
[2024] 163 taxmann.com 488 (Andhra Pradesh)[07-05-2024]

GST : Where order was not signed by authority, unsigned order held to be no order in law and cannot be implemented, setting aside impugned order and remanding for fresh decision



[2024] 163 taxmann.com 488 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sravankumar Blasting Works

v.

Assistant Commissioner*

RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.

WRIT PETITION NO. 7572 OF 2024

MAY 7, 2024

Assessment - Validity of - An unsigned order is not a valid order in the eyes of law - Assessee contended impugned order dated 10.11.2020 was not signed by authority and thus invalid - Revenue argued unsigned order was uploaded by competent authority and relied on Sections 160 and 169 of CGST Act, 2017 - HELD: Writ petition allowed - Unsigned order is no order in eyes of law and cannot be implemented - Mere uploading of unsigned order by competent authority does not cure defect - Sections 160 and 169 of CGST Act not applicable to unsigned orders - Impugned order set aside and matter remanded for fresh decision by respondent authorities [Section 160, read with section 169 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7 and 8] [In favour of assessee]

CASE REVIEW

SRK Enterprises v. Assistant Commissioner (W.P.No.29397 of 2023 decided on 10.11.2023) and *A.V. Bhanoji Row v. Assistant Commissioner (ST)* (W.P.No.2830 of 2023 decided on 14.02.2023) [Para 7] followed.

Srinivasa Rao Kudupudi for the Petitioner.

ORDER

Ravi Nath Tilhari, J.- Heard Sri Srinivasa Rao Kudupudi, learned counsel representing learned counsel for the petitioner and Sri S.A.V.Sai Kumar, learned Assistant Government Pleader for Commercial Tax.

2. With the consent of both the parties, this writ petition is decided at this stage.

3. Learned counsel for the petitioner submits that the impugned order dated 10.11.2020 is not signed by the authority and consequently, no order in the eyes of law. The same cannot be implemented or given effect to. He submits that the matter is squarely covered by the order passed by this Court in the case of *M/s.SRK Enterprises v. Assistant Commissioner* in W.P.No.29397 of 2023 decided on 10.11.2023.

4. Learned Assistant Government Pleader for Commercial Tax has obtained written instructions from the authority and informed that the impugned order is not signed but was uploaded by the competent authority. He raised the same plea as was raised in *M/s.SRK Enterprises' case* (cited supra) relying on Section 160 and 169 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act, 2017').

5. In *M/s.SRK Enterprises' case* (cited *supra*), this Court referred to the previous order of the Co-ordinate Bench in the case of *A.V.Bhanoji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14.02.2023 and held that the signatures cannot be dispensed with and the provisions of Section 160 & 169 of the CGST Act, 2017 would not come to the rescue. This Court held that:

"7. On consideration of the submissions advanced and the legal provisions, we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under "any mistake, defect or omission therein" as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter *i.e.* validity of the order.

8. We are of the further view that Section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.

9. In the case of *A. V. Bhanoji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14.02.2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue.

10. Paragraph 6 of *A. V. Bhanoji Row (supra)* is reproduced as under:-

"6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action."

6. Learned Assistant Government Pleader for Commercial Tax further submits that the matter may be remitted for fresh decision.

7. In view of the aforesaid, we allow this petition and set aside the proceedings/order issued by respondent No.1 dated 10.11.2020. The respondent authorities shall pass fresh orders in accordance with law, expeditiously and preferably within a period of three (03) weeks from the date of receipt of a copy of the order.

8. The Writ Petition stands allowed in part in the aforesaid terms.

9. No orders as to costs.

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

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*In favour of assessee.