

[2022] 144 taxmann.com 177 (Andhra Pradesh)/[2023] 95 GST 27 (Andhra Pradesh)/[2023] 68 GSTL 118 (Andhra Pradesh)[22-04-2022]

GST : Where notice for personal hearing was issued without giving date for such hearing and on same day, assessee was directed to produce documents for verification, adverse order passed without affording an opportunity of hearing was in violation of section 75(4)



[2022] 144 taxmann.com 177 (Andhra Pradesh)

HIGH COURT OF HYDERABAD

Balaramudu Chanampalli

v.

Assistant Commissioner ST*

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

WRIT PETITION NO.8768 OF 2022

APRIL 22, 2022

Adjudication order - Principles of natural justice - Opportunity of hearing - Whether an opportunity of hearing was required to be given in terms of section 75(4) of APGST Act - Contention of department was that hearing opportunity was required to be provided only when requested - HELD : Notice for personal hearing is required to be given if request is made or when adverse decision is contemplated - Notice for personal hearing was issued and an date of hearing, assessee was directed to produce documents for verification - Adverse order passed without affording an opportunity of hearing was in violation of section 75(4) of APGST Act - Impugned order was to be set aside - Authority was to be directed to pass order after affording opportunity of personal hearing [Section 75 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 9 and 10] [In favour of assessee]

ORDER

C. Praveen Kumar. - This Writ Petition is filed under article 226 of the Constitution of India seeking the following relief:—

"..... to issue an appropriate Writ, Order or Direction more particularly in the nature of MANDAMUS declaring that the impugned Order passed by the First Respondent in Form DRC-07 *vide* Reference no. 1/IGST, dated 14-12-2020, relating to the Tax Periods 04/2018 to 03/2019 under the IGST Act, 2017, as violative of the principles of natural justice, contrary to law, contrary to S.75(4) of the GST Acts, 2017, unjustified and unsustainable and illegal and consequently set aside the same and pass....."

2. Heard the learned counsel for the petitioner, learned Government Pleader for Commercial Tax appearing for respondent Nos.1 and 2 and Sri N. Harinath, learned Assistant Solicitor General appearing for respondent No. 3.

3. With their consent, this Writ Petition is disposed of at the stage of admission.

4. It may not be necessary for us to go into the facts in detail for the reason that the order impugned is challenged mainly on the ground that no opportunity of personal hearing was given to the petitioner, as contemplated under section 75(4) of the I.G.S.T./A.P.G.S.T. Act, 2017.

5. Learned counsel submits that there is a variation in the amount shown in the show cause notice, dated 2-6-2020, and the order passed by the Assessing Officer. Having regard to the above, he would contend that the matter be remanded back to the party concerned for fresh decision after giving opportunity of hearing.

6. The same is opposed by the learned Government Pleader for Commercial Tax contending that a reading of section 75(4) of A.P.G.S.T. Act contemplates that an opportunity of hearing would be given only when a request is made.

7. In order to appreciate the rival arguments advanced namely as to whether an opportunity of hearing is required to be given or not, it would be appropriate to refer to section 75(4) of the A.P.G.S.T. Act, which reads as under :-

"75(4) 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. From a reading of the above provision, it is very much evident that an opportunity of hearing shall be given when a request is made in writing by the person who is charged with tax or penalty or where any adverse decision is contemplated.

9. In the instant case, a notice for personal hearing, dated 13-10-2020, was issued to the petitioner. But on that day, the Assistant Commissioner directed the petitioner herein to produce documents for verification but however, did not give any date for hearing. Without hearing the petitioner, an adverse order came to be passed, which is impugned in this case. Therefore, it can be said that there is violation of Section 75(4) of the A.P.G.S.T. Act. It may not be necessary for us to go into the other aspects since the impugned order is liable to be set aside on this ground alone.

10. Accordingly, this Writ Petition is allowed setting aside the order passed by respondent No. 1 in Form GST DRC-07 *vide* Reference No. 1/IGST, dated 14-12-2020, relating to the tax periods from 04/2018 to 03/2019 under the IGST Act, 2017, and the matter is remanded back to respondent No. 1 for consideration of the same after giving notice of personal hearing to the petitioner. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

SB

*In favour of assessee.