



CGHC010381132024 2026:CGHC:40981

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 194 of 2024

- M/s Jai Ambey Road Lines (A Proprietorship) Having Its Reg. Office At I-37, Jai Ambey Road Lines, Shankar Nagar, Anupam Nagar, Raipur, District Raipur, Chhattisgarh, Through Its Proprietor Namely Jogendra Singh, S/o Shri Pradeep Singh, Presently Aged About 42 Years, R/o Ward No. 19, Clubpara, District Mahasamund, Chhattisgarh- 493445

--- Petitioner

versus

1. State Of Chhattisgarh Through The Secretary, Department Of State Tax Chhattisgarh (S.G.S.T.), Mantralaya, At Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur, Commercial Tax, Raipur, Chhattisgarh.
2. Joint Commissioner Of State Tax Chhattisgarh (S.G.S.T.) Office Of Joint Commissioner (State Tax), Division- 2, Civil Lines, Behind Raj Bhawan, District Raipur, Chhattisgarh.
3. The Deputy Commissioner Of State Tax Office Of Joint Commissioner (State Tax), Division- 2, Civil Lines, Behind Raj Bhawan, District Raipur, Chhattisgarh.

--- Respondent(s)

WPT No. 196 of 2024

- M/s Jai Ambey Road Lines (A Proprietorship) Having Its Registered Office At I-37, Jai Ambey Road Lines, Shankar Nagar, Anupam Nagar, Raipur, District- Raipur (C.G.). Through- Its Proprietor Namely Jogendra Singh, S/o Shri Pradeep Singh, Presently Aged About 42 Years, R/o Ward No. 19, Club Para, District- Mahasamund, (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh Through- The Secretary, Department Of State Tax Chhattisgarh (Sgst), Mantralaya At Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur, Commercial Tax, Raipur (C.G.).
2. Joint Commissioner Of State Tax Chhattisgarh (Sgst) Office Of Joint Commissioner (State Tax), Division- 2, Civil Lines, Behind Raj Bhawan, District- Raipur (C.G.).
3. The Deputy Commissioner Of State Tax Office Of Joint Commissioner (State Tax), Division- 2, Civil Lines, Behind Raj Bhawan, District- Raipur (C.G.).

--- **Respondent(s)**

WPT No. 197 of 2024

- M/s Jai Ambey Road Lines (A Proprietorship) Having Its Registered Office At I-37, Jai Ambey Road Lines, Shankar Nagar, Anupam Nagar, Raipur, District- Raipur (C.G.). Through- Its Proprietor Namely Jogendra Singh, S/o Shri Pradeep Singh, Presently Aged About 42 Years, R/o Ward No. 19, Club Para, District- Mahasamund, (C.G.).

---**Petitioner**

Versus

1. State Of Chhattisgarh Through- The Secretary, Department Of State Tax Chhattisgarh (Sgst), Mantralaya At Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur, Commercial Tax, Raipur (C.G.).
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3. The Deputy Commissioner Of State Tax Office Of Joint Commissioner (State Tax), Division- 2, Civil Lines, Behind Raj Bhawan, District- Raipur (C.G.).

--- **Respondent(s)**

For Petitioner(s)	:	Mr. Hari Agrawal, Advocate
For Respondent(s)	:	Ms. Anuradha Jain, Dy. Government Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

21.09.2026

1. Since common question of law and facts are involved in the bunch of these writ petitions, they are heard analogously and are being

disposed of by this common order. The Court while adjudicating the issue raised in these petitions, is taking into consideration the facts of WP(T) No. 194/2024 as lead case.

2. The petitioner has filed this writ petition under Article 226 of Constitution of India assailing the show cause notice under Section 74 of the SGST, 2017 read with CGST, 2017 and integrated Goods and Services Tax, 2017 DRC-01A/BOGUS PURCHASE/20-21/2024 dated 22.08.2024 wherein it has been mentioned that the Office of Commissioner State Tax and Joint Commissioner Enforcement while examining the GSTR 2A and 2B that the trader has done the transaction with non-existence traders and claim bogus Input Tax Credit (ITC) for the year 2020-21, rejected the claim and issued DRC-01A.

