
[2021] 131 taxmann.com 123 (Andhra Pradesh)[16-06-2021]

GST : Where Competent Authority provisionally attached bank account of assessee and also freezed his lockers, assessee was to be given liberty to approach Court of Special Judge for Economic Offences for appropriate relief

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[2021] 131 taxmann.com 123 (Andhra Pradesh)

HIGH COURT OF TELANGANA

Vennapusa Venkata Subba Reddy

v.

Union of India*

U.DURGA PRASAD RAO AND MS. J. UMA DEVI, JJ.
WRIT PETITION NOS. 8755 OF 2019 AND 21403 OF 2020
JUNE 16, 2021

Section 83 of the Central Goods and Services Tax Act, 2017/Section 83 of the Telangana Goods and Services Tax Act, 2017 - Demands and recovery - Provisional attachment - Competent Authority by an order passed under section 83 dated 8-3-2019 provisionally attached bank account of assessee and also freezed his lockers on ground that he was operating various fictitious/shell firms and in this process he had issued fake GST invoices with a total turnover of more than Rs. 397 crores - Whether assessee was to be given liberty to approach Court of Special Judge for Economic Offences and file an application seeking appropriate relief, who shall consider same and pass an appropriate order in accordance with governing law - Held, yes [Para 7] [In favour of assessee]

ORDER

U. Durga Prasad Rao, J. - Both these writ petitions are filed by the same writ petitioner. Writ petition No.8755 of 2019 is filed challenging the proceedings in F.No. DGGI/VZU/INV/GST/13/2019, dated 8-3-2019 provisionally attaching the bank Locker No.39 held by the petitioner and bank accounts of some others under section 83 of Central Goods and Services Tax Act, 2017 (for short 'CGST Act, 2017') and the notice in F.No. DGGSTI/VZU/INV/GST/13/2019, dated 2-7-2019 issued by the Additional Director General/3rd respondent informing the 5th respondent - Branch Manager, Laxmi Vilas Bank, Guntur that the 4th respondent is authorised to open the bank locker of the petitioner and one Smt. P. Usha Rani on 10-7-2019 in their presence and to recover/seize the incriminating documents, as illegal, arbitrary and contrary to the provisions of the Central Goods and Services Tax Act, 2017 and violative of fundamental rights under articles 14, 19(1)(g), 21 and 300(A) of the Constitution of India and also violative of principles of natural justice and consequently to *set aside* the aforesaid proceedings.

1.1 Whereas, the writ petition No.21403 of 2020 is filed challenging the proceedings in F.No. DGGSTII/VZU/INV/GST/13/2019, dated 6-3-2020 issued by the 3rd respondent extending the attachment of petitioner's locker No.39 and consequential letter in F.No. DGGI/VZU/INV/GST/13/2019/2044, dated 9-11-2020 issued by the Deputy Director on the approval of the 3rd respondent informing the 6th respondent - Branch Manager, Lakshmi Vilas Bank that 5th respondent is authorized to open bank locker of the petitioner and Smt. P. Usha Rani and her son P. Bhanu Prakash in their presence on 17-11-2020, as illegal, arbitrary and contrary to the provisions of the Central Goods and Services Tax Act, 2017 and its Rules, and violative of fundamental rights under articles 14, 19(1)(g) and 300(A) of the Constitution of India and also violative of principles of natural justice and consequently to *setaside* the aforesaid proceedings.

2. The case of the respondent department as can be seen from their counter is thus:

- (a) The writ petitioner with the assistance of his business accomplices passed fake Input Tax Credit (ITC) invoices on large scale in the name of different fictitious/shell firms within the States of Andhra Pradesh and Telangana during the period July, 2017 to February, 2019 without actual supply of goods in violation of CGST Act, 2017 and Rules. The investigation initiated by the Officers of Director General of GST (Intelligence), Visakhapatnam Zonal Unit revealed the said fact and they conducted searches in some of the premises of those fictitious/shell firms operated by V.V Subba Reddy. The searches were conducted in the places like Guntur, Vijayawada, Narsaraopeta, Hyderabad etc., and they revealed that no business firms have operated from those premises and the CGST registrations were taken fraudulently in the names of different firms using wrong credentials/addresses with a view to passing of ITC by issuing fake tax invoices without actual supply of goods. Investigation further revealed that around 90 different firms are operated by V.V Subba Reddy for the purpose of claiming ITC by issue of fake tax invoices during the period and these firms operated in a network so as to conceal evasion. Some of the fictitious/shell firms, where searches were conducted, have admittedly purchased the fake tax invoices without actual receipt of goods from the firms operated by V.V Subba Reddy. Investigation is still under progress.
- (b) The respondent officials have arrested Vennapusa Venkata Subba Reddy on 11-3-2019 for violation of section 132(1)(b) and section 132(1)(c) of CGST Act, 2017 and fraudulently passing on ITC by issuing fake tax invoices without actual supply of goods in the name of different fictitious firms. Learned Judge of Economic Offences Court, Visakhapatnam remanded Vennapusa Venkata Subba Reddy to judicial custody on 12-3-2019 and later conditional bail was granted to him on 18-6-2019 with a direction to appear before the Investigating Officer once in a week.
- (c) From the statements of the Jaluri Sai Babu and some others, it is clear that there are a number of business accomplices of Vennapusa Venkata Subba Reddy who associated with him in creation of fictitious firms by collecting credentials from different individuals for the purpose of issue of fake tax invoices for fraudulent passing on ITC. In this background, the bank accounts of the fictitious firms were provisionally attached in the interest of protecting the Government revenue. As a part of it, the bank Locker No.39 standing in the name of the petitioner was also ordered for provisional attachment on 8-3-2019 in the interest of Government revenue and with a reasonable belief that some incriminating documents/records relating to the case under investigation and cash might be secreted in those lockers.
- (d) Subsequent to the release of Vennapusa Venkata Subba Reddy on bail on 18-6-2019, the 3rd respondent addressed a letter dated 2-7-2019 to the Branch manager, Lakshmi Vilas Bank, Guntur and sent a copy to the petitioner *inter alia* intimating that the authorization was given to Sri Bhaskar Prasad/the 4th respondent in W.P.No.8755 of 2019 to open and search the bank locker No.39 standing in the name of the petitioner on 10-7-2019. However, the said date was postponed to 17-11-2019 vide letter dated 9-11-2020 of the Deputy Director. In the meanwhile the petitioner filed the present writ petitions.
- (e) The contention of the respondents is that the bank accounts were attached and lockers were sought to be opened as a part of the investigation and by following the CGST Act and Rules and therefore, the petitioner cannot claim any violation of his rights.

