
[2023] 146 taxmann.com 358 (Andhra Pradesh)[08-11-2022]

GST : Adjudicating order was not sustainable where such order was passed without granting an opportunity of personal hearing even after request for grant of such opportunity was made by assessee

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[2023] 146 taxmann.com 358 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Bharath Constructions

v.

Assistant Commissioner

U. DURGA PRASAD RAO AND T. MALLIKARJUNA RAO, JJ.

WRIT PETITION NO. 34861 OF 2022

NOVEMBER 8, 2022

Personal hearing - Principles of natural justice - Show cause notice was issued for which petitioner submitted a detailed reply containing factual details and legal aspects - Petitioner requested for grant of personal hearing before passing adjudication order but department passed order without granting same - HELD: It had been stated in impugned order that personal hearing request was acknowledged/considered and granted but time fixed for personal hearing was not mentioned in impugned order - Department failed to grant opportunity of personal hearing before passing impugned order - Matter was to be remanded back to original authority with direction to issue fresh notice and pass order in accordance with law after providing an opportunity of personal hearing - Impugned order was to be set aside - Writ petition was to be disposed of [Section 107 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 5, 6, 7 & 8] [In favour of assessee]

Karan Talwar, Adv. for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - In this writ petition, the petitioner seeks a Writ of Mandamus declaring the Notification No.4/2018-Central Tax (Rate) dated 25-1-2018 as ultra vires to Section 148 of the CGST Act/ APGST Act and to set aside the impugned order AAO No.ZH370722od11999 Dated 25-7-2022 confirming the demands of CGST/ APGST, Interest and Penalty being CGST of Rs.73,41,307/-, SGST of Rs.73,41,307/- under Section 74; IGST demand of Rs.1,71,959/-, Penalty of Rs.1,48,54,573/- under Section 74/73(9); Interest of Rs.1,19,10,247/- under Section 50, as being illegal, arbitrary and violation of the principles of natural justice.

2. Heard Sri Anup Koushik Karavadi, learned counsel, who represents Sri Karan Talwar, learned counsel appearing for the petitioner, and Sri Y.N.Vivekananda, learned Government Pleader for Commercial Tax and having regard to the nature of the prayer made during the course of hearing today this writ petition is disposed of at the stage of admission with the consent of both the parties.

3. Learned counsel for the petitioner would submit, as against the show cause notice dated 31.12.2021, the petitioner submitted its reply dated 4-3-2022 wherein the petitioner has specifically prayed the 1st respondent to afford a personal hearing in view of involvement of voluminous record as well as the factual and legal aspects to be submitted physically. However, no such opportunity was afforded to the petitioner but the

impugned order came to be passed on 25-7-2022 and thereby the petitioner was deprived of the principles of natural justice. He thus prayed that the impugned order dated 25-7-2022 may be set aside and the matter may be remanded back to the 1st respondent for hearing and to pass the order on merits.

4. Learned Government Pleader for Commercial Tax opposed the writ petition.

5. On perusal of the impugned order, the reference point No.9 refers to the reply filed by the petitioner dated 4-3-2022. Then reference point No.8, say that an endorsement-cum-personal hearing notice was issued on 10-2-2022. Then at paragraph 42 of the impugned order, it was mentioned as if tax payer has requested to grant personal hearing and the same was considered and granted. However, except this, in the impugned order, it is not specifically mentioned as to what date was fixed for personal hearing after filing reply by the petitioner and what happened on the date i.e., whether the petitioner and his counsel were present or not. Be that as it may, in the additional affidavit, at paragraph 4, it was mentioned that no opportunity for personal hearing was granted to the petitioner.

6. In view of these facts, we are of the view that the petitioner was not afforded an opportunity of personal hearing after he filed reply wherein he prayed for personal hearing. The reply itself is a detailed one which runs into several pages containing several factual details and some legal aspects. Therefore, the 1st respondent, in our considered view, ought to have afforded personal hearing to the petitioner so as to effectively adjudicate all the issues involved in the process of assessment. Since that was not done, the impugned order dated 25-7-2022 is liable to set aside.

7. Accordingly, the impugned order vide proceedings AAO No.ZH370722OD11999, dt. 25-7-2022 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent with a direction to give the notice to the petitioner, fixing a date for personal hearing and afford an opportunity to the petitioner to submit its argument and consider the submissions and pass appropriate order, in accordance with governing law and rules, expeditiously.

8. The writ petition is disposed of accordingly. No costs.

9. Miscellaneous petition, if any, pending in this writ petition shall stand closed.

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