3. Learned counsel for the petitioner would submit that the impugned intimation dated 22.08.2024 is not in-conformity with the provisions of Goods and Services Tax Act, 2017 (in short “GST Act”) as by impugned notice the petitioner has been directed to pay a total liability of Rs. 6,91,02,062/- only. It has been further contended that the said notice has been issued without any notice in this regard including ASMT-10, without giving any opportunity to reply including ASMT-11. It has been further submitted that the allegations of claiming bogus ITC was ever communicated to the petitioner, therefore, the imposition of such tax liability without giving any opportunity of proper hearing is wholly unlawful and against the principle of natural justice.

4. It has been further contended that intimation under form DRC-01A

and show cause notice under DRC-01A are different and it is not permissible under the law. It has also been contended that without any valid reason the rejection of the ITC alleging that R.A. Corporation and Star Traders are bogus/non-existence traders is illegal and liable to be quashed by this Court. It has been further contended that once the law provides something to be done in a certain manner then it must be done in the same manner as provided under the statute, failing which the action taken by the authorities are *per-se* illegal and would pray for quashing of the show cause notice.

5. On the other hand, learned State counsel opposing the submission made by the counsel for the petitioner would submit that the writ petition is premature as no decision has been taken by the authority and any decision will be taken by them after giving opportunity of hearing to the petitioner as per the procedure prescribed under the GST Act before assessing the tax liability upon the petitioner. She would further submit that as per Section 75 of the GST Act which provides General Provisions relating to determination of tax and sub-Section 4 of this Section provides an opportunity of hearing to the person chargeable with tax or penalty where a request is received in writing from him or where any decision is contemplated against such person. Section 75(4) of the GST Act is reproduced below as under:

> "75(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."

6. She would further elaborate her submission by contending that as

per Section 75(5) of the GST Act, if sufficient cause is shown by the person chargeable with tax grant time to the said person, however, as per proviso of this Section not more than 3 adjournments can be granted. Thus, petitioner can very well raise objection regarding the contentions of the department referred in the DRC-01A (Annexure P/1) regarding non-existence traders and claim bogus Input Tax Credit. She would further submit that as per Rule 142(1) of Goods and Services Tax Rules, 2017 (in short "Rules, 2017") the proper officer shall serve along with the (a) notice issued under Section 52 and 73 or Section 74 or Section 74(a) or Section 76 or Section 122 of Section 124 or Section 125 or Section 127, 129 and 130 of GST Act, a summary thereof has to be electronically informed in DRC-01A. She would further submit that Rule 142(1)(A) which have been inserted on 09.10.2019 clearly provides that proper Officer may before service of notice to the person chargeable with the tax interest and penalty under Sub-Section 1 of Section 73 or Sub-section 1 Section 74 or Sub-section 1 of Section 74(a) communicate (the details) of any tax interest or penalty as assessed by the Officer.

7. It has also been contended that ASMT-10 is not a mandatory requirement, therefore, proper Officer was justified in issuing DRC-01A without issuing ASMT-10 as Section 61 of the GST Act provides for scrutiny of the return and Rule 99 of the Rules, 2017 provides scrutiny of returns and for that ASMT-10 can be issued and if the registered person pays the tax interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy inform GST ASMT-11 to the proper

officer.

8. Section 61 of the GST Act, provides that proper Officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of discrepancies noticed and for that ASMT-10 is issued whereas the DRC-01A is issued under Section 74 of the GST Act for determination of tax pertaining to the period upto the financial year 2023-24 not paid or short paid or erroneously refunded or Input Tax Credit wrongly availed or utilized by reasons of fraud or any willful misstatement or suppression of facts. Thus, both the Acts work in a different sphere and Section 61(3) the GST Act cannot be considered as a pre-condition for initiation of any action under Section 73 or 74 of the GST Act. Thus, she would pray for dismissal of the petition.

