[2021] 128 taxmann.com 345 (Andhra Pradesh)/[2021] 54 GSTL 151 (Andhra Pradesh)[11-11-2020]

GST : Where aggregate turnover in preceding financial year does not exceed Rs. 50 lakhs, registered taxpayer (manufacturer) may opt to pay tax as prescribed, but not exceeding 1 per cent of turnover in case of manufacturer

GST : Turnover in VAT regime is not to be excluded while computing tax liability in terms of section 10

GST : Where petitioner opted for paying tax under composite scheme as per procedure contemplated under section 10(1) but petitioner's claim was rejected on ground that turnover of petitioner for 'previous year' under VAT regime was Rs. 2.09 crores, since turnover in VAT regime is to be included while computing tax liability in terms of section 10, there was no illegality in taking into consideration previous year's turnover (under VAT regime) for purpose of extending benefits under composite scheme

[2021] 128 taxmann.com 345 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Godway Furnicrafts

v.

State of Andhra Pradesh

C. PRAVEEN KUMAR AND MS. J. UMA DEVI, JJ.
WRIT PETITION NO.10350 OF 2020
NOVEMBER 11, 2020

I. Section 10 of the Central Goods and Services Tax Act, 2017/Section 10 of the Andhra Pradesh Goods and Services Tax Act, 2017 - Composite levy - Whether where aggregate turnover in preceding financial year does not exceed Rs. 50 lakhs, registered taxpayer (manufacturer) may opt to pay tax as prescribed, but not exceeding 1 per cent of turnover - Held, yes [Para 11]

II. Section 10 of the Central Goods and Services Tax Act, 2017/Section 10 of the Andhra Pradesh Goods and Services Tax Act, 2017 - Composite levy - Whether turnover in VAT regime is not to be excluded while computing tax liability in terms of section 10 - Held, yes [Para 15]

III. Section 10 of the Central Goods and Services Tax Act, 2017/Section 10 of the Andhra Pradesh Goods and Services Tax Act, 2017 - Composite levy - Petitioner registered under GST w.e.f. 1-7-2017 opted for paying tax under composite scheme as per section 10(1) which postulates payment of 1 per cent of GST of turnover - Petitioner's claim was rejected on ground that turnover of petitioner for 'previous year' under VAT regime was Rs. 2.09 crores - Whether since turnover in VAT regime is to be included while computing tax liability under section 10, there was no illegality in taking into consideration previous year's turnover (under VAT regime) for purpose of extending benefits under composite scheme - Held, yes [Paras 13 - 15]

Words and Phrases: 'Preceding financial year' as occurring in section 10 of the Central Goods and Services Tax Act, 2017

FACTS

- The petitioner was registered under GST regime with effect from 1-7-2017. It opted for paying tax under composite scheme as per the procedure contemplated under section 10(1) of the GST Act.
- The petitioner's claim for payment of tax under the composite scheme was rejected on the ground that the turnover of petitioner for the 'previous year' under the VAT regime was Rs. 2.09 crores and notice was issued in terms of section 74 and section 10(5) stating that she was liable to pay CGST at the rate of 14 per cent and SGST at the rate of 14 per cent from the date of initial registration, *i.e.*, from 1-7-2017 and demand had been confirmed along with interest and penalty.
- On writ, the petitioner pleaded that section 10(1) does not prescribe inclusion of VAT regime for the purpose of deciding the tax to be paid under section 10(1) and that the provisions of GST Act are not retrospective in operation and that the word 'preceding financial year' has no relevance for the taxes paid for the financial year 2017-18.

