
[2022] 141 taxmann.com 140 (Andhra Pradesh)/[2022] 64 GSTL 158 (Andhra Pradesh)/[2023] 95 GST 609 (Andhra Pradesh)[20-04-2022]

GST : Where order was relied on material that was not supplied to assessee, principles of natural justice was violated and matter was remanded back

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[2022] 141 taxmann.com 140 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Lakshmi Sowjanya Enterprises

v.

Assistant Commissioner*

C.PRAVEEN KUMAR AND SMT. V. SUJATHA, JJ.
WRIT PETITION NOS. 5999 OF 2021 AND 1832 OF 2022
APRIL 20, 2022

Adjudication order - Natural Justice - Material that was relied upon by department was not supplied to assessee and impugned order was passed without providing any opportunity to assessee to defend his case - Principles of natural justice was violated - Matters was remanded back for fresh adjudication after furnishing material relied upon and after giving an opportunity of personal hearing to petitioner [Section 75 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 11 and 12] [In favour of assessee]

CASE REVIEW

BGR Energy Systems Ltd. v. Asstt. Commissioner, Commercial Tax [2009] 49 APSTJ 213 (para 10) *followed*.

CASES REFERRED TO

BGR Energy Systems Ltd. v. Asstt. Commissioner, Commercial Taxes, Large Tax Payer Unit [2009] 49 APSTJ 213 (para 10).

ORDER

C. Praveen Kumar, J. - Since both the matters are inter-connected, the same are disposed of by this common order by taking W.P.No.5999 of 2021 as a lead petition.

2. W.P.No.5999 of 2021 is filed under Article 226 of the Constitution of India, seeking the following relief:

"....pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the impugned order of the 1st Respondent dated 21-1-2021 in AO No. ZH3701210D45148 for the tax period 1-7-2017 to 15-2-2020 under the Central Goods and Services Tax Act 2017 and State Goods and Services Tax Act 2017 as illegal arbitrary and in violation of principles of natural justice and consequently direct the 1st Respondent to do the assessment *de novo* by granting an opportunity to the Petitioner to submit objections, after furnishing to the Petitioner all the material, which is available with the 1th Respondent for use against the Petitioner in the proceedings and also granting an opportunity of personal hearing and pass..."

3. While W.P.No.1832 of 2022 is filed by the same party seeking the following relief:

"... to issue an appropriate writ order or direction more particularly a writ in the nature of WRIT OF MANDAMUS, declaring the action of the 5th Respondent in issuing impugned notice under section 79(1)(d) of CGS/APGST Act 2017 proposing to conduct Auction of the Petitioner's premises, Door No 16-7-14, a residential house with 58.66 sq yds on 10-1-2022 to recover Rs. 37,34,52,454/- under CGST and SGST as illegal, arbitrary, unjustified and set aside the same, consequentially direct the 6th respondent to conduct investigation with the assistance of 3 to 5 Respondents into the allegations made in Demand Notice No. RC No: JA 3/42/2020 dated 21-1-2021 with the Petitioner's cooperation and to pass such....."

4. On 9-7-2020, the 1st respondent issued a show cause notice proposing to assess Sri Konathala Lakshmana Chakravarthy under Andhra Pradesh Goods and Service Tax Act, 2017 (for short 'the Act') for the period from 1-7-2017 to 15-2-2020 on the following turnovers construing that the entire business was done by the petitioner.

"1. Purchase value of iron & steel scrap

Liable to be taxed on reverse charge Rs. 165,97,88,686 @ 18% Rs. 29,87,61,963

2. Supply of iron & steel scrap Rs.207,47,35,858 @ 18% Rs. 37,34,52,454

Sri Konathala Lakshmana Chakravarthy is hereby requested to file his objections, if any within (15) days from the date of receipt of this notice, adducing necessary documentary evidence in support of his claim and can also avail personal hearing to advance his arguments, failing which it will be construed that he is not having any objections to file and further action will be initiated without further notice"

5. Pursuant to the said show cause notice, the petitioner herein submitted his explanation, which lead to passing of the order on 21-1-2021 impugned herein.

