

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 1961/2021

M/s Ukas Goods Carrier

...Petitioner(s)/Appellant(s)

Through: Mr. Shariq J. Reyaz, Adv. with
Mr. Wahid Lone, Adv.

Vs.

Union Territory of JK & Ors.

...Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with Mr. Mohd Younus Hafiz, AC

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

02.12.2025

1. M/s Ukas Goods Carrier, a Goods and Transport Agency ["GTA"], invokes the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to throw challenge to a notice of show cause dated 6th February 2021 and the consequential demand order dated 26th August 2021 issued by Respondent No. 4 on the ground that the same are without and beyond the jurisdiction of Respondent No. 4 as conferred upon it under Goods and Services Tax Act 2017 ["GST Act, 2017"].

2. The impugned order is assailed by the petitioner on the ground that GTA providing transportation services is not a person charged with liability to pay tax in terms of Section 2 (98) and Section 9 (3) of the GST Act of 2017. It is argued that there is no incidence of service tax on the GTA for transportation services provided by it and that the incidence of tax is exclusively on the recipient of service only on the principle of reverse charge.

3. The impugned notice of demand passed by Respondent No. 4 under Section 74 (9) of the GST Act, 2017 is also assailed on the ground that the amount of tax, interest, and penalty demanded thereby exceeds the amount

of tax, interest, and penalty specified in the show cause notice issued under Section 74 (1) of the GST Act, 2017 and, therefore, not sustainable in view of provisions of Section 75 (7) of the GST Act, 2017.

4. *Per contra*, Mr. Mohsin Qadri appearing for the respondents challenges the entertainability of the petition in view of the availability of equally efficacious statutory remedy of appeal provided under Section 107 of the GST Act, 2017. He would further argue that the plea of jurisdiction raised by Mr. Shariq Reyaz is equally untenable in view of the disputed questions of fact involved in the matter. He would submit that the petitioner is not only providing the services as a Goods Transport Agent but is also found by the assessing authority to have indulged in intra-state and inter-state supply of goods. He however could not give any cogent argument to justify the confirmation of demand beyond the amount specified in the show cause notice.

5. Having heard the recourse for the parties and perused the material on record, we are of the considered opinion that the order impugned dated 26th August 2021 passed by Respondent No. 4 is not sustainable in law.

6. Ordinarily, we would have relegated the petitioner to a remedy of statutory appeal under Section 107 of the GST Act, 2017 as the order impugned is appealable. However, we are not doing so for the reason that we find that the impugned order confirms a demand of Rs. 7,61,80,000/- whereas the show cause notice issued to the petitioner specified a far less amount, i.e., Rs. 4,59,50,000/-.

7. That a show cause notice issued under Section 74(1) must require the assessee in default 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. For facility of reference, Section 74 (1) is reproduced hereunder:-

“(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.”

8. It is true that after the assessee responds to the notice and makes his representation, the proper officer shall act in terms of sub-Section 9 of Section 74 and after considering the representation, if any, made by the assessee, determine the amount of tax, interest or penalty due from him and issue an order. Section 75 sub-Section 7 makes it abundantly clear that the amount of tax, interest or penalty demanded in the order referable to sub-Section 9 of Section 74 shall not exceed the amount specified in the notice nor the demand shall be confirmed on the grounds other than specified in the notice. For quick reference, we set out Section 75 (7) hereinbelow.

“The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice”.

9. From reading of the aforesaid provision, it is abundantly clear that the essential requirement of a notice to be issued under Section 74(1) is the specification of the amount of tax along with interest payable thereon and penalty equivalent to the tax specified in the notice. This gives a clear and adequate opportunity to the assessee to respond and make representation. Sub-section 7 of Section 75 ensures that while passing a final order in terms of sub-Section 9 of Section 74, the assessing authority does not pass an order for an amount in excess of the amount specified in the notice nor it will pass the order on the grounds other than those specified in the show cause notice. Sub-section 7 of Section 75 is essentially a provision ensuring compliance with the principles of natural justice, i.e., nobody should be condemned unheard.

10. In the instant case, there is no dispute with regard to the fact that the final order passed under sub-Section 9 of Section 74 which is impugned before us is for an amount far exceeding the amount specified in the notice and, therefore, renders the order of demand violative of sub-Section 7 of Section 75 of the GST Act, 2017 and the principles of natural justice.

11. For the foregoing reasons, we find merit in this petition and the same is accordingly allowed. Impugned order dated 6th February 2021 and the consequential demand order dated 26th August 2021 passed by respondent No. 4 are set aside.

12. The assessing authority shall reconsider the matter and pass a fresh order in accordance with law. Should the assessing authority desire to pass a final order for an amount exceeding the amount specified in the show cause notice already issued by it, it may issue a fresh notice of show cause with regard to said excess amount provided the issuance of such notice is within limitation.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
02.12.2025
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Whether approved for reporting? Yes/No