

GAHC010160812025



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4157/2025

NASER ALI MONDAL
SON OF SOLEMAN MONDAL, RESIDENT OF LENTISHINGHA BAZAR,
LENGTISHINGHA, BHADAIPARA, BONGAIGAON, ASSAM, 783384,
CARRYING ON BUSINESS UNDER THE TRADE NAME M/S ALOM
ENTERPRISE, REGISTERED UNDER GST LAWS VIDE GSTIN
18AFTPM2040J1Z6 HAVING ITS BUSINESS PLACE AT LENTISHINGHA
BAZAR, LENGTISHINGHA, BHADAIPARA, BONGAIGAON, ASSAM, 783384

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, FINANCE
DEPARTMENT, ASSAM GUWAHATI

2:THE PRINCIPAL COMMISSIONER OF STATE TAX
ASSAM
GUWAHATI

3:THE ASSISTANT COMMISSIONER OF STATE TAX
BONGAIGAON-3
BONGAIGAON
ZONE- DHUBRI
ASSA

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri Amit Goyal, Advocate

Advocate for the respondents : Shri B. Choudhury, SC, Finance & Taxation Department.

Date of hearing : 31.07.2025

Date of judgment : 31.07.2025.

Heard Shri Amit Goyal, learned counsel appearing on behalf of the petitioner. Also heard Shri. B. Choudhury, the learned Standing Counsel of the Finance and Taxation Department of the Government of Assam.

2. Before dealing with the issue involved, the brief facts of the case may be put in a nutshell.

3. The petitioner was issued a Summary of Show Cause dated 05.12.2023 in GST DRC-01 for the tax period from April 2018 – March 2019 along with an attachment as regards the determination of tax. It is the case of the petitioner that as there was no proper Show Cause Notice attached to the Summary of the Show Cause Notice dated 05.12.2023 in the portal, the petitioner did not submit any reply. Subsequent thereto, an order was passed on 29.04.2024 in GST DRC-07 and the reason assigned is that the assessee failed to make payment within 30 days of issue of notice. It is contended that the attachment as well as the Summary of the Order uploaded in GST DRC-01 and GST DRC-07 were not

authenticated by any signature of the Proper Officer.

4. This Court had passed an order dated 28.07.2025 requiring the learned counsel appearing on behalf of the respondent authorities as to whether there were proper Show Cause Notices. In reply thereto, no positive response could be made.

5. Shri Goyal, the learning counsel appearing on behalf of the petitioners submitted that it is the requirement in terms of Rule 142 of the Central Goods and Services Tax Rules, 2017 (for short, 'the Rules of 2017') that the notice under Section 73 has to be issued and a summary thereof is to be additionally issued electronically in Form GST DRC-01. The learned counsel for the petitioners submitted that under no circumstances the attachment to the GST DRC-01 can be said to be a Show Cause Notice inasmuch as in the said attachment, there is no mention that the petitioner is required to show cause. Additionally, he submitted that the said attachment to the DRC-01 does not contain the signature of the Proper Officer and it is the mandate of Rule 26 of the Rules of 2017 that the Show Cause Notice had to be authenticated with digital signature or through E signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in that behalf. In that regard, the learned counsel for the petitioner submitted that the learned Division Bench of the Telangana High Court in the case of ***M/s Silver Oak Villas LLP vs. the Assistant Commissioner ST {WP(C) No.6671/2024}*** vide its judgment and order dated 14.03.2024 had dealt with Rule 26 of the Rules of 2017 and categorically opined that since the impugned order therein was an unsigned document, it lost its efficacy in the light of Rule 26 (3) of the Rules of 2017 as well as the Telangana Goods and Services Tax Act, 2017 and the Rules framed

therein under. It was also observed therein that the Show Cause Notice as also the impugned order would not be sustainable and deserved to be set aside and quashed. The learned counsel has relied upon the case of the Division Bench of the Andhra Pradesh High Court in ***A.V. Bhanoji Row vs. Assistant Commissioner (ST) & Others***, reported in ***(2024) 123 GSTR 432***. Reliance has also been placed on the case of ***Nkas Services Private Limited vs. State of Jharkhand & Others***, reported in ***(2022) 99 GSTR 145***, the learned Division Bench of the Jharkhand High Court and another judgment of the Karnataka High Court in the case of ***LC Infra Projects Pvt. Limited vs. Union of India and Others***, reported in ***(2020) 73 GSTR 248***.

