

[2019] 106 taxmann.com 119 (Andhra Pradesh and Telangana)/[2019] 74 GST 335 (Andhra Pradesh and Telangana)[08-05-2019]

GST: Where Competent Authority had levied interest upon assessee and assessee filed writ petition challenging impugned order, since an efficacious alternative remedy of appeal was available to assessee, High Court was not inclined to invoke writ jurisdiction

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[2019] 106 taxmann.com 119 (Andhra Pradesh and Telangana)

HIGH COURT OF ANDHRA PRADESH AND TELANGANA

Kesoram Industries Ltd.

v.

Assistant Commissioner of Central GST & Central Excise*

RAGHVENDRA SINGH, ACTG. CJ.

AND SHAMEEM AKTHER, JJ.

WRIT PETITION NO. 10207 OF 2019

MAY 8, 2019

Section [50](#), read with section [107](#), of the Central Goods and Services Tax Act, 2017/Section [50](#), read with section [107](#), of the Andhra Pradesh Goods and Services Tax Act, 2017 - Payment of interest - Interest on delayed payment - Competent Authority had levied interest upon assessee - Assessee filed writ petition challenging impugned order on ground that since principles of natural justice had been violated, it was entitled to invoke writ jurisdiction of High Court - Whether since an efficacious alternative remedy of appeal under section 107 was available to assessee, High Court was not inclined to invoke writ jurisdiction - Held, yes - Whether writ petition deserved to be dismissed - Held, yes [Para 8] [In favour of revenue]

(NR)

FACTS

- The Competent Authority had levied interest upon the assessee.
- The assessee filed a writ petition challenging the impugned order on the ground that since the principles of natural justice had been violated, it was entitled to invoke the writ jurisdiction of the Court.

HELD

- The instant writ petition is highly misplaced for section 107 clearly provides an efficacious alternative remedy to the assessee to approach the appellate authority. It is indeed a settled principle of law that generally a writ jurisdiction cannot be invoked in case the efficacious alternative remedy is available. [Para 5]
- Even otherwise, the assessee has approached the Court in order to circumvent the efficacious alternative remedy. For, according to section 107(6), an appeal can be filed provided the appellant makes the statutory deposit before the Appellate Authority. It is only in order to escape the said liability, the assessee has rushed to the Court. [Para 6]
- Even if the assessee is of the opinion that the principles of natural justice have been violated, it is free to

raise the said plea before the Appellate Authority. [Para 7]

- In view of the aforesaid, the Court is not inclined to invoke the writ jurisdiction. Therefore, the writ petition deserved to be dismissed. [Para 8]

A.K. Jaiswal for the Petitioner. **B. Narasimha Sarma** for the Respondent.

ORDER:

Raghvendra Singh Chauhan, Actg., C.J. - The petitioner is aggrieved by the orders dated 25.02.2019 and 28.02.2019, passed by the respondent No.2. By the first order, the petitioner was requested to workout the interest payable on the entire amount inclusive of the ITC availed, and also penalty payable under Section 122(iii) of the Goods and Services Act ('the Act', for short). By the latter order, the petitioner was directed to pay the interest, failing which, the recovery proceedings would be initiated under Section 79 of the CGST/SGST Act.

2. Mr. N. Prasad, the learned counsel appearing for Mr. A.K. Jaiswal, the learned counsel for the petitioner, submits that the order, dated 25.02.2019, is the recovery order, which has been passed without providing an opportunity of personal hearing to the petitioner. Immediately thereafter, the order, dated 28.02.2019, was passed. The said order was replied by the petitioner on 25.03.2019. Despite the petitioner has submitted its reply, the respondent No.2 has attached the bank account of the petitioner by notice, dated 29.04.2019. Hence, this petition before this Court.

3. According to the learned counsel, since the principles of natural justice have been violated, the petitioner is entitled to invoke the writ jurisdiction of this Court.

4. Heard the learned counsel for the petitioner, and perused the impugned orders.

5. The present writ petition is highly misplaced for Section 107 of the Act clearly provides an efficacious alternative remedy to the petitioner to approach the appellate authority. It is, indeed, a settled principle of law that generally, a writ jurisdiction cannot be invoked, in case the efficacious alternative remedy is available.

6. Even otherwise, the petitioner has approached this Court in order to circumvent the efficacious alternative remedy. For, according to Section 107(6) of the Act, an appeal can be filed provided the appellant makes the statutory deposit before the appellate authority. It is only in order to escape the said liability, the petitioner has rushed to this Court.

7. Even if the petitioner is of the opinion that the principles of natural justice have been violated, he is free to raise the said plea before the appellate authority.

8. For the reasons stated above, this Court is not inclined to invoke the writ jurisdiction. The writ petition is, therefore, dismissed.

9. Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

S.K. JAIN

*In favour of revenue.