

[2024] 158 taxmann.com 196 (Andhra Pradesh)/[2024] 102 GST 560 (Andhra Pradesh)/[2024] 83 GSTL 53 (Andhra Pradesh)[15-12-2023]

GST : Where assessee had no justifiable reason for not appearing for personal hearing on date fixed in show cause notice, writ petition filed against order passed under section 74 on ground of violation of principle of natural was to be dismissed

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[2024] 158 taxmann.com 196 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

TSN Old Iron Scrap Mechants

v.

Deputy/Assistant Commissioner of State Tax

RAVI NATH TILHARI AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 32206 OF 2023

DECEMBER 15, 2023

Demands - Tax or ITC involving frauds, etc. - Non-appearance for personal hearing - Writ jurisdiction - A show cause notice was issued to assessee - Impugned order was passed under section 74 - Even though said order was appealable, petitioner assailed same vide instant writ petition on ground that certain information were not supplied to assessee and order passed under section 74 was in violation of principle of natural justice as assessee was not provided sufficient time for making personal appearance - HELD : Even though copy of information received was not supplied but contents thereof were disclosed to assessee in said show cause notice - Assessee had no justifiable reason for not appearing for personal hearing on date fixed - Assessee had statutory alternative remedy of appeal - Writ petition was to be dismissed [Section [74](#), read with section [107](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 10 and 11]

T.C.D. Sekhar, Ld. Govt. Pleader for the Respondent.

ORDER

Ravi Nath Tilhari, J. - Heard learned counsel for the petitioner who appears through virtual mode and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax appearing for respondents.

2. This writ petition under Article 226 of Constitution of India has been filed for the following relief:

"pleased to issue an appropriate writ, order or direction, more in the nature of Writ of Mandamus, setting aside the common orders under DIN: 3703082343770 dated 3-8-2023 passed by the Deputy Assistant Commissioner of State Tax, Gollapudi Circle, Vijayawada and to pass such other order or orders."

3. Challenge is to the order dated 3-8-2023 passed under Section 74 of Goods and Services Tax Act (for short 'GST Act').

4. Preliminary objection has been raised that the order is appealable under the GST Act. Consequently, the writ petition deserved not to be entertained.

5. Learned counsel for the petitioner does not dispute that the order is appealable under section 107 of GST Act but he submits that there is violation of the principles of natural justice, and as such this petition deserves to be entertained. He submits that in the show cause notice dated 27-5-2023, there is mention that the letter

was sent to NAHI *vide* reference 6th cited *i.e.*, dated 14-3-2023 for passing of tollgate data and pursuant thereto the data was received from them. He submits that the same is the basis of the show-cause notice and for passing the impugned order but the report or the information so received from NAHI was not supplied to the petitioner.

6. Learned counsel for the petitioner further submits that there is violation of principles of natural justice at the stage of providing personal hearing as well, in as much as firstly the notice for personal hearing dated 12-7-2023 fixing the date 17-7-2023 was served on 17-7-2023 *i.e.*, the date of personal hearing. Consequently, the petitioner could not appear on that date. Secondly, the respondent issued another notice dated 21-7-2023 for personal hearing fixing the date 24-7-2023, but the petitioner could not appear for the reason that 22-7-2023 and 23-7-2023 were Saturday and Sunday and the time was not sufficient to make personal appearance.

7. In response, Sri T.C.D.Sekhar, learned Government Pleader submits that details of date received from NAHI were disclosed in the show-cause notice itself, at page No. 69. He submits that even if the copy of the information received from NAHI, might not have been provided, but, since the contents thereof were disclosed in the show-cause notice itself, there is no violation of the principles of natural justice.

8. Sri T.C.D.Sekhar, learned Government Pleader further submits with respect to the personal hearing, that inspite of the second notice for personal hearing on 21-7-2023 by which 24-7-2023 was fixed, the petitioner did not appear, though the petitioner is at Vijayawada and the place for personal hearing was also at Vijayawada. There is no valid justification for not availing the opportunity of the personal hearing.

9. Considering the aforesaid submissions, we find that even if the copy of the information received was not supplied but the contents thereof were disclosed in the show-cause notice, there would be no violation of the principles of natural justice as the material was disclosed to the petitioner. The petitioner had also submitted the reply to the show-cause notice on 7-7-2023. On consideration of the petitioner's reply, the impugned order was passed.

10. So far as the submission with respect to the violation of principles of natural justice of providing opportunity of personal hearing is concerned, the notice dated 21-7-2023 was given to the petitioner fixing the date 24-7-2023(Monday). It could not be demonstrated before us as to why the petitioner did not appear on the date fixed. The explanation of Saturday and Sunday is not for the date fixed. We find that the petitioner had no justifiable reason for not appearing for personal hearing on the date fixed. If a person does not avail the opportunity of personal hearing, he cannot later on complain about the same. On this aspect also we find that there is no violation of principles of natural justice.

11. The petitioner has got the statutory alternative remedy of appeal. If so advised, the petitioner can seek such alternative remedy in accordance with law.

12. The writ petition is dismissed on the aforesaid ground.

No orders as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.