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[2024] 165 taxmann.com 318 (Andhra Pradesh)[29-07-2024]

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GST : As on date of formation of 2 separate States, i.e., 2-6-2014, on account of unused input tax, tax credit was available in ledgers of dealers in AP VAT regime; such tax credit could be transferred to AP GST regime as it was not tax paid in excess and, hence, section 56 of Andhra Pradesh Reorganisation Act, 2014 would not be applicable

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[2024] 165 taxmann.com 318 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Lakshmi Vallabha Granites

v.

Assistant Commissioner of State Tax\*

R. RAGHUNANDAN RAO AND HARINATH N., JJ.

W.P. NOS. 7268, 7314, 7333 & 7343 OF 2022

JULY 29, 2024

Input tax credit - Transitional provision - On introduction of GST Act, tax credit available in ledgers of assessee-dealers under AP VAT Act were transferred to their ledgers under AP GST Act - Subsequently, an audit objection were raised that tax credit available under AP VAT Act at time of bifurcation of State, could not be transferred from AP VAT regime to AP GST regime as section 56 of Andhra Pradesh Reorganisation Act, 2014 only permitted a refund - On basis of audit objection, respondent authority reversed credit that was transferred and raised demand - Section 56 of Andhra Pradesh Reorganisation Act, 2014 related to liability of successor State, relating to refund of taxes which were collected in excess of liability of tax payer - tax credit available in ledgers of assessee-dealers was input tax credit, which is not tax paid in excess - Consequently, section 56 of Andhra Pradesh Reorganisation Act, 2014 would not be applicable in instant cases - Accordingly, writ petitions were to be allowed setting aside impugned demand orders [Section 140 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Section 56 of Andhra Pradesh Reorganisation Act, 2014] [Paras 10 and 11] [In favour of assessee]

K. Adi Siva Vara Prasad *for the Petitioner*. Y.V. Anil Kumar, Central Govt. Counsel *for the Respondent*.

## ORDER

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1. The batch of four Writ Petitions is being disposed of by way of this Common Order as all the Writ Petitions raised the same issues.

2. The common issues in these cases is that the petitioners who are dealers registered under the Andhra Pradesh Value Added Tax Act, 2005 [for the short "the AP VAT Act"] had certain outstanding credits in their account when the Andhra Pradesh Goods and Services Tax Act, 2017 [for the short "the AP GST Act"] was brought into effect from 01.07.2017. The dealers who had credit balances, arising out of unused input tax, were permitted to transfer the said credit balances under the AP GST Act and the said credit so obtained could be used by the dealers for adjusting against the tax payable by them. The petitioners, along with other dealers, had applied for transfer of credits available in their ledgers under the Form Tran-1 and the said Forms were accepted and the tax credit available in their ledgers under the AP VAT Act were transferred to their ledgers under the AP GST Act.

3. Subsequently, it appears that an audit objection were raised that the tax credit available in the ledgers of the petitioners under the AP VAT Act as on 02.06.2014, at the time of the bifurcation of the State, cannot be transferred from the AP VAT regime to the AP GST regime as Section 56 of the Andhra Pradesh Reorganisation Act, 2014 only permits a refund.

4. On the basis of this audit objection, the 1<sup>st</sup> respondent reversed the credit transfer to the extent of the credit balance available, in the ledgers of the petitioners, as on 02.06.2014 and raised demands for payment of the said taxes.

5. Aggrieved by the said action of the 1<sup>st</sup> respondent, the petitioners have approached this Court by way of these Writ Petitions.

6. 1<sup>st</sup> respondent had filed a counter affidavit, in which it is stated that the tax credit available to the petitioners as on 02.06.2014 could not have been taken into account, as the dealer could have taken benefit of the said tax credit by seeking refund of the said amount under Section 56 of the Andhra Pradesh Reorganisation Act, 2014. It also pointed out that the final intimation Form (Net 28 NCCF) issued in relation to the tax credit available to the each of the petitioners, as on 02.06.2014, had also contained a note, which stated that if the provisional net tax amount is not availed by the petitioners, by end of March-2016, then the petitioners would have to request the STO/AC for refund of the same subject to refund audit.

7. The controversy in the present case is whether the tax credit available in the ledgers of the petitioners, as on 02.06.2014, on account of unused input tax, can be transferred to the AP GST regime or the only option available to the petitioners was to seek a refund of the same.

8. The entire controversy revolves around Section 56 of the Andhra Pradesh Reorganisation Act, 2014 which reads as follows:-

"Section- 56: Refund of taxes collected in excess.

- (1) The liability of the existing State of Andhra Pradesh to refund any tax or duty on property, including land revenue, collected in excess shall be the liability of the successor State in whose territories the property is situated, and the liability of the existing State of Andhra Pradesh to refund any other tax or duty collected in excess shall be apportioned between the Successor States of Andhra Pradesh and Telangana on the basis of population ratio and the State discharging the liability shall be entitled to receive from the other State its share of the liability, if any.
- (2) The liability of the existing State of Andhra Pradesh to refund any other tax or duty collected in excess on the appointed day shall be the liability of the successor State in whose territories the place of assessment of such tax or duty is included, and the liability of the existing State of Andhra Pradesh to refund any other tax or duty collected in excess shall be apportioned between the Successor States of Andhra Pradesh and Telangana on the basis of population ratio and the State discharging the liability shall be entitled to receive from the other State its share of the liability, if any."

9. Section 56 of the Andhra Pradesh Reorganisation Act, 2014 deals with refund of tax or duty on property, including the land revenue which is collected in excess and refund of the same would be the liability of the Successor State in whose territory the property is situated and in the case of any other tax the liability would be on the Successor State within whose territory the place of assessment of such tax had been assessed.

10. This provision relates to the liability of the Successor State, relating to refund of taxes which are been collected in excess of the liability of the tax payer. The tax credit available in the ledgers of the petitioners is input tax credit, which is not tax paid in excess. Consequently, the provision of the Section 56 of the Andhra Pradesh Reorganisation Act, 2014 would not be applicable in the present cases.

11. Accordingly, these Writ Petitions are allowed setting aside the impugned demand orders in Form GST DRC-07 *vide* Ref. Nos.ZD370421001564T, ZD370421001562X, ZD370421001563V and ZD370421001565R dated 18.04.2021 issued by the 1<sup>st</sup> respondent. There shall be no order as to costs.

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

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\*In favour of assessee.