
[2023] 149 taxmann.com 66 (Andhra Pradesh)/[2023] 73 GSTL 180 (Andhra Pradesh)/[2023] 97 GST 841 (Andhra Pradesh)[07-03-2023]

GST : Proper Officer cannot issue summons under section 70(1) directing customer of assessee to stop further payments to assessee

■ ■ ■

[2023] 149 taxmann.com 66 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Sai Balaji Associates

v.

State of Andhra Pradesh*

U. DURGA PRASAD RAO AND V. GOPALAKRISHNA RAO, JJ.

WRIT PETITION NO.4663 OF 2023

MARCH 7, 2023

Summons - Power to direct assessee's customer - Notice was issued to assessee's customers under section 70(1) - No notice was issued to them in exercise of powers conferred under section 83 - Proper officer cannot exercise powers to direct summoning party to stop payment to assessee under section 70(1) - Thus, respondent exceeded his power in directing customer of petitioner to stop further payments to petitioner herein - Impugned portion of notice issued under section 70(1) customers requesting to stop further payments until clearance was given by respondent officer was to be set aside [Section 70, read with section 83, of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 5] [In favour of assessee]

G.V. Shivaji, Adv. for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - The challenge in this writ petition is to the notice under section 70 (1) of GST Act, 2017 issued by the 3rd respondent to M/s. Sterlight technologies limited, Vishakapatnam who are the customers of the petitioner.

2. Heard learned counsel for petitioner Mr. G.V.Shivaji and learned Government Pleader for Commercial Taxes II.

3. The grievance of the petitioner as ventilated by learned counsel is that though the 3rd respondent in terms of section 70 (1) of G.S.T Act, has power to summon any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in any inquiry in the same manner, however that power is not extended to direct the summoning of a party to stop all further payments, which he ought to receive from the customers. Learned counsel would submit in notice such a direction is contained which is beyond the jurisdiction of the 3rd respondent. He would thus pray to allow the writ petition and delete the last paragraph in the impugned notice.

4. Learned Government Pleader while admitting that in a notice issued under section 70 (1) of GST Act, the concerned officer may not have power to issue a direction to stop payment by the summoning party to the assessee, would however argue, he has such power under section 83 of GST Act which deals with provisional attachment of any property or bank account of the assessee.

5. As can be seen, the impugned notice was issued under section 70(1) of GST Act but not under section 83 of GST Act. Section 70 (1) of GST act only says that the proper officer shall have the power to summon any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in the enquiry and nothing more. Therefore, it is obvious that under section 70 (1) of GST Act the proper officer cannot exercise powers to direct the summoning party to stop payment to the assessee which is beyond the scope of 70 (1) of GST Act. Of course, under Section 83 of GST Act, if the Commissioner is of the opinion that for the purpose of protecting the government revenue, he may by order provisional attachment of any property including bank account belonging to the taxed person or any person specified in sub-section 1 (A) of section 122 in such manner as prescribed. The impugned notice was issued under section 70 (1) of GST Act but not in exercise of powers conferred under section 83 of GST Act. Thus at the outset, it is clear that the 3rd respondent has exceeded his power in directing M/s. Sterlight Technologies Limited to stop further payments to the petitioner herein. Therefore, such a direction is beyond the jurisdiction of the 3rd respondent. The same is liable to be set aside to that extent.

6. Accordingly, this writ petition is allowed and the impugned portion of the notice issued under section 70 (1) of GST Act *i.e.*, "in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is given by the undersigned" is set aside and liberty is given to the 3rd respondent to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

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

Poonam

*In favour of assessee.