3. Heard Sri V.V. Lakshmi Narayana, learned counsel for petitioner and Sri M.V.J.K. Kumar, Senior Standing Counsel for Central Excise, Customs and Service Tax representing respondent Nos.1 to 5.

4. The main contention of the learned counsel for petitioner is that while attaching the bank locker No.39 *vide* impugned proceedings, no show cause notice was served on the petitioner to offer his explanation. So also the bank locker number-39 of the petitioner was freezed and no opportunity was given to the petitioner to submit his explanation. Due to freezing of locker, the petitioner is suffering a lot. Hence, principles of natural justice were infringed. Learned counsel vehemently argued that the petitioner has not committed any offences as alleged. He thus, prayed to allow the writ petition.

- (a) Per contra, Sri M.V.J.K. Kumar, representing the respondents, vehemently opposed the writ petitions arguing that the petitioner opened around 90 shell companies and created fake invoices without actual supply of goods and thus cheated Government. He would submit that the

investigation is in the prime stage and department reasonably believes that opening of the lockers of the petitioner and other shell companies will provide necessary documents and money etc., connected to the case. He thus prayed to dismiss the writ petition.

5. The point for consideration is whether there are merits in the writ petitions to allow?

6. We gave our anxious consideration to the above respective submissions. A perusal of the remand report, a copy of which is filed along with the material papers by the petitioner would show that the Senior Intelligence Officer levelled allegations against the petitioner that he was indulged in issue of fake GST invoices in the name of more than 70 fictitious/non-operating firms created by him at different locations in the States of Andhra Pradesh and Telangana without actual supply of goods to facilitate availment of irregular input tax credit and thereby defrauded the Government's tax revenue. It is further alleged that search operations were conducted in the registered office premises of different enterprises and also the premises of the Accountant of the petitioner and incriminating documents were recovered. Scrutiny of the documents revealed that the petitioner created 70 different fictitious/shell firms in Andhra Pradesh and Telangana for taking GST registrations. The *modus operandi* of the petitioner was that he opened fictitious firms only on paper to issue fake GST invoices showing supply of iron and steel goods, chemicals, battery scrap, led etc. This fictitious firms generally operated in three levels. The firms operating at first level in the chain, will issue fake invoices without actual supply of goods in the name of firms operating at second level without any corresponding purchases and thus first level firms will neither pay GST nor file monthly GSTR - 3B returns. The second level companies issue GST invoices in the name of firms operating at third level basing on the fake GST invoices issued by the 1st level firms and these second level firms show payment of GST utilizing irregular input tax credit taken basing on the invoice issued by the first level firms and accordingly, file monthly GSTR-3B returns. In turn, the firms operating at third level issue fake GST invoices without actual supply of goods to different business firms/companies in consideration for commission and the firms operating at third level show payment of GST utilizing the irregularly generated ITC basing on the invoices issued by the second level firms and accordingly file monthly returns. Thus, there will be no money, bank transactions at the first and second levels. However, bank accounts are opened with Lakshmi Vilas Bank in the name of firms operating at third level showing receipt of sale consideration through banking channels from different business firms/companies in whose name fake GST invoices are issued for passing on ITC. In this process, the petitioner has issued fake GST invoices with a total turnover of Rs. 397,28,11,944/- without supply of goods to different business firms/companies by passing on a total fraudulent input tax credit of Rs. 61,30,33,274/- in respect of 21 firms, out of more than 70 firms created by him and thus caused huge loss to the Government exchequer. The investigation is stated to be pending.

- (a) In furtherance of investigation, the Senior Intelligence Officer has attached the bank accounts and lockers of some of the companies on the apprehension that they are operating as shell companies for Vennapusa Venkata Subba Reddy. Therefore, the locker No.39 of the petitioner was freed under section 83 of CGST Act, 2017 and decided to open through the authorized Officer.
- (b) Having regard to the above facts and circumstance and also in view of the fact that the matter has been seized by the learned Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam and also considering that the investigation is in crucial stage, we deem it not apposite to consider the prayer of the writ petitioner. On the other hand, without expressing any opinion on merits of petitioner's case, we consider it apt to direct the petitioner to approach Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam for appropriate relief.

7. Accordingly, the writ petitions are disposed of giving liberty to the petitioner to approach the Court of Special Judge for Economic Offences-cum-IV Additional Metropolitan Sessions Judge, Visakhapatnam and file an application seeking appropriate relief in which case the said Court shall consider the same and after hearing both parties, pass an appropriate order in accordance with governing law and rules expeditiously. No costs.

As a sequel, interlocutory applications, if any, pending for consideration shall stand closed.

*In favour of assessee.