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**[2024] 159 taxmann.com 127 (Andhra Pradesh)/[2024] 102 GST 430 (Andhra Pradesh)/[2024] 82 GSTL 270 (Andhra Pradesh)[21-12-2023]**

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**GST : Where petitioner provided her godown for storage and warehousing of food grains and claimed services provided as exempt from tax while respondent authority held that she had let out space on monthly rental basis attracting tax under Entry No. 9972 12; liberty was to be provided to petitioner to file appeal and respondent authority was to be directed to not take any coercive action for recovery of tax**

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**[2024] 159 taxmann.com 127 (Andhra Pradesh)**

**HIGH COURT OF ANDHRA PRADESH**

**Smt. Gali Lavanya**

**v.**

**State of Andhra Pradesh\***

**U.DURGA PRASAD RAO AND A.V. RAVINDRA BABU, JJ.**

**WRIT PETITION NO: 26032 OF 2023**

**DECEMBER 21, 2023**

**Rental or leasing services involving own or leased non-residential property - Real estate services - Heading No. 99712 - Classification - Writ jurisdiction - Petitioner received certain amount for providing her godown for storage and warehousing of food grains to Andhra Pradesh State Civil Supplies Corporation Ltd. and claimed that services of storage and warehousing of food grains were exempted from tax as per Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 - Subsequently, show cause notice was issued to petitioner stating that services provided by petitioner amounted to renting of immovable property and thus, not exempt from tax - Without considering reply of petitioner, respondent authority held that petitioner had let out space on monthly rental basis and delivered possession and therefore, said activity attracted tax prescribed in Entry No. 997212 - Also, as per department, petitioner had remedy of appeal and therefore, writ petition was not maintainable - HELD : Petitioner had an efficacious and alternative remedy to file appeal and said fact was also mentioned in impugned order to effect that an appeal lies against impugned order - Therefore, liberty was to be provided to petitioner to file appeal and respondent authority was to be directed to not take any coercive action against petitioner for recovery of demanded tax till time granted for filing of appeal was over [Section 9 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Article 226 of Constitution of India] [Paras 7 to 9] [In favour of revenue]**

**Circulars and Notifications : [Notification No. 12/2017 - Central Tax \(Rate\), dated 28-6-2017](#)**

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#### **CASE REVIEW**

*Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.* [\[2020\] 116 taxmann.com 417/2020 \(36\) G.S.T.L. 305 \(SC\)](#) (para 8) followed.

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#### **CASES REFERRED TO**

*Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.* [\[2020\] 116 taxmann.com 417/2020 \(36\) G.S.T.L. 305 \(SC\)](#) (para 5).

## ORDER

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**U. Durga Prasad Rao, J.** - In this Writ Petition filed under Article 226 of the Constitution of India, the petitioner seeks the following relief:

"to issue Writ of Mandamus or any other appropriate Writ or Order or Direction declaring the action of the 2nd Respondent in passing Order dated 10-7-2023 having reference DIN3716052321888/2017-18, DIN No. 3716052352492/2018-19, DIN 3716052394469/2019-20, DIN 3716052381053/2020-21 directing payment of tax of Rs. 65,40,840/-, penalty of Rs. 65,40,840/- and interest of Rs. 45,48,892/- totaling to Rs. 1,76,30,572/-, for the tax period 2017-18 to 2020-21, under the CGST/SGST Acts, 2017, as arbitrary, contrary to law, without jurisdiction and in violation of Principles of Natural Justice, and consequently *set aside* the proceedings of the 2nd respondent dated 10-7-2023 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstance of the case."