HELD

- While a reading of section 10(1) would show that where the aggregate turnover in the preceding financial year does not exceed Rs. 50 lakhs, the registered taxpayer may opt to pay tax as prescribed, but not exceeding 1 per cent of the turnover in State in case of manufacturer; 2 1/2 per cent of the turnover in case of persons engaged in making supplies referred to in clause (*b*) of paragraph 6 of Schedule II; and 1/2 per cent of the turnover in State in case of other suppliers. [Para 11]
- It may be true that the petitioner had paid GST under a composite scheme as per the option exercised in the web portal, for nearly four quarters, but, the option exercised by the petitioner was self-declaratory, which requires verification. Therefore, the argument of the department that it took sometime for the authorities to examine the options exercised by all the taxpayers in the State cannot be brushed aside. Merely because the petitioner has exercised an option (which should be correct one) and that it took time for the authorities to verify the genuinity or otherwise of the option exercised, it cannot stop the department from directing the petitioner to pay tax as regulated under the provisions of the GST Act, if the option exercised was found to be incorrect. [Para 12]
- If the word 'preceding financial year' is restricted to the period commencing from GST regime, then all the assessees, who have submitted their returns with false declarations in the GST regime for the financial year 2017-18, would go scot free and would not be liable to pay any tax, as there would not be any preceding financial year in the GST regime for the period 2017-18. This could not have been the intention of the Legislature at all. If the intention of the Legislature was to exclude the declarations made under VAT regime, the same would have found place in section 10(1) of the Act itself. As the tax to be paid is to be determined under the new regime, the Legislature thought it fit to fix a limit in the turnover of the preceding financial year for the purpose of extending the benefit under the composite scheme. A reading of the objects and reasons and the provisions of GST Act makes it clear that GST Act has only replaced VAT Act. All the taxes to be paid under VAT are subsumed into a single tax called GST, simplifying the tax collection process and making it easier not only to the customer, but also the State and Central authorities. [Para 13]
- Therefore, the argument that the turnover in the financial year starting from 1-7-2017 has only to be taken into consideration ignoring the previous turnover in the VAT regime does not sound to reason, because when the Legislature at more than one place used the word 'preceding financial year' it would only mean that as on 1-7-2017, the turnover of the previous year under the VAT regime has to be reckoned with for the purpose of extending benefit under GST regime, provided the self-declarations made are correct. It is also to be noted that if during the course of business in subsequent year, the turnover comes down, such a declaration can be made seeking reduction of tax liability. But, the turnover of the previous year declared under a different tax collection process cannot be eschewed for fixing the liability under a new tax collection process. As stated earlier, by switching over from VAT to GST system, tax payment/collection on intra-State supply of goods is being continued, but, however, in a different mode, thereby avoiding inconvenience and hardship to one and all. [Para 14]
- In the instant case, the dispute insofar as interpretation of the word 'previous financial year' arose only for

the financial year 2017-18, as the GST regime commenced from 1-7-2017. If the intention of the Legislature was that the turnover of the financial year under GST regime is only to be taken into consideration, then there would have been a clarification of the word 'preceding financial year'. Section 10(1) would not carry any meaning of such an interpretation, as sought by the petitioner, namely, the turnover in the VAT regime is not to be excluded while computing the tax liability and if such a narrow interpretation to section 10(1) is given, many of the businessmen would not only escape payment of GST for the year 2017-18, though the self-declaration made is incorrect or false, but also end up paying minimum GST though their turnover is on a higher side. It is to be noted here that word 'preceding financial year' is appearing at more than one place in section 10 itself, hence, it cannot be said that there was any error in usage of the word 'preceding' in section 10. The Legislature was conscious enough, when the word 'preceding' was used before the word 'financial year' in section 10(1) and also in the second proviso to section 10(1)(*c*), while extending benefits under a scheme. The Legislature in its wisdom observed that such a benefit can be extended to those whose turnover in the previous financial year does not exceed Rs. 50 lakhs. Therefore, the word 'preceding' appearing before the word 'financial year' cannot be ignored and if done, one would be doing mockery of the words 'financial year does not exceed Rs. 50 lakhs'. Therefore, to fix a parameter for extending the benefits under the scheme and for payment of less tax in case of manufacturers and for those engaged in making supplies, the Legislature though it fit to take into account the turnover of the previous financial year. Insofar as the financial year 2017-18 under GST regime is concerned, the preceding financial year would be 2016-17 under the VAT regime. The collection of tax under the GST Act, 2017 is not in addition to the provisions of VAT, but, this is being introduced as a substitute to VAT Act to deal with both goods and services, so as to maintain uniformity across the length and breadth of the country. This has been introduced to meet the requirements under the recommendations of the GST Council, in which all the States and Union territories are the stakeholders. [Para 15]

- Hence, there is no illegality in taking into consideration the previous year's turnover (under VAT regime) for the purpose of extending benefits under the composite scheme or for collecting taxes and penalty. [Para 16]

- Accordingly, the writ petition is dismissed.