6. Sri S.Dwarakanath Reddy, learned Senior Counsel appearing for the petitioner mainly submits that the impugned proceedings came to be issued without furnishing the material relied upon by the authority concerned while directing the petitioner to pay tax of Rs. 37,34,52,454/-. In other words, the learned counsel would contend that even as per section 75(7) of the Act, the petitioner should be given material relied upon by the authority, while passing an order against him. As the order came to be passed without furnishing the material relied upon, the same would be in violation of principles of natural justice.

7. Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax, strenuously opposed the same contending that the petitioner has committed fraud and claimed input tax credit without movement of the vehicle through the check post. He further submits that since the material collected and relied upon by the authority was from the Toll Plaza, no prejudice is caused to the petitioner since the very same material could have been collected by the petitioner as well as from the Toll Plaza.

8. A perusal of the material on record would show that the authority relied upon Exs.P1 and P2, which are running into 800 pages. The fact that the said material was relied upon by the Assistant Commissioner(4th respondent) is not in dispute. The fact that the said material was relied upon is evident from the findings given to objections 3 and 4. It is appropriate to extract the same, which is as under:

Objection No. 3:

It was contended that out of 34 registrations 10 registrations belongs to the State of Telangana which were outside the jurisdiction of the officers of State of Andhra Pradesh and accordingly their turnovers cannot be taxed by State of Andhra Pradesh.

Finding:

First of all, it is necessary to understand that for the entire scheme of operations the taxable person is the king pin. The scrap which was purportedly sold by him to Telangana did not reach the destined place as verified from Vempadu Toll Plaza data which is on way to Telangana where every vehicle moving out of Visakhapatnam or coming into Visakhapatnam must get checked. Further even the incoming vehicles as per the documents of the perpetrators in the operations never came into State of Andhra Pradesh. Again it is evident from the records of Toll Plaza which are enclosed as Exhibit No. 1. It is interesting to note that the vehicles either have not crossed the toll gate or the vehicles which have crossed have come from Telangana to Toll Plaza with a speed of modern racing car. In some occasions, the vehicle has crossed prior to the time of e-way bill generation and some times (in very few occasions) in extra ordinary delay.

To the extent of vehicles, checked, it is quite obvious that the taxable person randomly chose the number of vehicles going to Telangana and created a record based on their registration number. It is possible that the scrap has been disposed off locally but efforts were made to show that they were consigned to Telangana. In fact the taxable person himself has conceded in his written statement that they supplied scrap iron to M/s. S.P.Bailing Press with registered Number 37ABTPS0369 NIZO of Visakhapatnam. Hence it can be easily inferred that in all the different registrations floated, only documents were created to camouflage the real transactions.

Objections No. 4:

It is argued that the creation of the Registrations which was attributed to the taxable person was in fact filing the returns regularly and therefore cannot be said to be bogus. Further on some occasions when the vehicles were detained by the authorities, who have collected tax and penalty from the respective taxable persons, released the vehicles. It is shown that the taxable person has no involvement in the transactions made in the other registrations.

Finding:

It is true that in some cases returns were filed. Returns were filed but they have closed the business in a very short time. For example M/s. SKML Enterprises, M/s. Venkatasai Traders, M/s. Sri Veeranjanya Traders, M/s. Bhavani traders, M/s. Koti Enterprises, M/s. Sri Durga Enterprises, M/s. Sekhar Traders, M/s. Sridevi Enterprises, M/s. Surya Traders, M/s. Bhagavan Traders, M/s. Sri Durgadevi Traders, M/s. Sri Rama Enterprises, M/s. Viswa Traders, M/s. Sri Sakti Enterprises, M/s. Bojanki Enterprises, M/s. Ranga Enterprises, M/s. Srinivasa Enterprises (Exhibit No. 2) and in other cases, the registrations are lying. It is quite interesting to see that the input tax has been nullified by the sham transactions from State of Telangana back to the same taxable person. In such case no tax of infinitesimal quantum has to be paid compared to the profit made in the illegal trade. One can continue such Registrations eternally. Therefore, the claim of the taxable person that returns are being filed in all cases and taxes are being paid is incorrect. Further, the taxable person has contended that the detained vehicles were released by the holder of respective registrations each in itself is the evidence of essence. It is surprising as to why the taxable person came to know about each vehicle which were detained and who have released those vehicles. The taxable person may produce evidence if any that in all such cases where the registration holders have themselves come forward and released the goods.

