition (i.e. 2,00,000/-) to the petitioner within a period of six weeks from the date of receipt/production of a copy of this order. However, Respondents would be at liberty to initiate fresh proceeding in accordance with law. As a result, both these writ petitions stand allowed. Pending I.A.s, if any, is also closed.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Amardeep/-
AFR