
[2024] 162 taxmann.com 830 (Andhra Pradesh)[25-04-2024]

GST : Where assessee challenged order denying input tax credit on job work services provided between its units in different states, writ petition dismissed on grounds of availability of statutory alternative remedy of appeal

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[2024] 162 taxmann.com 830 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Saraca Laboratories Ltd.

v.

Union of India*

RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.

WRIT PETITION NO. 8067 OF 2024

APRIL 25, 2024

Input Tax Credit - Denial of - Alternative remedy - Assessee challenged order denying input tax credit on job work services provided by its Andhra Pradesh unit to Telangana unit - Assessee contended order was contrary to circular dated 17.07.2023 clarifying valuation of services between offices in different states - Revenue argued circular not applicable to assessee's case - HELD: Writ petition dismissed solely on ground of availability of statutory alternative remedy of appeal - Applicability of circular can be examined by appellate authority - No challenge raised on violation of natural justice, fundamental rights or vires of statute - Matter left open for assessee to file statutory appeal [Section 16 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 9-14] [In favour of assessee]

Circulars and Notifications : Circular dated 17.07.2023

Vivek Chandra Sekhar S. *for the Petitioner.*

ORDER

1. Heard Sri Vivek Chandra Sekhar S, learned counsel for the petitioner and Sri Josyula Bhaskara Rao, learned Central Government counsel for the respondent No.1 and Sri T. C. D. Sekhar, learned Government Pleader for Commercial Tax appears for the respondent Nos.2 and 3.

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

"For the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the Order bearing Case ID No.AD371022003502V, dated 30.12.2023 and the consequential recovery notices in Form GST DRC-07 for the years 2017-18, 2018-19 and 2019-20 passed by the 3rd Respondent as void, illegal, arbitrary, without jurisdiction, contrary to the Circular dated 17.07.2023 issued by the 1st Respondent as well as contrary to the provisions of the APGST Act, 2017 and CGST Act, 2017 and the Rules made thereunder, and set aside the same and further direct the Respondents not to initiate any coercive steps against the Petitioner pursuant to the Order bearing Case ID No.AD371022003502V, dated 30.12.2023 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. On 02.04.2024, the Court passed the following order:-

"Heard Sri S. Vivek Chandra Sekhar, learned counsel for the petitioner and Sri T. C. D. Sekhar, learned Government Pleader for Commercial Tax appears for the respondent Nos.2 and 3 and Sri Josyula Bhaskara Rao, learned Central Government counsel appears for the respondent No.1.

2. A preliminary objection has been raised by learned Government Pleader for Commercial Tax that the petitioner has got the statutory alternative remedy of appeal and as such the writ petition deserves not to be entertained.

3. Learned counsel for the petitioner does not dispute that there is remedy of appeal, but submits that the challenge to the impugned order is on the grounds that, there is violation of the provisions of the GST; the Assessing Authority has failed to correctly apply the clarification circular dated 17.07.2023; and that the petitioner is legally not under liability to pay any tax, but if the petitioner is relegated to file the appeal, he has to comply the statutory requirement of pre-deposit of 10% of the disputed amount under the impugned order.

4. From the aforesaid submissions, it is evident that there is no challenge on the ground of violation of principles of natural justice, or the order being without jurisdiction. There is also no challenge to the vires of any provision of the statute. In view thereof, we are of the view that the present case does not fall within the well-recognised exceptions, where the writ petition may be entertained, without relegating the petitioner to first avail the statutory alternative remedy of appeal and particularly when such arguments or ground of challenge, as raised before us, can be very well taken before the appellate authority. The condition of pre-deposit for filing the appeal cannot be permitted to be bye-passed, by entertaining the writ petition.

5. At this stage, learned counsel for the petitioner prays for time to further address the Court on the above aspect of alternative remedy and entertainability of the writ petition by placing some judgments.

6. As requested, list on 23.04.2024.

7. The above view expressed by us is only prima facie."

4. Learned counsel for the petitioner has only reiterated the submissions which were advanced on 02.04.2024 as quoted above.

5. Learned counsel for the petitioner submits that the question involved is whether the circular dated 17.07.2023 would or would not apply to the petitioner's case. In his submission the impugned order is contrary to the circular dated 17.07.2023, though he submits that the said clarificatory circular, clarifies the issue of the determination of value of services provided by the Head offices of distinct persons to their Branch offices, but the same would also be applicable to the petitioner's case which is that, the petitioner's unit - 1 at Telangana is eligible for full Input Tax Credit (ITC) of the GST on the job work manufacturing service it received from the petitioner unit - 2 at Andhra Pradesh. So the petitioner's case is of the service provided by one unit to another unit and not by Head Office to Branch Office.

6. Sri Josyula Bhaskara Rao, learned counsel for the respondent No.1 submits that the circular is very clear and does not apply to the petitioner's case.

7. The respondent No.3 in its order considered the circular dated 17.07.2023 and observed as under:-

"Further, that the above clarification was issued by the CBIC to restrict the difficulties in distribution of Input Service Distribution, in general most of the services are being rendered from their Head Office and will be distributed to the Branch Offices in order to reduce the complication in such distribution, the clarification was issued.

In view of the above clarification, it is obvious that the clarification shall be applicable to the transactions made from Head Office to Branch Office only, but does not applicable to the services rendered from Branch Office to their Head Office. In the instant case, the services have been rendered from their Branch Office at Pydibheemavaram to their Head Office at Hyderabad and thus the clarification is not applicable to the instant case."

8. There is no challenge to the circular dated 17.07.2023 (P2) on the subject of "clarification regarding taxability of services provided by an office of an organization in one state to the office of that organization in another state being distinct persons".

9. In any case, we are of the view that the aforesaid aspect of applicability of Circular dated 17.07.2023 to the petitioner's case, can be looked into by the Appellate Authority if such a plea is raised before the Appellate Authority. It is not such a ground which cannot be taken in appeal.
10. Any plea of the order being without jurisdiction, or in violation of the principles of natural justice or in violation of the Fundamental Rights has not been raised before us during arguments. There is also no challenge to the vires of any statutory provisions.
11. Any judgment on the point has not been placed before us to take a view contrary to the *prima facie* view taken in the order dated 02.04.2024 on entertainability of the writ petition in the presence of statutory alternative remedy of appeal.
12. Consequently, leaving it open to the petitioner to file the statutory appeal against the impugned order, if so advised, as per law, we are not inclined to entertain the writ petition.
13. Since we are relegating the petitioner to avail the alternative remedy of appeal, we are not observing anything with respect to the applicability or otherwise of the circular to the case of the petitioner.
14. The writ petition is dismissed only on the ground of availability of the statutory alternative remedy.
15. No order as to costs.
16. As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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*In favour of assessee.