

[2022] 143 taxmann.com 9 (Andhra Pradesh)/[2022] 94 GST 584 (Andhra Pradesh)/[2022] 67 GSTL 300 (Andhra Pradesh)[12-07-2022]

GST : Where merely demand of tax was made in show cause notice, if department had intended to fix fresh liability by adding interest and penalty on impugned payment, then separate notice ought to have been issued to assessee

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[2022] 143 taxmann.com 9 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Hajee A P Bava and Company Constructions (P.) Ltd.

v.

Assistant Commissioner*

C. PRAVEEN KUMAR AND TARLADA RAJASEKHAR RAO, JJ.

W.P. NO.18276 OF 2022

JULY 12, 2022

Interest and penalty - Show cause notice - Assessee was a company carrying on business in mechanical erection and fabrication of cement and steel plants - Two show cause notices were issued by department demanding assessee to pay tax liability of Rs. 69,12,114 each under CGST and SGST Act - Assessee had submitted its explanation - Department, after adding interest and penalty, passed an order by which liability was fixed at Rs. 5,20,39,891 instead of liability fixed in show cause notices - HELD : If department had intended to fix fresh liability by adding interest and penalty on impugned payment, then separate notice ought to have been issued to assessee - Hence, order was to be set aside and matter was to be remanded to authority for fresh determination in accordance to law [Section 16 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rules 73 and 74 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 8, 9 and 10] [In favour of assessee/Matter remanded]

Bhaskar Reddy Vemireddy, Adv. for the Petitioner.

ORDER

C. Praveen Kumar, J. - Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri Sai Kumar, learned counsel representing the learned Government Pleader for Commercial Taxes and with their consent, the Writ Petition is disposed of at the stage of admission.

2. The present Writ Petition came to be filed questioning the order in Form GST DRC-07, dated 17-11-2021 as illegal, improper, incorrect and violative of principles of natural justice.

3. The facts in issue show that the petitioner is a Company carrying on business in mechanical erection and fabrication of Cement and Steel plants. The petitioner is registered as a taxable person under the provisions of Central Goods and Services Tax Act, 2017 (for short, "CGST Act") and State Goods and Services Tax Act, 2017 (for short, "SGST Act") with GSTIN No. 37AACCH1 218C3Z4. It is said that the petitioner has been filing returns regularly after adjusting the tax credit in terms of section 16 of CGST/SGST Act, 2017. The 1st respondent in pursuance of the authorization said to have been issued by the 2nd respondent inspected the business premises of the petitioner on 2-11-2020 and thereafter issued a notice dated 3-11-2020, invoking the power under section 73/74 of APGST/CGST Rules, 2017, assessing the tax payable to the petitioner as Rs. 69,12,453/- in respect of the assessment year 2018-19 and Rs. 1,53,25,314/- in respect of the year 2019-20.

4. The 1st respondent is said to have issued a show cause notice dated 10-8-2021 proposing to levy penalty and interest in addition to the tax already ascertained by him through Form DRC 01A. The petitioner herein is said to have given the explanation to the show cause notice mentioning the incorrectness in the show cause notice issued. Pursuant thereto, the authority passed an Order dated 17-11-2021, which is impugned in the present Writ Petition.

5. Learned counsel appearing for the petitioner mainly submits that the order impugned in the Writ Petition is bereft of any reasons and the explanation given by the petitioner has not been considered. Accordingly to him, except extracting the contents of the explanation given to the show cause notice, there is no consideration of the same while fixing the liability. He further submits that while the show cause notice is for payment of Rs. 69,12,114/- under SGST and CGST Acts, the order impugned directs levying of Rs. 5,20,39,891/- as the amount payable by the petitioner, which according to the petitioner is beyond the amount demanded under the show cause notice.

6. Sri Sai Kumar, learned counsel representing the respondents, on instructions, states that, the petitioner did not respond to the show cause notice issued and as such the order impugned warrants no interference. He further submits that though the amount demanded to be paid is more than the amount demanded in the show cause notice, but the same in no way cause any prejudice to the petitioner.

7. Learned counsel for the petitioner, in reply, contends that apart from adding CGST and SGST, the authority concerned has imposed IGST interest to a tune of Rs. 84,16,365/-, which is also beyond the purview of the show cause notice.

The point that arises for consideration is that,

Whether the tax demanded is in accordance with the procedure established by law ?

8. As seen from the record, the show cause notice was issued on 10-8-2021, by the Office of the Assistant Commissioner (ST)(FAC), Tadipatri, demanding the petitioner to pay a sum of Rs. 69,12,114/- under CGST. On the very same day, another show cause notice was issued demanding payment of Rs. 69,12,114/- under SGST Act.

9. The petitioner submitted his explanation on 9-9-2021 explaining the mistake committed by the authority in arriving at the said figures. The representation was received on 9-9-2021. Thereafter, the impugned order came to be passed on 17-11-2021 fixing the liability at Rs. 5,20,39,891/-. The said amount was arrived at after calculating interest and penalty to be paid by the petitioner, on the amount demanded. Not only that, an amount of Rs.84,16,365/- was added towards Integrated Goods and Services Tax (for short, "IGST") which in our view is impermissible under law. It would be appropriate to extract the findings arrived at by the authority which are as herein under:-

"Hence, the orders are passed accordingly and levied supra cited IGST Tax of Rs. 84,16,365/-, IGST penalty of Rs. 84,16,365/-, IGST interest of Rs. 31,05,921/-, CGST Tax of Rs.69,09,201/-, CGST penalty of Rs.69,09,201/-, CGST interest of Rs.22,28,521/-, SGST Tax of Rs.69,12,201/- and SGST penalty of Rs. 69,12,201/- and SGST Interest of Rs. 22,29,915/- total levied of Rs. 5,20,39,891/- (Rupees Five Crore Twenty Lakh Thirty Nine Thousand Eight Hundred and Ninety One only) and the amount shall be paid within 30 (thirty) days without fail, lest recovery proceedings will be initiated. DRC-07 (system generated copy) is herewith attached".

10. It is also to be noted here that in case if the authority intend to add interest and penalty on the amount fixed in the show cause notice, separate notices ought to have been issued to the petitioner for the said demand, which was not done in the instant case. Apart from that a perusal of the order would show that except extracting the explanation given to the show cause notice, there is no discussion raised on the objections. The objections raised were overruled stating as follows:-

"The same is verified and arrived the actual tax liability as under:-

2018-19:—

S.No.	Description	CGST	SGST	IGST
1	Tax liability declared in GSTR-9	18994781	18994781	276514
2	Tax paid through cash ledger as well as credit ledger	17521432	17518432	276514

3	Balance to be payable	1473349	1476349	0
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The tax payer has claimed excess ITC during 2018-19 and the same was shown and availed in annual return GSTR-9. The difference is excess claim and accordingly levied".

11. It is also to be noted that, while dealing with the objections raised, the authority goes into the aspect of claim of ITC alleged to have been made by the petitioner which was not the content of the show cause notice.

12. Having regard to the above circumstances, the Order under challenge *i.e.*, Form GST DRC-07, dated 17-11-2021, is set aside and the matter is remanded back to the authority to issue fresh notice and there after proceed further in accordance with law.

Miscellaneous Petitions pending, if any, shall stand closed.

SB

*Partly in favour of assessee.