

[2023] 150 taxmann.com 174 (Andhra Pradesh)/[2023] 73 GSTL 148 (Andhra Pradesh)/[2023] 97 GST 804 (Andhra Pradesh)[25-04-2023]

GST : Officials of V&E Department have statutory right to conduct inspection in assessee's premises and can share relevant information with Commercial Tax Department without any prior requisition under section 72(2) of APGST Act, 2017

GST : Where show cause notices were issued by Deputy Commissioner in light of alert note forwarded by V&E Department and not under section 67 of APGST Act, 2017, authorization was not required under section 67 ibid. but under section 61 of APGST Act, 2017 read with rule 99 of APGST Rules, 2017



[2023] 150 taxmann.com 174 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sudhakar Traders

v.

State of Andhra Pradesh*

U. DURGA PRASAD RAO AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

W.P. NOS. 6599 AND 6601 OF 2023

APRIL 25, 2023

Search and seizure - Vigilance and Enforcement Officer - Government with an avowed object has constituted V&E Department and has assigned certain functions, one of which is to safeguard revenue due to Government - Officials of V&E Department have statutory right, without any prior requisition, to conduct inspection in assessee's premises and can share relevant information with Commercial Tax Department and assist them - Powers conferred are independent and exclusive and are in aid to Tax department; however, same was not in derogation to section 72(2) of APGST Act, 2017 - Therefore, there is no conflict between powers and functions of V&E Department and power of Chief Commissioner to make requisition to Government under section [72\(2\)](#) of Andhra Pradesh Goods and Services Tax Act, 2017 [Section [72](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 10 and 11]

Demand- Show cause notice was issued by Deputy Commissioner in light of alert note forwarded by V&E Department - No action was contemplated to inspect premises of petitioner or to search and seize any goods or books of account as contemplated under section 67 of APGST Act, 2017 - HELD : As such, no authorization was necessary under section 67 ibid. to issue impugned notices - However, Deputy Commissioner required authorization of Chief Commissioner assigning task of issuing notices under rule 99 of A.P. Goods and Services Tax Rules, 2017 read with section 61 of A.P. Goods and Services Tax Act, 2017 which had not been taken - Impugned notices suffered from vice of lack of authorization by Proper Officer i.e., Chief Commissioner and were thus, liable to be set aside [Section [61](#), read with section [73](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 99 of Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 12 and 13] [In favour of assessee]

CASE REVIEW

Prakashsinh Hathisinh Udavat v. State of Gujarat [2019] 112 taxmann.com 124/31 GSTL 583 (Guj.) (paras 4, 12) distinguished.

CASES REFERRED TO

Prakashsinh Hathisinh Udavat v. State of Gujarat [2019] 112 taxmann.com 124/31 GSTL 583 (Guj.) (paras 4).

Sri . M.V.K. Murthy, Ld. Sr. Counsel and **M.V.J.K. Kumar** for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - W.P.No.6599/2023 and 6601/2023 are filed by the petitioner challenging the notices in Form GST ASMT-10 dated 28-2-2023 issued by 2nd respondent under rule 99 of the A.P. Goods and Service Tax Rules, 2017 (for short, 'the AGPST Rules') r/w section 61 of the A.P. Goods and Service Tax Act, 2017 (for short, 'the AGPST Act') calling for explanation of the petitioner with regard to the discrepancies found in respect of the returns submitted by the petitioner for the tax period April 2019 to March 2020 and April 2020 to March 2021 respectively.

2. The petitioner is engaged in supply of iron and steel purchased from the resident registered taxable persons. The petitioner is a registered dealer under the APGST Act and an assessee on the file of 3rd respondent herein. While so, the petitioner submitted its returns for the taxable period April 2019 to March 2020 and April 2020 to March 2021. The 3rd respondent, on having received alert note vide R.C.No.158/C/2020 dated 21-12-2022 from the Regional Vigilance & Enforcement Officer/2nd respondent, scrutinized the aforesaid returns and found the suppression of sales turnover in the returns submitted by the petitioner for both the taxable periods and accordingly, issued notices of intimation dated 28-2-2023 regarding the discrepancies in Form GST ASMT-10 under rule 99(1) of the APGST Rules r/w Section 61 of the APGST Act and called for the payment of the due tax/explanation within fifteen days of the receipt of the notice.

Hence, the instant two writ petitions.

3. Heard Sri M.V.K. Murthy, learned Senior Counsel representing Sri M.V.J.K. Kumar, learned counsel for petitioner, and learned Government Pleader for Commercial Tax-II representing the respondents 1 & 3, and learned Government Pleader for Home representing 2nd respondent.