9. Section 75(7) of the Act reads as under:

"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."

10. In *BGR Energy Systems Ltd. v. Assistant Commissioner, Commercial Taxes, Large Tax Payer Unit* [2009] 49 APSTJ 213, the Hon'ble Division Bench of this Court in paragraph Nos.8 and 9 observed as under:

"A person should not be deprived of his vested right, or be made to suffer any disadvantage or detriment, without telling him why such an action was warranted and without giving him an opportunity to say why it should not be taken. The requirement of audi alteram partem has two elements-notice of what action is proposed, why it is proposed, and adequate opportunity to show that the action is uncalled for. A corollary of the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acqum licet dixerit, haud acqum fecerit" is that "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right" or in other words, as is now expressed, "justice should not only be done but should manifestly be seen to be done". The notice must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. (*Canara Bank v. Debasis Das* MANU/SC/0225/2003:2003) IILLJ 531SC; *Canara Bank v. V.K.Awasthy* MANU/SC/0249/2005: (2005)IILLJ461SC). The person proceeded against must know that he is required to meet the allegations which might lead to a certain action being taken against him. (*S.L. Kapoor v. Jagmohan* MANU/SC0036/1980: [1981]1SCR 746). A proper hearing must always include a 'fair opportunity to those who are parties to the controversy for correcting or contradicting anything prejudicial to their view'. (4) A crucial aspect of a fair hearing is having a right to know the grounds or the opposing case in advance.(5)

If prejudicial allegations are made against a person he must, normally, be given particulars of them. He must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision. (6) It is essential to state the particulars to enable the person to answer the case against him. A notice which does not mention the particulars, on which the case against the person is based, cannot provide a foundation for the proceedings that follow. (*Nasir Ahmad v. Asstt. Custodian General, Evacuee Property*) MANU/SC/0377/1980: [1980]3SCR 248. The show cause notice which preceded the impugned assessment order make no mention of the grounds or the basis on which the turnover of Rs. 815.52 crores, among others, is proposed to be taxed under the A.P.VAT Act. The petitioner-assessee has, thereby, been denied the opportunity of effectively showing cause why such turnover is not liable to tax under the A.P.VAT Act. The show cause notices, in the present case, violate the audi alteram partem rule."

11. From the judgment of the Division Bench referred to above, it is very clear that a person proceeding must know that he is required to meet the allegations, which may lead to certain action being taken against him. Apart from that the Bench also held that an opportunity must be given to enable to controvert correct or comment on the evidence or information that may be relevant to the decision. A notice which does not mention the particulars, on which the case against the person is based, cannot provide a foundation for the proceedings that follow. As the order impugned herein refers to Exs.P1 and P2, which were never supplied to the petitioner at any point of time, it can be said without hesitation that the same will be in violation of principles of natural justice. It may be true that the petitioner has committed a grave offence but any order passed without providing an opportunity to defend his case would be in violation of the procedure established by law.

12. Accordingly, the writ petitions are allowed and the orders impugned are set aside and the matters are remanded back to the 4th respondent to deal with the same afresh after furnishing the material relied upon and after giving an opportunity of personal hearing to the petitioner. No costs.

13. All pending miscellaneous petitions if any, shall stand closed.

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*In favour of assessee.