
[2024] 164 taxmann.com 773 (Andhra Pradesh)[10-07-2024]

GST : Where impugned order levied tax, penalty and interest on basis of communication from Additional Commissioner of Commercial Taxes (Enforcement) stating that input tax credit had been fraudulently availed without actual receipt of goods, report of Additional Commissioner of Commercial Taxes (Enforcement) not furnished to petitioner, impugned order was to be set aside and matter remanded

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[2024] 164 taxmann.com 773 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Larix Minerals

v.

Assistant Commissioner, State Tax*

R. RAGHUNANDAN RAO AND HARINATH N., JJ.

W.P. NO. 17518 OF 2023

JULY 10, 2024

Demand - Fraudulent availment of input tax credit - Report of Additional Commissioner of Commercial Taxes (Enforcement) - Petitioner's registration was cancelled and at time of cancellation, no taxes were shown due from petitioner - Subsequently, a show-cause notice was issued informing it that Additional Commissioner of Commercial Taxes (Enforcement), Bangalore had sent a communication stating that input tax credit had been fraudulently availed on basis of invoices issued by "MM, Bengaluru" without actual receipt of goods - Show-cause notice called upon petitioner to either furnish final return or to pay wrongly availed ITC of Rs. 7,13,917 - Petitioner filed his objections - However, respondent authority passed an order of assessment requiring petitioner to pay tax, penalty and interest - Petitioner submitted that it had requested respondent authority to furnish a copy of above report of Additional Commissioner of Commercial Taxes (Enforcement), however, said report had not been furnished to it - HELD: An assessment based on material and reports submitted by Regional Vigilance and Enforcement Authority can be upheld only when such reports are supplied to assessee along with notice of assessment before any assessment order is passed - Report of Additional Commissioner of Commercial Taxes (Enforcement) had not been furnished to petitioner, therefore, subsequent assessment order which levied tax, penalty and interest was to be set aside - Respondent authority was also to be directed to take up assessment proceedings after furnishing above copy of report of Additional Commissioner and after giving opportunity of personal hearing to petitioner [Section 73 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 9 and 10] [In favour of assessee/ Matter remanded]

G. Narendra Chetty *for the Petitioner.* **Y.V. Anil Kumar**, Central Govt. Counsel *for the Respondent.*

ORDER

R. Raghunandan Rao, J. - The petitioner has registered a dealer under the Goods and Service Tax Act, 2017 with effect from 21.08.2018 in the Addanki Circle and thereafter, the registration was transferred to Bapatla Circle, Guntur-II Division. The petitioner who was earlier doing business in granite slabs or blocks had subsequently cancelled his registration with effect from 30.09.2019. At the time of cancellation, which was accepted by the department, no taxes were shown due from the petitioner.

2. Subsequently, a show-cause notice was issued to the petitioner in form GST DRC-01, dated 15.12.2021, informing the petitioner that the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore, Karnataka had sent a communication dated 05.10.2021 stating that input tax credit of Rs.7,13,917/- has been fraudulently availed on the basis of invoices said to have been issued by one M/s. Manjunatha Marketing, Bengaluru without actual receipt of goods. The show-cause notice called upon the petitioner to either furnish the final return in GSTR-10 or to pay the wrongly availed ITC amount of Rs.7,13,917/-. The petitioner filed his objections dated 10.01.2022. The 1st respondent, who had issued the show-cause notice, had passed an order of assessment requiring the petitioner to pay tax of Rs.7,13,917/- and penalty of Rs.7,13,917/- apart from interest of Rs.5,44,298/- aggregating to Rs.19,72,132/-.