4. Vehemently remonstrating the impugned notices, learned Senior Counsel would firstly argue that there is no provision authorizing the Director of Vigilance & Enforcement in the State to conduct inspection of the business premises of a registered dealer under GST law. Therefore, the impugned notices issued by 3rd respondent on the strength of the alert note forwarded by 2nd respondent is a gross infraction of the GST law and on that ground alone the impugned notices are liable to be *set aside* as they are based on the unauthorized alert notes. He alternatively argued that even assuming for argument sake that the 2nd respondent has power to inspect the premises of the petitioner still he cannot himself forward any alert notes to the 3rd respondent for the reason that under section 72 of the APGST Act, whenever the Chief Commissioner required the assistance of any public officers for implementation of the provisions of the APGST Act, he may call upon to do so and on his requisition the Government may by notification empower and require any class of officers other than the officers mentioned in sub-section (1) of section 72 to assist the proper officers in implementation of the Act. Learned counsel while referring to section 72 would strenuously argue, in the instant case there is no material to show that either the Chief Commissioner issued any requisition to the Government seeking assistance of the 2nd respondent being the Regional Vigilance & Enforcement Officer or the Government issued any notification to that effect. Therefore, the impugned notices fell foul of the canons of law.

- (a) Secondly, learned Senior Counsel argued that section 67 of the APGST Act is the relevant provision which enables a Proper officer not below the rank of Joint Commissioner or any officer authorized by him to inspect any place of business of the taxable person on the ground that he has suppressed any transaction relating to supply of goods or services or claimed Input Tax Credit in excess of his entitlement or indulged in contravention of any of the provisions of the Act or engaged in business of transporting goods or keeping the goods which escaped payment of tax etc. Learned Senior Counsel would submit that in the instant case, in the impugned notices the 3rd respondent has not stated anything about the authorization issued to him by the Joint Commissioner

to either conduct the inspection or to issue the impugned notices. Since the notices suffer the vice of lack of authorization under section 67, they are illegal and unsustainable and liable to be set aside. In this regard he placed reliance on *Prakashsinh Hathisinh Udavat v. State of Gujarat* [2019] 112 taxmann.com 124/31 GSTL 583 (Guj.).

- (b) Next, learned Senior counsel would argue that in spite of the representation dated 2-3-2023 requesting 3rd respondent to communicate copy of the report along with the alleged incriminating material stated to be forwarded to him by the 2nd respondent, except the pre-prepared stock inventory, the 3rd respondent has not forwarded the inspection report of the 2nd respondent and other incriminating material and thereby the petitioner was deprived of valuable opportunity to submit an effective explanation/objections to the impugned notices. He thus prayed to allow the writ petitions.

5. Per contra, learned Government Pleader for Commercial Taxes-II while supporting the impugned notices and opposing the writ petitions argued that in the instant case the impugned notices in Form GST ASMT-10 were issued by following the procedure under rule 99(1) r/w section 61 of the APGST Act but not under section 67(1) or (2) of the APGST Act. In expatiation, referring to section 67 he would submit that whenever a Proper Officer not below the rank of Joint Commissioner has reason to believe that a taxable person has suppressed any transaction relating to supply of goods or services or claimed input tax credit in excess of his entitlement or indulged in contravention of the provisions of the GST Act or rules to evade tax, then he may authorize in writing any officer of the State tax to inspect the premises of such assessee under sub-section (1). He would further submit, pursuant to such inspection, if he has reason to believe that any goods are liable for confiscation or any documents or books or things useful for the proceedings under this Act are secreted, then as per sub-section (2) he may authorize in writing any other officer of the State tax to search and seize such goods or documents. Learned Government Pleader would thus submit that section 67(1) and (2) would apply when the assessee acted in contravention of the provisions of the Act to evade tax and such attempts came to the notice of the proper officer not below the rank of Joint Commissioner. Then in order to ascertain the truth of the information, at first he may authorize an officer to inspect the premises of the assessee and later authorize an officer of the State tax to search and seize incriminating goods or documents as the case may be. In such an event, learned Government Pleader would submit, the officer of the State tax who proceeds for inspection or search and seize shall require the prior authorization of the proper officer not below the rank of Joint Commissioner. However, in the instant case, the proceedings were undertaken and impugned notices were issued not under section 67 of the APGST Act but by following rule 99(1) r/w section 61 of the Act. As per section 61, after an assessee makes self-assessment and files returns for the relevant tax period, the Proper Officer, under section 61 of the APGST Act, may scrutinize returns and related particulars furnished by the registered person to verify the correctness of the returns and inform him of the discrepancies noticed and seek his explanation thereto. Learned Government Pleader would strenuously argue that in the instant case, the petitioner has filed its returns for the tax period April 2019 to March 2020 and April 2020 to March 2021. However, on receiving the alert note from the statutory authority i.e., the Regional Vigilance & Enforcement Officer, Kurnool, pointing out the suppression of sales turnovers, the 3rd respondent in order to seek clarification from the petitioner issued the two impugned notices asking him to either pay the demanded tax if he does not wish to challenge the notices or submit its objections within the stipulated time. Learned Government Pleader would argue in vehemence that the 3rd respondent is well within his powers and jurisdiction to issue the impugned notices and the petitioner cannot clamour that the 3rd respondent cannot act upon the alert note forwarded by 2nd respondent on one hand and issue the impugned notices without authorization on the other. He thus prayed to dismiss the writ petitions.