9. I have heard learned counsel for the parties and perused the record and provisions of GST Act.

10. From perusal of Section 74 of the GST Act and the Rules made therein as well as DRC-01A which have been issued under Rule 142(1)(1A) of the Rules, 2017, it is quite vivid that form DRC-01A only talks about the ascertaining of the facts in terms of available information and it also advices to pay the amount of tax as ascertain along with the application of interest in full, failing which show cause notice shall be issued under Section 73(1) of the GST Act or also advised to pay the amount of tax as ascertain along with the amount of interest and penalty under Section 74(5) of the GST Act, failing which show cause notice will be issued under Section 74(1)

or show cause notice will be issued under Section 74(a)(1) read with Clause (i) of sub-Section 5 of the Section 74(a)(5) or a show cause notice will be issued under sub-Section 1 of Section 74(a) read with Clause (ii) of the said Section, as such, the petitioner has various opportunities where he can make a representation as provided in sub-Section 9 of Section 3 or sub-Section 9 of the Section 74 or sub-Section 6 of Section 74(a) or sub-Section 3 of Section 76 or the reply to any notice issued under any Section whose summary has been uploaded electronically in form GST DRC-01 under sub-Rule 1.

11. From perusal of the above stated provisions of the GST Act, it is quite vivid that the petitioner has to submit reply to DRC-01 which has to be considered by the respondent after giving the opportunity of hearing to the petitioner and thereafter, DRC-01 also provides ample opportunity of hearing to the petitioner to put forward his case and if the petitioner is aggrieved with any order passed in DRC-07, after hearing the petitioner, remedy of appeal is available as per Section 107 of the GST Act. As such, the petitioner's petition is premature and without exhausting the remedy available to him under the GST Act. The Hon'ble Supreme Court in case of **The Assistant Commissioner of State Tax and Others vs. M/s Commercial Steel Limited** reported in **(2022) 16 SCC 447** has held in paragraphs 11 to 13 as under:

> "11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

> (i) a breach of fundamental rights;
>
> (ii) a violation of the principles of natural justice;
>
> (iii) an excess of jurisdiction; or
>
> (iv) a challenge to the vires of the statute or delegated legislation.
>
> 12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.
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> 13 For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case."

12. Considering the provisions of law that various statutory remedial provisions have been inserted in the statute and also statutory remedy of appeal is available as provided under the GST Act, and the circumstances referred in the case of **The Assistant Commissioner State Tax (Supra)** is not available to the present facts and circumstances of the case, therefore, the writ petitions are not maintainable in view of the statutory remedies available to him. Even otherwise, from the rules, it is quite vivid even after the intimation issued by the proper officer in DRC-01, the right of the petitioner is not adversely affected as according to the provisions of Section 74(5) of the GST Act, the proper officer will issue a show cause notice, where the petitioner can make his submission and take all his defense which are available to him under the law, as

such, the right of the petitioner is not being adversely affected, therefore, the writ petitions deserve to be dismissed in view of availability of various opportunities to put forward his case as discussed above.

13. Accordingly, bunch of these writ petitions are dismissed. However, it is directed that before assessing the tax liability of the petitioner, the respondent will comply with the provisions of the GST Act in its letter and spirit giving all the opportunity of hearing will be extended to the petitioner. It is also directed that the petitioner will also cooperate with the proceeding and will not try to delay the proceeding pending before the authority in view of the fact that the proceedings are pending before this Court since 07.11.2024. It is also directed that the petitioner shall not take unnecessary adjournment and will cooperate with the authorities for early disposal of the matter.

14. Consequently, the writ petitions are dismissed with aforesaid liberty granted in favour of the petitioner.

15. The interim orders dated 07.11.2024 passed by this Court in all these three writ petitions stand vacated.

Sd/-
(Narendra Kumar Vyas)
Judge

Manish