

[2022] 142 taxmann.com 499 (Andhra Pradesh)/[2022] 65 GSTL 298 (Andhra Pradesh)/[2022] 94 GST 728 (Andhra Pradesh)[24-08-2022]

GST : Where works contract for maintenance of toilets at bus station was awarded to petitioner and petitioner paid monthly license fee for same to respondent, such fee was exempt from Tax

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[2022] 142 taxmann.com 499 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Rajeev Yuvajana Sangham

v.

State of A.P.*

C. PRAVEEN KUMAR AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO.16162 OF 2022

AUGUST 24, 2022

Works contract service - Maintenance of toilets - Exemption - Works contract for maintenance of toilets at respondent's bus station was awarded to petitioner - Monthly license fee paid by petitioner to bus station was exempt from Tax in view of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, issued by Government of India and G.O.Ms. No. 588, dated 12-12-2017, issued by Government of Andhra Pradesh [Section [2\(119\)](#) read with section [11](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 9 to 11] [In favour of assessee]

Circular and Notifications : [Notification No. 12/2017-C.T. \(Rate\), dated 28-6-2017](#) and Commercial Tax Department Revenue, AP Notification G.O. Ms. No. 588, dated 12-12-2017

Sreekanth Reddy Ambati, Ld. Counsel for the Petitioner. N. Sri Hari, S.A.V. Sai Kumar and Y.N. Vivekananda for the Respondent.

ORDER

C. Praveen Kumar, J. - Heard Sri Sreekanth Reddy Ambati, learned counsel for the petitioner, learned Government Pleader for Transport appearing for respondent No. 1, Sri N. Sri Hari, learned Standing Counsel for Andhra Pradesh State Road Transport Corporation appearing for respondent Nos.2 to 4, and Sri S.A.V. Sai Kumar, learned Assistant Government Pleader representing Sri Y.N. Vivekananda, learned Government Pleader for Commercial Tax appearing for respondent No. 5, and with their consent, this writ petition is disposed of at the stage of admission.

2. The present Writ Petition came to be filed under article 226 of the Constitution of India seeking the following relief :—

"..... to issue an appropriate Writ, Order or Direction more particularly one in the nature of "Writ of Mandamus" declaring the action of the Respondents in demanding Central GST and AP GST of 9% each, totaling 18% on the monthly license fee collected from the Petitioner for the work contract of maintenance of toilets at 4th Respondent Bus Station, as illegal, arbitrary and contrary to the exemption granted by the Government of India, Ministry of Finance through its Notification No. 12/2017- Central Tax (Rate), Dt.28-6-2017, and G.O. Ms. No. 588 dated 12-12-2017, issued by Revenue (Commercial Taxes-II) Department, Government of A.P., contrary to the order passed by this Hon'ble Court in W.P. No. 3197 of 2019 and to pass"

3. The averments made in the affidavit filed in support of the writ petition disclose that the petitioner was awarded contracts of cleaning toilets in different bus stations under respondent No. 2. The petitioner is punctual in paying rents including 18% G.S.T. i.e., 9% Central G.S.T. and 9% A.P. State G.S.T., as demanded by the respondents. While things stood thus, the Government of India, Ministry of Finance (Department of Revenue), through its Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, exempted G.S.T. for the service under Heading 9994, serial No. 76, which refers to "Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets." Similar exemption was granted by the State of Andhra Pradesh through G.O. Ms. No. 588, Revenue (Commercial Taxes-II) Department, dated 12-12-2017. Since the demand notice issued on 10-6-2022 refers to demand of G.S.T. in spite of the notifications issued above, the present writ petition came to be filed.

4. No counters are filed in spite of taking time.

5. The short point that arises for consideration is:

"Whether the authorities were right in demanding G.S.T. on the monthly license fee paid by the petitioner?"

POINT:—

6. Sri Sreekanth Reddy Ambati, learned counsel for the petitioner, mainly submits that in view of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, issued by the Government of India and G.O. Ms. No. 588, dated 12-12-2017, issued by the Government of Andhra Pradesh, the petitioner is exempted from payment of G.S.T.

7. The same is strongly opposed by Sri S.A.V. Sai Kumar, learned Assistant Government Pleader representing Sri Y.N. Vivekananda, learned Government Pleader for Commercial Tax appearing for respondent No. 5, stating that the notifications relied upon by the petitioner do not apply to the case on hand.

8. As stated earlier, no counter is filed opposing the same.

9. A perusal of the Notification, dated 28-6-2017, (Notification No. 12/2017-Central Tax (Rate), would show that Heading 9994 relates to "Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets" and the rate of tax against the said heading is shown as "nil". Similarly, the Government of Andhra Pradesh, vide G.O. Ms. No. 588, dated 12-12-2017, issued similar notification exempting payment of tax for the services rendered by such Agency.

10. As these two notifications are still in force and no notification is issued modifying or overriding the same, we feel that the writ petition deserves to be allowed.

11. Accordingly, this Writ Petition is allowed, declaring the action of the respondents in demanding C.G.S.T. and A.P.G.S.T. at the rate of 9% each on the monthly license fee paid by the petitioner for the work contract of maintenance of toilets at respondent No. 4 bus station as illegal and improper. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

ANURAG

*In favour of assessee.