6. While so, learned Government Pleader for Home representing the 2nd respondent while producing the copy of the G.O.Ms.No.504 dated 25-11-1997 issued by the General Administration (V&E-A) Department, would submit that in the said G.O., the role of the Vigilance and Enforcement Department has been delineated, as per which one of the tasks of the Vigilance & Enforcement Department is to prevent the leakage of revenues due to the Government and in that context, the 2nd respondent and his officials while inspecting the premises of the petitioner found stock variation and also sale of material without issuing invoices/bills and therefore, after obtaining the statement from the petitioner, forwarded alert note to the 3rd respondent for taking necessary action to prevent evasion of the tax. Learned Government Pleader would thus submit that the 2nd respondent has authority to inspect the premises of the petitioner and forward the alert note to 3rd respondent and his acts are thus just and legal.

7. The points for consideration are:

- (1) Whether the 2nd respondent has no statutory authority to inspect the premises of the petitioner and forward alert note to the 3rd respondent regarding the suppression of sales turnover and other deficiencies and 3rd respondent cannot act upon the said alert note and issue impugned notices dated 28-2-2023 to the petitioner?
- (2) Whether the impugned notices are unsustainable in law for want of authorization from the Proper Officer under section 67 of the APGST Act and hence liable to be set aside?

8. Point No. 1: We gave our anxious consideration to the above respective arguments of either side. Admittedly, the impugned notices dated 28-2-2023 were issued by the 3rd respondent on the strength of the alert note dated 21-11-2022 forwarded by the 2nd respondent stating that during his inspection of the premises of the petitioner, his team found sale of iron and binding wire by the petitioner without issuing any invoices/bills and thus suppressed the sales turnover to avoid the tax. The 3rd respondent in his turn issued the impugned notices dated 28-2-2023 and instructed the petitioner to either pay the demanded tax within 15 days or submit his objections by 14-3-2023.

9. Be that as it may, a perusal of the G.O.Ms.No.504, General Administration (V&E-A) Department, dated 25-11-1997 produced by learned Government Pleader for Home shows that the Vigilance & Enforcement Department was constituted by the Government of A.P. *vide* G.O.Ms.No.269, General Admin (SC.D) Department dated 11-6-1985 to conduct enquiries/investigations into specific allegations affecting public interest and to take effective measures through its own machinery and achieve several objectives, one of which is prevention of leakage of revenues due to the Government. In the said G.O., it is further stated that the V&E Department is expected to carry out vigilance functions where Government spending is involved and enforcement functions in respect of the revenues due to the Government. The Head Office of V&E was reconstituted into following four wings *vide* office order No. 283, G.A (V&E) Department dated 3-8-1995:

- (a) Revenue Wing
- (b) Engineering wing
- (c) Development works Wing
- (d) Natural Resources wing

Each of these wings is headed by the Joint/Additional Director. Further, the officers working in V&E Department have jurisdiction and powers throughout the State of Andhra Pradesh in respect of matters to which the Executive Authority of the State extends. The jurisdiction of the V&E Department extends to all departments of the Government, State Public Sector undertakings, State Government companies, all local bodies like Municipalities and Zilla Parishads. Finally it is stated in the aforesaid G.O. that all the administrative departments of the Government shall extend necessary cooperation to the V&E Department.

10. Thus, the above G.O. pellucidly tells that the enforcement functions of the V&E Department *inter alia* are to safeguard revenues due to the Government and in that context it is permeable in all the departments including the Tax department. We agree with the submission of the learned Government Pleader for Home that in the matter of protection of revenue due to the Government in the form of taxes, the officials of the V&E Department, if need be, can make inspection in the premises of taxable traders. During course of such inspection if the officials of the V&E Department found the attempts of such traders in evasion of tax, they can pass on the information to the concerned tax department. In our view, it is an exchange of information between two statutory authorities for safeguarding the revenue due to the Government. Therefore, we are unable to accept the contention of petitioner that the 2nd respondent has no statutory right to conduct inspection in its premises and forward the alert note to the 3rd respondent and the latter cannot act upon such information.