6. He has submitted that even in a case where an adverse decision is contemplated to be passed, there is a requirement for providing an opportunity of hearing irrespective of whether the petitioners seek such an opportunity. By referring to the Summary of the Show Cause Notice issued in GST DRC-01, he has submitted that there is no mention whatsoever about the date of hearing and the Column had been left blank. He submitted that use of the word 'or' in Section 75(4) of the Central Act as well as State Act in between the words 'when a request is received in writing from the person chargeable with tax or penalty' and 'where any adverse decision is contemplated against such person' clearly shows the legislative intent to the effect that irrespective of a request made or not but when an adverse decision is contemplated an opportunity for hearing is mandated. The learned counsel for the petitioner had referred to the judgment of the learned Division Bench of the Chhattisgarh High Court in the case of ***Mahindra & Mahindra Limited vs. Union of India and Others***, ***(WA No.172/2024)*** delivered on 10.04.2024 wherein the learned Division Bench dealt with the scope and ambit of Section 75 (4) of the Central Act and

observed that when the statute contains a mandate of hearing which is a synonym to natural justice, it cannot be given a go by or can be made porous. The learned counsel for the petitioner therefore submitted that in the instant cases as the impugned orders have been passed without giving a proper opportunity of hearing as mandated under Section 75 (4) of both the Central Act as well as the State Act, the impugned orders are liable to be interfered with.

7. *Per contra*, Shri Choudhury, the learned Standing Counsel, Finance and Taxation Department of the Government of Assam submitted that the respondent authorities have issued the Summary of the Show Cause Notice in Form DRC-01 which was accompanied by the determination of tax which as per the respondents would have provided all the details so that the petitioners could have submitted the reply. The learned counsel, however, fairly submitted that there is no separate Show Cause Notice apart from the determination of tax enclosed to the Summary of the Show Cause Notice. On the question of lack of signatures in the attachments to the GST DRC-01 as well as the GST DRC-07, the learned counsel fairly submitted that the materials on record do not show that there is/are any signature(s) in the attachment to the Summary to the Show Cause Notice as well as Summary to the Order issued in Forms GST DRC-01 and GST DRC-07 respectively. He however submitted that in the attachments it is mentioned as 'Sd- Proper Officer'. The learned counsel further submitted that when the Summary of the Show Cause Notice as well as the Summary of the Order are uploaded in GST DRC-01 and GST DRC-07, the same are duly authenticated in the portal with digital signatures and without such authentication, the portal cannot be operated.

8. From the materials on record as well as the submissions advanced, the

following issues will arise for determination.

- (i) Whether Show Cause Notices were issued prior to passing the Impugned Order under Section 73 (9) of the State Act?
- (ii) Whether the determination of tax as well as the Order attached to the Summary of the Show Cause Notice in GST DCR-01 and Summary of the Order in GST DCR-07 can be said to be the Show Cause Notice and Order respectively?
- (iii) Whether the impugned orders under Section 73 (9) of the State Act is in conformity with Section 75(4) of the State Act and is in consonance with the principles of natural justice?

9. The records show that in GST DRC-01 issued to the petitioner, it is stated that a Show Cause Notice is attached. The respondents claim that the attached document which includes the tax determination, constitutes the SCN. The core issue is whether such an attachment qualifies as a valid SCN under the Central and State GST Acts and their respective Rules. Notably, all the SCN summaries were issued under Section 73. Section 73 would show that the said provision is set into motion when it appears to the Proper Officer that:-

- (a) Any tax has not been paid; or
- (b) Any tax short paid; or
- (c) Any tax erroneously refunded; or
- (d) Where input tax credit had been wrongly availed or utilized, for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax.

10. Considering that it is only in the circumstances referred to above, the

Proper Officer is mandated to issue a SCN only under specific circumstances as outlined in Section 73. Therefore, the SCN must clearly state the reasons and circumstances justifying its issuance under this section. Only then can the recipient effectively respond, particularly if they wish to challenge the applicability of Section 73. Section 73(9) requires the Proper Officer to determine the tax, interest, and penalty after considering the representation. Section 73(2) and 73(10) are interconnected, while Section 73(10) allows passing the order within three years from the due date of the annual return, Section 73(2) mandates that the SCN must be issued at least three months before the deadline. Furthermore, a combined reading of subsections (1) to (4) of Section 73 shows that the legislature has made a clear distinction between a Show Cause Notice and a Statement. Even if a Statement is issued under Section 73(3), a separate and proper SCN is still required.

