
[2024] 163 taxmann.com 706 (Andhra Pradesh)[28-03-2024]

GST : Where assessee sought payment of tax dues in installments due to pending payments from government projects, revenue's rejection was set aside and payment of tax arrears in monthly installments was allowed



[2024] 163 taxmann.com 706 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Adhunik Infratech India (P.) Ltd.

v.

Assistant Commissioner of State Tax*

G. NARENDAR AND HARINATH. N, JJ.

WRIT PETITION NO. 7624 OF 2024

MARCH 28, 2024

Recovery in installments - Payment of tax - Financial constraints due to pending government dues - Assessee, works contractor, sought payment of tax arrears in installments citing non-receipt of payments from principal contractor for government projects - Revenue rejected request for installments - HELD: Writ petition allowed - Considering assessee's financial constraints and pending dues from government projects, payment of tax arrears allowed in six monthly installments - Revenue's rejection order and bank account attachment set aside - Assessee directed to pay arrears in installments from April to September 2024 [Section 80 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 16-19] [In favour of assessee]

Shaik Jeelani Basha *for the Petitioner.*

ORDER

Harinath.N, J.- The petitioner is aggrieved by the action of 1st respondent in issuing endorsement dated 11.03.2024 rejecting the request for payment of tax due in installments.

2. The petitioner is a private company in the business of executing works contracts. The petitioner executed Government works as a Sub-Contractor. The principal Contractor M/s.Stanch Projects Private Limited has not made the payments to the petitioner for the works executed on the premise that the State Government has not released the payments to the principal contractor(s).

3. The petitioner is due by an amount of Rs.1,77,12,294/- towards arrears of tax for the period ending March, 2023. The petitioner could not pay the taxes as the petitioner did not receive the payments due from the principal contractor.

4. It is also submitted that the principal contractor has filed writ petition challenging the in-action on the part of the Government in releasing the bills payable. In the meanwhile, the 1st respondent issued garnishee notices dated 19.10.2023 and 28.10.2023 to the principal contractor for realization of the tax dues.

5. The petitioner filed WP.No.31777 of 2023 and this Court passed the following order on 11.12.2023.

9. Hence, in these circumstances, we are of the considered opinion that the instant set of facts are required to be adjudicated equitably and without transgressing the four corners of GST Act.

10. In that view of the matter, we deem it appropriate to modify the garnishee order passed by the respondents by restricting it, in so far as it relates to the amounts in the case of the garnishee namely M/s. Stanch Projects Private Limited. In so far as garnishee order passed by the respondents in respect of the other three garnishees, the same are set aside.

11. In any event, this order shall not be treated as a bar on the respondents from seeking payment of tax dues from the petitioner, in the event of the petitioner receiving his dues from either of the three contractors or all of them. In the event of the petitioner receiving his dues from any of the contractors, the petitioner shall deposit tax dues within a period of two weeks thereafter. In the event of such deposit, the respondents shall withdraw the garnishee notice as against M/s. Stanch Projects Private Limited.

6. It is submitted that, the petitioner is due to receive bills to the tune of Rs.9, 62, 21, 616/- from the principal contractors. An amount of Rs.23, 00, 000/- was credited to the account of the petitioner from a third party which was promptly adjusted by the bank itself, towards the dues payable to the bank, i.e, towards the arrears of the over draft account. The 1st respondent issued a notice dated 18.01.2024 calling upon the petitioner to pay an amount of Rs.23,00,000/- within a period of one week. The petitioner submitted his explanation to the 1st respondent that the amount which was credited into their account was auto debited and adjusted by their banker towards the arrears of the over draft account.

7. The 1st respondent issued a notice dated 25.01.2024 calling upon the bank to pay the total amount of Rs.1,77,12,294/- and to pay the arrears as and when amounts are credited to the account of the petitioner. In the said notice, the 1st respondent called upon the bank to make the payment of Rs.23, 00, 000/- which was credited to the account of the petitioner.

8. The petitioner submits that, 1st respondent is not allowing the petitioner to utilize any part of the amount received in the bank account which is resulting in scuttling the operations of the petitioner. The correspondence of the 1st respondent with the bank resulted in freezing of the account of the petitioner.

9. The petitioner filed WP.No.3407 of 2024 seeking raising of the attachment of the bank account of the petitioner and consequential other reliefs. The writ petition was disposed off by this Court *vide* order dated 09.02.2024 permitting the petitioner to make a representation to the 1st respondent placing cogent reasons for seeking time and the said representation be considered and suitable orders be passed after affording an opportunity of hearing to the petitioner.

10. It is submitted that, the petitioner has submitted a representation on 19.02.2024 and sought six months time for making the due payments. The 1st respondent has summarily rejected the plea of the petitioner *vide* endorsement dated 11.03.2024. The said proceedings is under challenge before this Court.

11. The learned Government Pleader for Commercial Tax submits that the case of the petitioner is not unique and that there are several contractors in the state, similarly executing works contractors, however they had complied with their statutory tax payments. It is also submitted that the petitioner is not inclined to pay the tax arrears. At the same time would not deny the liability of the state to pay the dues to the Contractors. It is submitted that the petitioner has not deposited an amount of Rs.23,00,000/-which was credited into the account by one of the principal contractor.

12. A specific query was posed by this Court to the learned Government Pleader for Commercial Taxes to ascertain whether the amount of Rs.23,00,000/-, which was deposited in the account of the petitioner was adjusted by the banker towards the arrears of the over draft account. The learned Government Pleader on instructions submits that the amount deposited into the account of the petitioner was adjusted by the banker.

13. It is not disputed that the petitioner is due to receive payment from the principal contractors for the works executed. It is also not in dispute that the petitioner has executed works for the Government agencies. It is also not in dispute that the principal contractor has initiated legal steps for recovery of the dues from the Government.

14. The petitioner is not denying or disputing the tax arrears. The petitioner is admitting the dues, however, he is requesting for grant of installments for discharging the arrears of tax. This Court in WP.No.3407 of 2024 had permitted the petitioner to make a representation seeking appropriate extension of time for payment of tax arrears. The 1st respondent ought to have exhibited a more pragmatic approach in considering the request of the petitioner.

15. The 1st respondent ought to have before passing the endorsement dated 11.03.2024 considered the case of the petitioner purely on the facts presented by the petitioner.

16. There is force in the contention of the petitioner that a blanket attachment of the bank account of the petitioner - company would bring the operations of the company to a grinding halt. The company would default in paying the salaries and other operational dues. As per Section 80 of GST Act, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act in monthly instalments not exceeding twenty four.

17. The learned counsel for the petitioner requests the Court to consider granting six months time to repay the tax arrears. The learned Government Pleader for Taxes submits that the department is more concerned in recovery of the arrears and nothing else.

18. In our considered opinion, ends of justice would be met if the petitioner is permitted to pay the tax arrears in six monthly installments starting from 15th April, 2024 and ending 15th September, 2024.

19. The impugned proceedings dated 11.03.2024 are hereby set aside, further the Form GST DRC.13 dated 25.01.2024 issued by the 1st respondent to the petitioner's banker Canara Bank SME, Kukatpally Branch, Hyderabad is also set aside. It is made clear that the petitioner shall repay the tax arrears in terms of the above observations of this Court.

20. In the result, the writ petition is disposed off. No costs.

21. Pending miscellaneous petitions, if any, shall stands closed.

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*In favour of assessee.