CASES REFERRED TO

Mc Dowell & Co. Ltd. v. *CTO* [1985] 22 Taxman 11 (SC) (para 6).

P.S.P. Suresh Kumar, Adv. *for the Petitioner.*

ORDER

C. Praveen Kumar, J. - The petitioner firm, represented by its proprietrix, was doing business in furniture after obtaining permission and licence from the concerned Departments, including erstwhile Sales Tax Department. When GST Act came into force, the petitioner, along with other dealers, got registered and obtained GST registration number *vide* registration No. 37AABPA9728J1ZJ from the Department, which was with effect from 1-7-2017. The petitioner claims to have opted for paying tax under composite scheme as per the procedure contemplated under section 10(1) of GST Act and got it registered through GST portal. The petitioner has been filing GST returns and Form GSTR-IV from the quarter ending September, 2017 and the taxes were paid as per the said scheme, which postulates payment of 1% of GST on the turn over. According to the petitioner, the Department accepted the taxes paid/returns filed, till the date of issuance of show cause notice by the 3rd respondent on 14-2-2018, wherein the action of the petitioner claiming payment of tax under the composite scheme was rejected on the ground that the turnover of petitioner for the "previous year" under the VAT regime was Rs. 2.09 crores. The petitioner is said to have given an explanation to the show cause notice, but the same was rejected on 26-7-2018 in Form-GSTCMP-07. Consequently, the petitioner was issued with a show cause notice on 27-7-2018, in terms of section 74 and section 10(5) of the State GST Act, stating that she is liable to pay S.GST @ 14% and C.GST @ 14% from the date of initial registration *i.e.*, from 1-7-2017. Though an explanation was given stating that she is not liable to pay an amount of Rs. 15,93,708/-, as demanded in the show cause notice, the same was rejected by the 3rd respondent on 19-9-2018 confirming the demand along with interest and penalty. Challenging the order of the 3rd respondent, the petitioner preferred an appeal before the 2nd respondent, but the same was rejected on 12-2-2020. Aggrieved by the said order, the present writ petition came to be filed in the month of June, 2020.

2. Sri P.S.P. Suresh Kumar, the learned counsel for the petitioner, would contend that the orders passed by the 2nd and 3rd respondents directing the petitioner to pay GST @ 28% from 1-7-2017 is illegal, improper and incorrect. According to him, the respondents having accepted the option exercised by the petitioner in the web portal and having permitted him to pay tax at 1% of the total turn over in terms of the composite scheme, cannot now turn around and reject the option exercised and consequently direct the petitioner to pay GST as per the regular rates. He would further plead that a reading of section 10(1) of the Act, does not anywhere prescribe inclusion of VAT regime for the purpose of deciding the tax to be paid under section 10(1) of GST Act. In other words, his plea is that the provisions of GST Act are not retrospective in operation and that the word "preceding financial year" has no relevance for the taxes paid for the financial year 2017-2018. He further pleads that even if the turn over from 1-7-2017 is taken into consideration, the petitioner's turn over would be below Rs. 1 crore and hence the word 'preceding financial year' appearing in section 10(1) would be from financial year, after the GST regime came into force and not otherwise. He took us through the provisions of GST Act in support of his plea.

3. The learned Government Pleader for Commercial Taxes opposed the same contending that the option exercised by the petitioner in the web portal cannot be accepted without due verification. Merely because the petitioner has exercised an option, which was on his own, and that the authorities have collected the taxes for four quarters basing on self-declaration, the same does not by itself mean that the authorities have accepted the scheme opted by the petitioner. He pleads that having regard to the fact that the new regime came into effect from 1-7-2017, it took some time for the officials to process all the options exercised and in the process accepted the tax paid. Hence, urges that this will not estop the respondents from exercising the power to cancel the option exercised by the petitioner. According to him, if really the intention of the legislature was to exclude the provisions of the VAT Act, or make the provisions of GST prospective in operation, there would have been a reference to that effect in section 10 of GST Act itself. In the absence of the same, it cannot be inferred that the word 'preceding year' excludes the turn over declared during the VAT regime. Apart from that, he pleads that under Sub-Section 1 of Section 10, any person, who files an intimation to pay tax in the said provision, has to file form GST - CMP-03 (Rule 3(4)) intimating details of stock as on the date of exercise of option for composition levy, but in the absence of the same, the petitioner cannot claim that the turnover was less than the prescribed norm warranting applicability of section 10(1) of the GST Act.