11. It may be noted that in Section 73, there is no mention of issuance of a Summary of Show Cause Notice. The requirement of issuance of a Summary of the Show Cause Notice is seen in Rule 142 of the Rules of 2017 which reads as follows:-

“142. Notice and order for demand of amounts payable under the Act.-

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02,

specifying therein the details of the amount payable.”

12. From a perusal of the above quoted Rule, it would show that in addition to the Show Cause Notice to be issued under Section 73 (1) and the Statement of determination of tax under Section 73 (3), there is an additional requirement of issuance of a Summary of the Show Cause Notice in GST DRC-01 and the Summary of the Statement in GST DRC-02. The natural corollary from the above analysis is that the issuance of the Show Cause Notice and the Statement of determination of tax by the Proper Officer are mandatory requirement in addition to the Summary of Show Cause Notice in GST DRC-01 and Summary of the Statement in GST DRC-02.

13. The Division Bench of the Hon’ble Jharkhand High Court in ***Nkas Services Pvt. Ltd.*** (supra) held that a summary in GST DRC-01 cannot replace a proper SCN. Similarly, in ***LC Infra Projects Pvt. Ltd.*** (supra), the Honble Karnataka High Court emphasized that issuing a proper SCN is essential before the recovery of interest or penalty under the Act.

14. In light of these decisions, the Court holds that merely attaching a tax determination order to the summary in DRC-01 does not amount to valid initiation under Section 73. The summary is only supplementary to a full SCN. Thus, the impugned orders, having been passed without a proper SCN, are in violation of Section 73 and Rule 142(1)(a).

15. This brings this Court to the issue as to whether the determination of tax as well as the order attached to the Summary to the Show Cause Notice in GST DRC-01 and the Summary of the Order in GST DRC-07 can be said to be the Show Case Notice and Order respectively.

16. Earlier, the Court clarified that a Statement under Section 73(3) cannot

substitute a SCN under Section 73(1). Therefore, the respondent's claim that the statement attached to the Summary in GST DRC-01 constitutes a valid SCN is misconceived and contrary to law. Moreover, the submission made on behalf of the petitioner finds force that the attachments to both DRC-01 and DRC-07 summaries lack legal value, as they bear no authentication by the Proper Officer, violating Rule 26(3). In this connection, reliance may be put on the judgments in ***M/s Silver Oak Villas LLP*** (supra) and ***A.V. Bhanoji Row*** (supra) which emphasize the necessity of proper authentication for such documents to be valid.

17. Rule 26 (3) of the Rules of 2017 reads as follows:

“26.

(3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorized to issue such notices or certificates or orders, through digital signature certificate [or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.]”

18. Rule 26(3) of the CGST Rules, 2017 lays down the manner of authentication for notices, certificates, and orders, stating they must be electronically issued by the Proper Officer or an authorized officer, using a digital signature, e-signature as specified under the provisions of the Information Technology Act, 2000 or any other Board-notified mode. However, it is important to note that Rule 26 falls under Chapter III, which relates to Registration, not Demand and Recovery, which is governed by Chapter XVIII. Therefore, the

direct applicability of Rule 26(3) to documents issued under Section 7 (falling within Demand and Recovery) may be limited unless specifically extended or adopted by the relevant provisions or judicial interpretation.

19. The question arises whether Rule 26(3), though located under Chapter III (Registration), can apply to Chapter XVII (Demand and Recovery). In the case of ***M/s Silver Oak Villas LLP***, (supra) it was held that Rule 26(3) applies even to Chapter XVIII, requiring authentication through digital or e-signature for all notices and orders and this view was endorsed in the case of ***A.V. Bhanoji Row*** (supra). It was laid down that signatures cannot be dispensed with, and Sections 160 and 169 (which deal with procedural lapses) cannot cure an unsigned notice or order. The said view is also supported in the case of ***Railsys Engineers Pvt. Ltd. V. Additional Commissioner of Central Goods and Services Tax (Appeals-II)*** reported in ***(2023) 112 GSTR 143***, wherein it has been stated that at least digital signatures must be affixed on SCN and Orders. Section 73 mandates that the Proper Officer must issue the SCN, the Statement under Section 73(3), and the final Order under Section 73(9). As per Section 2(91), a Proper Officer is the Commissioner or someone entrusted by him. Therefore, unless these documents are duly authenticated by the Proper Officer, they fail to meet the statutory requirements and are rendered invalid and unenforceable. Section 73 of the Act requires that notices and order be issued by the Proper Officer but it does not prescribe the mode of authentication outside Chapter III of the Rules. Since no specific rule under Chapter XVIII (relating to Demand and Recovery) governs authentication, a regulatory gap exists. Given the critical importance of authentication by the Proper Officer, the Court held that, until proper rules or notifications are issued by the Board to address this gap, Rule 26(3), which requires digital or e-

signature, must be applied by default. This ensures that any notice, statement or order issued under the Act maintains its legal validity and enforceability.

