

**Court No. - 03**

**Case :-** WRIT TAX No. - 287 of 2022

**Petitioner :-** M/S Nanhey Mal Munna Lal

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Aditya Pandey

**Counsel for Respondent :-** C.S.C.,A.S.G.I.

**Hon'ble Surya Prakash Kesarwani,J.**

**Hon'ble Jayant Banerji,J.**

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri B.P. Singh, Kachhwah, learned standing counsel for the State-respondents.

2. On 08.03.2022, this court passed the following order:

*"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.*

*Learned counsel for the petitioner states that petitioner is not pressing the Relief Nos.(i) & (ii) of the writ petition, therefore, the writ petition insofar as Relief Nos. (i) & (ii) is concerned, stands dismissed as not pressed. For the rest of the relief, the writ petition is being entertained.*

*Learned counsel for the petitioner submits that before issuing the impugned notice dated 20.01.2022 under Section 74(1) of the CGST/UPGST Act, 2017 in Form GST DRC 01, the statement as required under Rule 142 (1A) was not submitted by the proper officer to the petitioner. Therefore, on account of non compliance of the provision of Rule 142 (1A), the impugned notice deserves to be quashed.*

*Learned counsel for the petitioner has referred to relief No. (v) and submits that petitioner cannot be stopped to file returns on the ground of negative ITC.*

*Learned Standing Counsel prays for and is granted a week's time to obtain instructions or to file counter affidavit.*

***Put up as a fresh case before the appropriate bench on 15.03.2022. "***

3. Learned counsel for the petitioner submits that even if input tax credit is blocked invoking the provisions of Rules 86A of the Rules, yet a negative Input Tax Credit cannot be shown otherwise it would amount to stopping the dealer from filing his return and depositing tax therewith. In support of his submission, learned counsel for the petitioner has relied upon a decision of Gujrat High Court dated 03.02.2022 in Special Civil Applicatin No.18059 of 2021 (Samay Alloys

**India Pvt. Ltd vs. State of Gujrat) (para-57)**, in which the respondents-department were directed to withdraw negative blocking of the Electronic Credit Ledger.

4. Learned standing counsel states on instructions of the respondents that Rule 142(1A) has been amended by Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs by Notification No.79/2020 dated 15.10.2020, as under:

*“6. In the said rules, in rule 142, in sub-rule (1A),-*

*(i) for the words “proper officer shall”, the words “proper officer may” shall be substituted;*

*(ii) for the words “shall communicate”, the word “communicate” shall be substituted.”*

5. He, therefore, states on instructions that now there is no requirement to send a statement in Part-A of GST DRC-01A under Rule 142(1A) of the CGST Rules.

6. Prima facie, perusal of Form GST DRC-01A under rule 142(1A) of the Rules indicates that it is a pre-show cause notice intimation with reference to Section 73(1)/(5) or Section 74(1)/(5) to an assessee so that either he may deposit the amount of tax and interest or he may disagree to the ascertainment resulting in show cause notice under Section 73(1) or Section 74(1), as the case may be. Likewise, such an intimation in Form GST DRC-01A provides an opportunity to the dealer to resolve the dispute by depositing or in case of disagreement to face the adjudication proceedings under the Act. Thus, *prima facie*, it appears that Section 74(1) read with Rule 142(1A) intends to afford an opportunity to the dealer/ assessee on a pre-show cause notice stage which shall ultimately benefit both, i.e the assessee and the department, and shall also reduce litigation. This also indicates to follow the principles of natural justice at a pre-show cause notice stage.

7. Learned standing counsel prays for and is granted a week’s time to file counter affidavit. Petitioner shall have three days thereafter to file rejoinder

affidavit.

8. Along with the counter affidavit, the respondents shall file a Gazette copy of the notification dated 15.10.2020. Respondents shall also explain as to how a negative credit can be shown in the Electronic Ledger Account, while blocking Input Tax Credit.

**9. Put up as a fresh case before the appropriate bench on 28.03.2022 at 02:00 P.M.**

10. Considering the facts and circumstances of the case, **as an interim measure, it is provided that the petitioner is permitted to file his return along with proof of deposit of tax for the relevant tax period for which return is being filed.**

**Order Date :- 15.03.2022**

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