3. Aggrieved by the said order, the petitioner has approached this Court by way of the present Writ Petition.

4. Sri G. Narendra Chetty, learned counsel for the petitioner assails the said order of assessment on three grounds as here under:-

- (i) Firstly, the learned counsel for the petitioner contends that the assessment order, after extracting the objections raised by the petitioner had rejected all the applications by stating that the contention of the petitioner was thoroughly examined and it was found that the petitioner had not produced any valid documentary evidence in support of its contention. The learned counsel for the petitioner would submit that such rejection of all objections raised by the petitioner and without analyzing or considering any of them is arbitrary and violative of certain principles of natural justice as envisaged by various Judgments of the High Courts and the Hon'ble Supreme Court of India.
- (ii) Secondly, the petitioner, in his objections of 10.01.2022, had requested the 1st respondent to furnish a copy of the report of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore, Karnataka sent under the communication dated 05.10.2021. However, the said report has not been furnished to the petitioner and as such no order of assessment could have been passed without furnishing the said report. The learned counsel for the petitioner also relies upon the Judgment of the Division Bench of the Common High Court of Andhra Pradesh in the case of *Sri Nallana Sambasiva Rao v. State of Andhra Pradesh* (2015) 61 APSTJ 255.
- (iii) The Third ground raised by the petitioner is that section 75(4) of the Goods and Service Tax Act, 2017 requires the assessing officer to grant a personal hearing either if the assessee so requires or if the assessing officer proposes to pass an order adverse to the interest of assessee. The learned counsel for the petitioner would submit that in the present case, such an opportunity of personal hearing should have been given to the petitioner as the assessing officer was proposing to pass an order adverse to the petitioner. He would also submit that no such notice of personal hearing was served on the petitioner.

5. In reply to these grounds, the learned Assistant Government Pleader for Commercial Tax would submit that the objections raised by the petitioner were merely extracts of various Judgments of the various High Courts and a statement that all necessary documents were available with the petitioner. In such circumstances, the observation of the assessing officer that no material has been placed before the assessing officer is sufficient compliance with the requirement that the objections of the assessee should be analyzed.

6. The learned Assistant Government Pleader for Commercial Tax would submit that the notice for personal hearing was sent on 03.02.2023 for giving personal hearing on or before 10.02.2023 and the same was served by registered post with acknowledgment due. The noting on the registered post cover that was returned was "no such person was available in the address" of the office of the dealer. He would submit that the responsibility of service of notice on the assessing officer is discharged upon notice being sent to the address of the dealer available in the record of the assessing officer. It is the responsibility of the dealer to intimate any change in address, failing which the service of notice on the address registered with the assessing officer would be sufficient.

7. On the question of non furnishing of the report of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore, Karnataka, the learned Assistant Government Pleader submits that the petitioner should have approached the authority in person for perusal of the documents.

8. As far as grounds 1 & 2 are concerned, this Court does not find any reason to interfere with the order of the 1st respondent-assessing officer. A perusal of the objections raised by the petitioner would show that the said

objections are extracts of various Judgments and a statement that all necessary documents are available with the petitioner. In such circumstances, the observations of the assessing officer made above are sufficient response to the objections raised by the petitioner. Similarly, the absence of the petitioner at the address available with the assessing office cannot amount to non-service of notice on the petitioner.

9. However, on the question of non furnishing of the report of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore, Karnataka We respectfully follow the Judgment of Division Bench of the Common Andhra Pradesh High Court in the case of *Sri Nallana Sambasiva Rao v. State of Andhra Pradesh* (2015) 61 APSTJ 255, which had held that an assessment based on material and reports submitted by Regional Vigilance and Enforcement Authority can be upheld only when such reports are supplied to the assessee along with the notice of the assessment before any assessment order is passed. As the said report has not been furnished, the subsequent assessment order which levied tax penalty and interest would have to be set aside.

10. In the circumstances, this Writ Petition is allowed setting aside the impugned order of assessment passed by the 1st respondent in Form GST DRC-07, *vide* A.O.No.ZD370423028360Q, dated 18.04.2023 and remanding the matter back to the 1st respondent to take up the assessment proceedings after furnishing the copy of the report of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore, Karnataka and after giving a opportunity of personal hearing to the petitioner. There shall be no order as to costs.

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

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*Partly in favour of assessee.