20. On the question of whether the impugned orders under Section 73(9) conform to Section 75(4) of the State Act and is according to the principles of natural justice, the Court observed that the Summary of the Show Cause Notice did not mention any date of hearing, leaving the relevant column blank. The petitioner was merely asked to submit a reply, without being offered a cleared opportunity for personal hearing.

21. Section 75(4) of both the Central and State GST Acts mandates that an opportunity of hearing must be granted when a written request is made by the person chargeable with tax or penalty, or when any adverse decision is contemplated against such person. This provision serves as a safeguard for assessees, ensuring procedural fairness.

22. The Division Bench of the Hon'ble Chhattisgarh High Court in the case of ***Mahindra & Mahindra Ltd.*** (supra) reinforced this by holding that where a statute mandates a hearing, it must be granted, and failure to do so renders the provision ineffective and violative of natural justice. Accordingly, the Court held that non-compliance with Section 75(4) in the present case violates both statutory requirements and principles of natural justice, thereby vitiating the impugned order.

23. In this case, FORM GST DRC-01 attached to the writ petition includes fields for the reply submission date, date and time of personal hearing, and venue. However, in the Summary of the SCN, only the reply date was filled, while the rest were marked as "NA". The Proper Officer may have presumed that a personal hearing was only necessary if the notice explicitly requested it in

their reply. However, the Court clarified the even when no reply is filed, the second limb of the Section 75(4) still applies, i.e., if an adverse decision is contemplated, a hearing must be granted.

24. Failing to provide such a hearing renders the second part of Section 75(4) meaningless, and thus, passing an adverse order without a hearing in such circumstances violated both the statutory mandate and the principles of natural justice.

25. This Court, upon detailed analysis, hold that the Summary of the SCN issued in FORM GST DRC-01 does not substitute the proper SCN required under Section 73(1) of both the Central and State GST Acts. A formal and duly authenticated SCN is mandatorily required to initiate proceedings under Section 73. The Statement of tax determination under Section 73(3), which is attached to the summary in the present case cannot be treated as a valid SCN. Therefore, initiating proceedings solely based on such a statement is not in conformity with law.

26. It is further clarified that the SCN, the Statement, and the final Order under Section 73(9) must be issued and passed only by the Proper Officer, as defined under Section 2(91) of the Act, these documents must be properly authenticated in accordance with Rule 26(3) of the CGST Rules, 2017. The summaries issued in GST DRC-01, DRC-02, and DRC-07 are merely supplementary and cannot override or replace the requirement of issuing proper and authenticated primary documents.

27. This Court also notes that the impugned order contravenes Section 75(4) of the Act which mandates that the impugned order contravenes Section 75(4) of the Act, which mandates that a reasonable opportunity of hearing must be

provided either when an adverse decision is contemplated or when a written request is made by the assessee. In the present case, although the DRC-01 summary specifies the date for filing a reply, it leaves the fields regarding the date and time of personal hearing as "NA". In a situation where no reply is submitted, the Proper Officer cannot proceed to pass an adverse order without granting an opportunity of hearing, as doing so would render the safeguards under Section 75(4) ineffective and violate principles of natural justice.

28. Accordingly, the impugned order dated 29.04.2024 is interfered with and set aside. However, as it appears that the respondents have proceeded under the mistaken impression that attaching the determination of tax to the summary constitutes a valid Show Cause Notice, the Court grants them liberty to initiate *de novo* proceedings under Section 73, if considered appropriate. To enable this, the Court directs that the period between the issuance of the Summary of the Show Cause Notice and the date when a certified copy of this judgment is served upon the Proper Officer be excluded from the computation of the limitation period under Section 73(10) of the Act.

29. Writ petition accordingly stands allowed in the manner indicated above.

30. No order as to cost.

JUDGE

Comparing Assistant