
[2021] 129 taxmann.com 426 (Andhra Pradesh)/[2021] 55 GSTL 150 (Andhra Pradesh)[06-04-2021]

GST : Where Competent Authority passed an order under section 74 raising demand of tax, but had not served on assessee notice of personal hearing indicating date of hearing according to mandatory requirement of second limb of section 75(4), matter required fresh consideration

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[2021] 129 taxmann.com 426 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

GRT Hotels & Resorts (P.) Ltd.

v.

State of Andhra Pradesh*

A.V. SESA SAI AND MS. J. UMA DEVI, JJ.

W.P. NO. 7584 OF 2021

APRIL 6, 2021

Demand - Mandatory requirement - Competent Authority issued on assessee a notice calling upon it to show cause as to why tax should not be imposed granting fifteen days time to file objections and arguments - Assessee did not file any objections within time stipulated - Thereafter Competent Authority passed an order under section 74 on assessee - HELD : Though show cause notice was issued, Competent Authority before resorting to impugned action ought to have served on assessee notice of personal hearing indicating date of hearing according to second limb of sub-section (4) of section 75 - Said mandatory requirement was not complied with - Matter required to be remanded to Competent Authority for fresh consideration and for passing appropriate orders after giving opportunity of personal hearing to assessee [Section 74, read with section 75, of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7 and 8] [In favour of assessee]

Kailashnath P.S.S., *Ld. Counsel for the Petitioner.* **T.C.D. Sekhar,** *ld. Govt. Pleader for the Respondent.*

ORDER

A.V. Sesha Sai, J. - Heard Sri Kailashnath P.S.S., learned counsel for the petitioner, and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax, appearing for the respondents, apart from perusing the entire material available on record.

2. Challenge in the present Writ Petition is to the order of demand passed by the Assistant Commissioner of StateTax, Ramachandrapuram, East Godavari District-second respondent herein *vide* A.O.No.ZH370221OD39587, dated 9-2-2021. The second respondent herein *vide* Ref.GSTIN.No.37AAACG3608B1Z5, dated 6-1-2021, issued a show cause notice, calling upon the petitioner herein to show cause as to why tax of Rs. 10,04,022/- should not be imposed, granting fifteen days time to the petitioner herein to file objections/arguments from the date of receipt of the said notice. Admittedly, petitioner herein did not file any objections within the time stipulated.

3. The only contention advanced by the learned counsel for the petitioner in the present Writ Petition is that, in contravention of the mandatory provisions of section 75 of the Central Goods and Services Tax Act, 2017

(for brevity, 'the Act') in general and sub-section (4) of section 75 of the Act in particular, the second respondent herein passed the impugned order.

4. On the contrary, it is strenuously contended by the learned Government Pleader that, having failed to respond to the show cause notice issued by the second respondent herein, within the time stipulated, petitioner herein is estopped from questioning the validity and the legal sustainability of the impugned order passed by the second respondent on 9-2-2021. In the instant case, second respondent herein passed the impugned order under section 74 of the Act and rule 142 (5) of the Central Goods and Services Tax rules, 2017 framed thereunder.

5. The short question that arises for consideration of this Court in the present Writ Petition is :

"Whether the questioned order, dated 9-2-2021, passed by the second respondent, is sustainable and tenable having regard to the provisions of section 75 (4) of the Act?."

6. Sub-section (4) of section 75 of the Act deals with the general provisions relating to determination of tax. Sub-section (4) of section 75 of the Act, in clear and vivid terms, stipulates that 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.

7. In the instant case, though show cause notice was issued on 6-1-2021, asking the petitioner herein to submit objections, in the considered opinion of this Court, second respondent herein, before resorting to the impugned action, ought to have served on the petitioner the notice of personal hearing, indicating the date of hearing, according to the second limb of sub-section (4) of section 75 of the Act. In the instant case, the said mandatory requirement is not complied with. On this ground alone, this Court is inclined to set aside the impugned order, dated 9-2-2021.

8. For the aforesaid reasons, Writ Petition is allowed, setting aside the order of the second respondent, *vide* A.O.No.ZH370221OD39587, dated 9-2-2021, and the matter is remanded to the second respondent herein for fresh consideration and for passing appropriate orders after giving opportunity of personal hearing to the petitioner herein. It is made clear that, in order to have a quietus for the issue, petitioner herein is permitted to submit objections, if any, within a period of one week from the date of receipt of a copy of this order. There shall be no order as to costs.

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

S.K. JAIN

*In favour of assessee.