



## Intimation of tax payable not cause of action to approach writ court

### *Cera Sanitaryware Limited versus State of Gujarat<sup>1</sup>*

The Gujarat High Court in this case examines the validity and legality of a notice of intimation issued under section 74(5) of the Central Goods and Service Tax Act, 2017 (“the Act”) and if it was liable to be set aside.

Section 74(5) of this Act read with Rule 142 (1A) of the Central Goods and Service Tax Rules, 2017 (“the Rules”) provides for an intimation to be issued to the person chargeable with tax, interest, penalty in Form DRC -01A before a notice is issued to the person under section 73(1) or 74(1) of the CGST Act. In the present case, the Petitioner had only received the intimation of the tax, interest and penalty payable by them.

The Gujarat High Court held that the writ is not maintainable as:

- Form DRC -01A is merely an intimation and that it is up to the petitioner to pay attention to it or not.
- If the petitioner deems it fit to ignore the intimation, it will entail the issuance of a show cause notice under Section 74(1) of the Act coupled with the opportunity for a hearing.

### **Dhruva Comments:**

The provision for issuance of an intimation were specifically inserted<sup>2</sup> in Rule 142 and Form DRC- 01A was introduced so that the process defined in sections 73(5) and section 74(5) can be followed.

There is a difference in the Form DRC-01A and Form DRC -01. The DRC -01A is the starting point for initiation of proceedings for determination of tax, it allows the person to whom the form is issued to save 85% of the penalty that could be levied, once a notice is issued to the person under section 73(1) or section 74(1). The issuance of a show cause notice in Form DRC-01 (issued subsequently) will be followed by the opportunity to file a reply and of being heard by the concerned authorities. These principles of natural justice are required to be followed as per the provision of the Act and the Rules.

Only when the concerned GST authority fails to provide an opportunity to the person to file a reply or fails to grant an opportunity to be heard, should writ jurisdiction be invoked. The writ petition in the present case was filed at a nascent stage of the proceedings and was appropriately set aside.

<sup>1</sup> 2020-VIL- 310-GUJ

<sup>2</sup> Inserted by the Central Goods and Services Tax (6th Amendment) Rules, 2019, vide Notification No. 49/2019-Central Tax, dated 09.10.2019





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