2. The petitioner's grievance is that she is the owner of the Godown No. 02, having total capacity of 10000 Mts situated at M/s Jagadish & Others Warehouses, Bhanuprakash Nagar, Sitarampet Village, Yerpedu Mandal, Chittoor District. The said godown was used to provide services of storage and warehousing to clients such as Andhra Pradesh State Civil Supplies Corporation Ltd (APSCSCL). The petitioner received monetary consideration as per the agreement for the period between 2017 and 2021 a sum of Rs. 3,59,70,000/-. Later the Regional Vigilance and Enforcement Officer inspected his warehouse and thereafter a show cause notice was issued to the petitioner on 4-2-2022 stating that the services provided by the petitioner amounts to renting of immovable property and therefore the same is not exempted from tax. The petitioner filed objections contending that the services of storage and warehousing of food grains is exempted from levy of tax as per Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017. The activity undertaken by the petitioner is that it had entered into an agreement with APSCSCL for providing storage, warehousing services involving loading, unloading, stacking, packing, care, custody and security etc., of food grains and the activity of storage or warehousing of rice is specifically covered under entries prescribed in Sl.No.24 and also under Sl.No.3 or Sl.No.54 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 and it is exempted from payment of tax. However, without considering the reply of the petitioner in proper manner, the 2nd respondent held that the petitioner has let out 10000 Mts of space on monthly rental basis and delivered possession and therefore the said activity attracts tax @ 9% under SGST & CGST as prescribed in Entry No. 997212 and disagreed with the contention of the petitioner that the services rendered by the petitioner are exempted under Notification No.12/2017 - Central Tax (Rate), dated 28-6-2017.

(a) It is the case of the petitioner that under Notification No. 12/2017, all the services related to supplies like loading, unloading, storage or warehousing including those of renting and leasing is exempted from tax if such supplies are made to the Government or Government Authority. The APSCSCL is apparently a Government Authority as the Government holds more than 90% on equity shares and therefore, the transaction exempted from tax.

Hence the writ petition.

3. The 2nd respondent not filed counter. Learned Government Pleader submitted that he filed counter in similar connected Writ Petition No. 21055 of 2023 and since the factual and legal aspects in both the matters are same, the counter averments in W.P.No.21055/2023 may be considered in the present writ petition also.

4. Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes-II representing respondents.

5. While learned counsel for the petitioner Sri Shaik Jeelani Basha reiterated his pleadings in his argument, learned Government Pleader took a fundamental objection regarding the entertainability of the writ petition on the ground that the petitioner has an efficacious and alternative remedy of appeal and therefore the writ petition is not maintainable. He placed reliance on the decision of Hon'ble Apex Court in *Assistant Commissioner (CT) (LTU), Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.* [[2020 SCC OnLine SC 440 = \(2020\) 19 SCC 681/\[2020\] 116 taxmann.com 417/2020 \(36\) G.S.T.L. 305](#)]

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

7. POINT:- We gave our anxious consideration to the above respective submissions, particularly the preliminary objection of learned Government Pleader regarding the entertainability of the writ petition. Admittedly, the petitioner has an efficacious and alternative remedy to file appeal. The said fact is also

mentioned in the impugned order to the effect that an appeal lies against the impugned order before the Appellate Joint Commissioner (ST), Tirupathi.

**8.** In that view of the matter and also in view of the decision in *Assistant Commissioner (CT), Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd's case* (Supra 1) wherein the Hon'ble Apex Court held that the High Court ought not to have entertained the writ petition when an efficacious and alternative remedy of appeal is available to the petitioner, without expressing our opinion on the merits of the petitioner's case, we deem it apposite to give liberty to the petitioner to file an appeal against the impugned order.

**9.** Accordingly, the writ petition is disposed of giving liberty to the petitioner to file an appeal against the impugned order dated 10-7-2023 passed by the 2nd respondent before the concerned Appellate Authority within four (4) weeks from the date of receipt of a copy of this order, in which case, the Appellate Authority shall admit the appeal and after affording an opportunity of hearing to both parties, pass an appropriate order on merits in accordance with governing law and rules expeditiously. Till the time granted for filing of appeal is over, the respondent authorities shall not take any coercive action against the petitioner for recovery of demanded tax under the impugned order. No costs.

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

AJAY

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\*In favour of revenue.