
[2024] 162 taxmann.com 430 (Andhra Pradesh)[19-03-2024]

GST : Order was not signed but was uploaded by competent authority and that signatures of competent authority could not be dispensed with and provisions of Sections 160 and 169 of CGST Act would not come to rescue

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[2024] 162 taxmann.com 430 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

SRS Traders

v.

Assistant Commissioner (ST)*

RAVI NATH TILHARI AND HARINATH N., JJ.

WRIT PETITION NO. 5238 OF 2024

MARCH 19, 2024

Demand of tax - Imposition of Penalty - Assistant Commissioner issued Form GST DRC-07 under section 74 of Goods and Services Tax Act, 2017, levying tax of Rs. 3,72,00,616, interest of Rs. 1,21,90,432 and penalty @ 50 per cent of tax, under Integrated Goods and Services Tax Act, Central Goods and Services Tax Act, 2017, and State Goods and Services Tax Act 2017, for tax period 2018-19 to 2021-22 - Assessee filed petition alleging that Form GST DRC-07 was issued without considering its objections and impugned order was not signed by authority and consequently same could not be implemented or given effect to - Held: impugned order was not signed but was uploaded by competent authority - Signatures of competent authority could not be dispensed with and provisions of Sections 160 and 169 of CGST Act would not come to rescue - Order issued by Assistant Commissioner was set aside. [Sections [74](#), read with sections [160](#) and [169](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 4 , 5 and 6] [In favour of assessee]

CASE REVIEW

A.V.Bhanoji Row v. Assistant Commissioner (ST) [W.P. No. 2830 of 2023, dated 14-2-2023] (para 5).

CASES REFERRED TO

SRK Enterprises v. Assistant Commissioner (ST) [[2023](#)] [157 taxmann.com 93](#)/[[2024](#)] [102 GST 450/82 GSTL 142 \(AP\)](#) (para 3) and *A.V.Bhanoji Row v. Assistant Commissioner (ST)* [W.P. No. 2830 of 2023, dated 14-2-2023] (para 5).

Shaik Jeelani Basha *for the Petitioner.* **G Arun Showri**, (Central Govt. Counsel) *for the Respondent.*

ORDER

Ravi Nath Tilhari, J. - Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes for respondent Nos.1 and 2 and Sri G.Arun Showri, learned counsels for respondent No. 3.

2. With the consent of learned counsel for the parties, this writ petition is decided at this stage.

3. Learned counsel for the petitioner submits that the impugned order dated 5-6-2023 is not signed by the authority and consequently, no order in the eyes of law. The same cannot be implemented or given effect to. He submits that the matter is squarely covered by the order passed by this Court in the case of *SRK Enterprises v. Assistant Commissioner (ST)* [2023] 157 taxmann.com 93/[2024] 102 GST 450/82 GSTL 142 in [W.P.No.29397 of 2023 dated 10-11-2023].

4. Learned Government Pleader for Commercial Tax has obtained oral instructions from the authority and informed that the impugned order is not signed but was uploaded by the competent authority. He raised the same plea as was raised in *SRK Enterprises'* case (cited *supra*) relying on sections 160 and 169 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act, 2017').

5. In *SRK Enterprises'* case (cited *supra*), this Court referred to the previous order of the Co-ordinate Bench in the case of *A.V.Bhanoji Row v. Assistant Commissioner (ST)* [W.P. No. 2830 of 2023, dated 14-2-2023] in [W.P.No.2830 of 2023 dated 14-2-2023] and held that the signatures cannot be dispensed with and the provisions of sections 160 & 169 of the CGST Act, 2017 would not come to the rescue. This Court held that:

"7. On consideration of the submissions advanced and the legal provisions, we are of the view that section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under "any mistake, defect or omission therein" as used in section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter *i.e.* validity of the order.

8. We are of the further view that section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.

9. In the case of *A. V. Bhanoji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14-2-2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of sections 160 and 169 of CGST Act would not come to the rescue.

10. Paragraph 6 of *A. V. Bhanoji Row* (*supra*) is reproduced as under:-

"6. A reading of section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action."

6. In view of the aforesaid, we allow this petition and set aside the proceedings/order issued by respondent No. 1 dated 5-6-2023. The respondent authorities to pass fresh orders in accordance with law, expeditiously.

7. The Writ Petition stands allowed in part in the aforesaid terms.

No orders as to costs.

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

RITA