11. We also cannot appreciate the other contention of learned counsel for petitioner that unless the Chief Commissioner requires the assistance of any public officer(s) in terms of Section 72(2) of the APGST Act and the Government issues a notification requiring such class of officer(s) to assist the Proper Officer, no assistance can be extended by any public officer as in the instant case. For better appreciation, Section 72 of the APGST Act is extracted as under:

72. Officers to assist proper officers

- (1) All officers of Police, Railways, Customs, and those engaged in the collection of land revenue,

including village officers, and officers of central tax and officers of the Union territory tax shall assist the proper officers in the implementation of this Act.

- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Chief Commissioner.

It is true that when the Chief Commissioner requires the assistance of any other class of officers other than those mentioned in sub-section (1), he may require such assistance and the Government may issue notification in that regard. However, apart from that, the Government with an avowed object constituted V&E Department under G.O.Ms.No.269 and assigned certain functions, one of which is to safeguard the revenue due to the Government. In that context, the officers of the said department can share the relevant information with the Commercial Tax Department and assist them without any prior requisition. The powers conferred under G.O.Ms.Nos.269 and 504 are independent and exclusive and they are in aid to the Tax department but not in derogation to section 72(2) and in our view, there is no conflict between the powers and functions of the V&E Department and the power of Chief Commissioner to make requisition to the Government under section 72(2) of the APGST Act. This point is answered accordingly.

12. Point No. 2: Regarding this point, as rightly argued by the learned Government Pleader for Commercial Taxes-II, the 3rd respondent issued impugned notices in terms of rule 99(1) of the APGST Rules r/w Section 61 of the APGST Act but not under section 67 of the Act. As per section 61, during the scrutiny of the returns and related particulars submitted by an assessee, if the proper officer finds any discrepancies, he may seek explanation of the assessee and if such explanation is found acceptable, no further action shall be taken or otherwise if the assessee fails to furnish satisfactory explanation or fails to take the corrective measures in his return in which the discrepancy is accepted, the Proper Officer may initiate appropriate action. In the instant case, the 3rd respondent in the light of alert note forwarded by 2nd respondent, only issued the impugned notices to the petitioner either to pay the demanded tax if he accepts the discrepancies or to submit its objections/explanations within the stipulated time. At this stage, no action was contemplated to inspect the premises of the petitioner or to search and seize any goods or books of account as contemplated under section 67 of the Act. As such, in our view, no authorization is required to the 3rd respondent under section 67 of the APGST Act to issue the impugned notices calling for objections. Therefore, the contention of the petitioner that the notices became illegal for want of authorization under section 67 of the APGST Act is untenable. Consequently the decision in *Prakashsinh Hathisinh Udavat (supra)* relied upon by the petitioner is of no avail, as in the said decision the High Court of Gujarat deprecated the act of Assistant Commissioner in seizing the car and mobile phones of the petitioner without having any authorization given by the Proper Officer in terms of section 67(2) of the Gujarat Goods and Service Tax Act. Needless to emphasize that the present case is of not that ilk. Thus, section 67 has no relevancy in the instant case.

13. Be that as it may, a pertinent question will arise here that even for acting under rule 99(1) of the APGST Rules r/w section 61 of the APGST Act, whether the 3rd respondent requires any authorization. This question would arise because in rule 99 as well as in section 61 the word 'Proper Officer' is employed and it is stated that the Proper Officer may scrutinize the returns submitted by the registered person. In this context, section 2(91) of the APGST Act defines 'Proper Officer' as follows:

"Proper Officer" in relation to any function to be performed under this Act, means the Chief Commissioner or the officer of the State tax who is assigned that function by the Chief Commissioner."

The 3rd respondent who issued the impugned notices is the Deputy Commissioner (ST) but not the Chief Commissioner. Therefore, in order to issue the impugned notices, the 3rd respondent requires the authorization of the Chief Commissioner assigning the task of issuing notices under rule 99 r/w Section 61 of the Act. In the impugned notices, neither any reference is made about such authorization nor it was filed separately in the Court. Therefore, we are constrained to hold that the two impugned notices suffer the vice of lack of authorization by the Proper Officer i.e., Chief Commissioner. Therefore, the impugned notices are liable to be set aside. However, that will not preclude the Chief Commissioner or the officer authorized by him to issue fresh notices under rule 99 of the APGST Rules r/w section 61 of the APGST Act.

14. In the result, these Writ Petitions are allowed and the impugned notices dated 28-2-2023 are *set aside* with an observation that the respondent authorities are at liberty to issue fresh notices under rule 99 of the APGST Rules r/w section 61 of the APGST Act either through the Chief Commissioner or any other Officer of the State Tax authorized by the Chief Commissioner in that regard. Such notices can be issued to the petitioner calling for objections by furnishing copies of the relevant documents forwarded by the 2nd respondent

through his alert note. In such event, the petitioner shall submit its objections within the time stipulated in the notices and thereupon the Proper Officer after affording personal hearing to the petitioner pass an appropriate order on merits in accordance with law. No costs.

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

POONAM

*In favour of assessee.