

[2024] 158 taxmann.com 552 (Andhra Pradesh)/[2024] 82 GSTL 131 (Andhra Pradesh)/[2024] 102 GST 242 (Andhra Pradesh)[04-01-2024]

GST : Where assessee filed reply to discrepancy notice served on assessee in respect of audit but same was not considered while finalizing findings of audit, final Audit Report was in violation of principles of natural justice and, hence, to be quashed

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[2024] 158 taxmann.com 552 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

PBL Transport Corporation (P.) Ltd.

v.

Assistant Commissioner (ST)*

RAVI NATH TILHARI AND HARINATH NUNEPALLY, JJ.

WRIT PETITION NO.33477 OF 2023

JANUARY 4, 2024

Audit - Non-consideration of reply - Violation of Natural Justice - In respect of Audit, assessee filed reply to discrepancy notice under rule 101(4) served on assessee, but without considering same Final Audit Report was submitted by authority - HELD : Sub-rule (4) of rule 101, provides that proper officer may inform registered person of discrepancies noticed, if any, as observed in audit and said person may file his reply - After that proper officer shall finalize findings of audit after due consideration of reply furnished and in view of rule 101(4), it is evident that after informing about discrepancies noticed, if person files reply, same ought to be considered and on such consideration, findings of Final Audit Report are to be furnished - In instant case, since petitioner filed reply and same was not considered while finalizing findings of audit, final Audit Report was therefore in violation of principles of natural justice - Therefore, impugned audit report was to be quashed and revenue should consider said reply and should finalize audit report [Section 65 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 101 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 7 to 9] [In favour of assessee]

Anil kumar Bezawada, Ld. Counsel for the Petitioner.

JUDGMENT

Ravi Nath Tilhari, J. - Heard Sri Anil Kumar Bezawada, learned counsel for the petitioner and learned Government Pleader for Commercial Tax for the respondents and perused the material on record.

2. The petitioner by means of this writ petition under Article 226 of the Constitution of India is challenging the Final Audit Report dated 22-12-2023 (Ex.P1).

3. The challenge is mainly on the ground of violation of the principles of natural justice. The submission is that the petitioner had filed reply dated 19-12-2023 to the discrepancy notice under Rule 101 (4) of the Andhra Pradesh Goods and Services Tax/Central Goods and Services Tax Rules, 2017 (in short, APGST/CGST Rules, 2017) served on the petitioner on 12-12-2022, but without considering the same the Final Audit Report was submitted.

4. On 2-1-2024, this Court passed the following order:-

"While challenging the proceedings of respondent No.1, final audit report dated 22-12-2023 (P1), learned counsel for the petitioner submits that the discrepancy notice under Rule 101(4) of the APGST/CGST Rules, 2017 was served on 12-12-2023, to which, the petitioner filed reply on 19-12-2023 within time. But, in the final audit report, the petitioner's reply was not considered. He further submits that the final audit report at page No.57 of paper book mentioned that "the tax payer did not file any reply to the proposed notice". He submits that on consideration of the reply, the proper officer has to finalize the findings of the audit. Consequently, in his submission, there is violation of principle of natural justice and basing on the final audit report, no further proceedings can be initiated.

2. Learned Government Pleader for Commercial Tax seeks time to obtain instructions with respect to the filing of petitioner's reply to the discrepancy notice.

3. Post on 4-1-2024 in motion list."

5. Pursuant to the order dated 2-1-2024, learned Government Pleader obtained instructions and based on the written instructions he submits that the petitioner filed the reply on 19-12-2023. The same was not noticed by the authority and consequently, it escaped consideration while finalizing findings of the audit vide Final Audit Report.

6. Rule 101 of the APGST/CGST, Rules 2017 reads as under:-

"101. *Audit*:- (1) The period of audit to be conducted under sub section (1) of section 65 shall be a financial year [part thereof] or multiples thereof.

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02."

7. Sub Rule (4) of Rule 101, provides that the proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply. The proper officer shall finalise the findings of the audit after due consideration of the reply furnished. In view of Rule 101(4), it is evident that after informing about the discrepancies noticed, if the person files the reply, the same is to be considered and on such consideration, the findings of the Final Audit Report are to be furnished. Here, it is now not disputed that the petitioner filed the reply and the same was not considered while finalizing the findings of the audit. The Final Audit Report is therefore in violation of the principles of natural justice as also the statutory provisions.

8. Consequently, the impugned Final Audit Report deserves to be quashed. The writ petition deserves to be allowed with further directions to the respondents. Any further proceeding if initiated, based on the impugned Final Audit Report, can also not stand.

9. The writ petition is partly allowed. The impugned Final Audit Report is quashed only on the aforesaid ground. The respondents shall now consider the petitioner's reply dated 19-12-2023 to the discrepancy notice dated 12-12-2023 and shall finalize the audit report. Thereafter, they shall proceed further, in accordance with law.

10. No order as to costs.

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

KARTIK

*In favour of assessee