
[2022] 141 taxmann.com 327 (Andhra Pradesh)/[2022] 62 GSTL 325 (Andhra Pradesh)[21-03-2022]

GST : Where adverse assessment order was passed without issuing notice to assessee, same was to be set aside

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[2022] 141 taxmann.com 327 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sree Constructions

v.

Assistant Commissioner ST*

C.PRAVEEN KUMAR AND SMT. V. SUJATHA, JJ.

WRIT PETITION NO.24955 OF 2021

MARCH 21, 2022

Adjudication - Opportunity of hearing - Petitioner executed certain works entrusted to it by TATA Projects Ltd., and issued Tax Invoices to TATA Projects Ltd., as per terms of agreement, said Contractee had to pay Service Tax on same to petitioner on issue of Tax Invoices by petitioner - Though, petitioner issued Tax Invoices, Contractee failed to pay G.S.T. amounts to petitioner and withheld same due to which petitioner could not file its returns and pay Taxes as G.S.T. Portal would not accept returns unless accompanied by payment of Taxes - Garnishee Notice was issued to Contractor stating that petitioner had failed to pay Taxes, penalty and interest under G.S.T. Act and was directed them to pay said amount, when came to know about order of Assessment passed by authority, petitioner filed present Writ Petition - No notice was given to assessee before contemplating to pass adverse order - Such course of action was prejudicial to interest of assessee and in violation of section 75(4) of Central Goods and Services Tax Act, 2017 - Assessment and rectification orders was to be set aside and matter was remanded [Section [75](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Article [226](#) of Constitution of India] [Paras 6 to 8] [Matter remanded]

CASES REFERRED TO

Ocean Sparkle Ltd. v. Assistant Commissioner (ST) [[2021](#)] [129 taxmann.com 186 \(AP.\)](#) (para 3).

G. Narendra Chetty, Ld. Counsel for the Petitioner.

ORDER

C. Praveen Kumar, J. - Heard Sri G. Narendra Chetty, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes and with their consent the Writ Petition is disposed off at the admission stage.

2. The Order of Assessment No. ZH370720OD77052, dated 9-7-2020 and the Rectification Order, dated 25-7-2020 passed by the respondent no. 1 under the A.P.G.S.T. Act, 2017, for the Tax periods July, 2017 to June, 2019, imposing Tax, Penalty and Interest as violative of principles of natural justice, the present Writ Petition came to be filed.

3. The averments made in the affidavit filed, in support of the Writ Petition, are that:-

- (a) The petitioner executed certain works entrusted to it by M/s. TATA Projects Limited, and issued Tax Invoices to M/s. TATA Projects Limited. It is said that as per the terms of the agreement, the said Contractee has to pay Service Tax on the same to the petitioner on issue of Tax Invoices by the petitioner. Though, the petitioner issued Tax Invoices, the Contractee failed to pay G.S.T. amounts to the petitioner and withheld the same due to which the petitioner could not file its returns and pay the Taxes as the G.S.T. Portal will not accept the returns unless accompanied by payment of Taxes.
- (b) It is said that the total G.S.T. liability for the works executed for the petitioner during the tax period is about Rs. 1,85,84,695/-. A Garnishee Notice dated 11-9-2020, came to be issued to the Contractor stating that the petitioner has failed to pay Taxes, Penalty and Interest under the G.S.T. Act and directed them to pay the said amount. On coming to know about the order of the Assessment passed by the authority, the petitioner filed the present Writ Petition mainly on the ground that an opportunity of hearing should have been granted to the petitioner in terms of sub-section (4) of section 75 of the SGST Act, 2017. He placed reliance on the judgment of this Court in *Ocean Sparkle Ltd. v. Assistant Commissioner (ST)* [2021] 129 taxmann.com 186 (AP) in support of the same.

4. Sri G. Narendra Chetty, learned counsel for the petitioner though raised various grounds would submit that since no opportunity of hearing was given, the matter to be remanded back to the Assessing Authority as it came to be passed in violation of principles of natural justice.

5. Sri Y.N. Vivekananda, learned Government Pleader for Commercial Taxes, would submit that though the Assessment Order was passed in the month of July, 2020, the petitioner did not approach this Court within a reasonable time. He further submits that he approached this Court only after issuance of Garnishee Notice and long thereafter, the present Writ Petition is filed. He further submits that having regard to the orders passed by the Hon'ble Supreme Court, extending the period of limitation, the petitioner can avail the remedy of appeal as provided under section 107 of the C.G.S.T. Act, 2017

6. It is no doubt true that the order was passed in the month of July, 2020 and the Writ Petition was filed in the month of October, 2021. The reason given by the petitioner is that due to pandemic, he could not avail the remedy at the earliest. He further submits that in view of the orders passed by the Hon'ble Supreme Court extending the period of limitation, approaching this Court in the year 2021 cannot be said to be with delay. Infact, in W.P.No.9162 of 2021 relied upon by the learned counsel for the petitioner, similar such objection was raised, but the same was not accepted having regard to the violation of section 74 of C.G.S.T. Act, which we will discuss now.

7. Sub-section (4) of section 75 of the Act, reads as under:-

"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

8. It is very much evident that an opportunity of hearing is required to be given where a request was made in writing to the person chargeable with taxes and penalty or where any adverse decision is contemplated against such person. Therefore, when the authority contemplates to pass an adverse order against any assessee, an opportunity of hearing is required to be given. Failure to do so, in our view, amounts to violation of principles of natural justice. In the instant case, admittedly no notice was given to the petitioner before contemplating to pass an adverse order. Such a course of action is prejudicial to the interest of assessee and the same would be in violation of sub-section (4) of section 75 of C.G.S.T. Act, 2017.

9. For the above said reasons, the Writ Petition is allowed, setting aside the Assessment Order No. No. ZH370720OD77052, dated 9-7-2020 and the Rectification Order, dated 25-7-2020 passed by the respondent no. 1 under the G.S.T. Act, 2017, and remanding the matter to respondent no. 1 for consideration of the issues and for passing appropriate orders in accordance with law afresh after giving notice of hearing to the petitioner. It is needless to mention that on the date so fixed either the petitioner or his authorized representative shall be present before the respondent no. 1 for personal hearing. The entire exercise of giving notice, hearing and passing of the order should take place as early as possible preferably within a period of four (4) weeks from the date of receipt of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

[*](#)Matter remanded.