4. The point that arises for consideration is whether the petitioner is entitled for payment of GST as per the composite scheme, as his turn over after the GST regime came to force is less than Rs. 1 crore.

5. Value Added Tax is a consumption tax that is assessed on products at each stage of the production process from labour and raw materials to the sale of the final product. It is an indirect tax where the charges are levied at the State level, within every production and distribution level of commodities and services. It is charged at the sale point. While under GST, particularly as per Section 9 of the GST Act, all the taxes mentioned under the VAT regime are proposed to be subsumed into a single tax called the Goods and Services Tax, which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. So, basically any tax that is presently being levied by the Central or State Government on the supply of goods or services is going to be converged into GST. The GST can be called as a unifier that will integrate various taxes levied by the State and Centre and provide a platform for forging an economic union of the country. It is also to be noted that after the onset of GST regime, transitional provisions came to be introduced with the sole object of allowing seamless flow of credit and the supplies under the GST regime which have already suffered tax once, do not suffer again. It is to be noted here that the Goods and Services Tax has replaced central and state indirect taxes such as VAT, excise duty and service tax and it has come into effect from 1st July, 2017. As observed earlier, GST has eliminated the cascading effect of taxes on the economy, meaning thereby, GST has eliminated tax on tax levied on a product at every step of the sale. It appears that essential vision is to create one nation and one market wherein all the goods, irrespective of their territory suffer the same tax and have the same costs.

6. Keeping in view the objects and reasons and the purpose for which GST Act came into force and also the observations made by the Apex Court in *Mc Dowell & Co. Ltd.* v. *CTO* [1985] 22 Taxman 1, namely, that "there is no equity about a tax, there is no presumption as to a tax, nothing is to be read in and nothing is to be implied", we shall now proceed to deal with the issue involved in the present case.

7. It is now to be seen whether the authorities were right in directing the petitioner to pay tax at 28% (14% SGST and 14% CGST) and also as to what the word "preceding financial year" appearing in Section 10(1) of Act would mean?

8. In order to appreciate the same, it will be useful to refer to section 10(1) of the AP GST Act, which is as under :

"10. *Composition levy*.— (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,-

Rate of Tax of Composition levy

(*a*) one percent of the turnover in State in case of manufacturer,

(*b*) two and a half percent of the turnover in State in case of persons engaged in making supplies referred to in clause (*b*) of paragraph 6 of Schedule II; and

(*c*) half percent of the turnover in State in case of other suppliers, subject to such conditions and restrictions as may be prescribed :

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.

Provided further that a person who opts to pay tax under clause (*a*) or clause (*b*) or clause (*c*) may supply services (other than those referred to in clause (*b*) of paragraph 6 of Schedule II;), of value not exceeding ten per cent of turn over in the State in the preceding financial year or five lakh rupees, whichever is higher."

9. A reading of section 10(1) of A.P. GST Act, 2017 would indicate that notwithstanding anything contrary to the provisions of the Act, but, subject to sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the "preceding financial year" does not exceed fifty lakh rupees may opt to pay tax as prescribed, but not exceeding 1% of the turn over in State in case of manufacturer; 2 ½ % of the turn over in State in case of persons engaged in making supplies referred to in clause (*b*) of paragraph 6 of Schedule II; and ½ % of the turn over in State in case of other suppliers.

10. Sub-section (3) of section 10 postulates that the option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

11. From the above it is pellucid that option exercised by the registered person under sub-section (1) of section 10 would lapse if his aggregate turn over during the financial year exceeds the limit prescribed under sub-section (1). While a reading of section 10(1), *inter alia*, would show that where the aggregate turn over in the preceding financial year does not exceed Rs. 50 lakhs, the registered tax payer may opt to pay tax as prescribed, but not exceeding 1% of the turn over in State in case of manufacturer; 2 ½% of the turn over in case of persons engaged in making supplies referred to in clause (*b*) of paragraph 6 of Schedule II; and ½% of the turn over in State in case of other suppliers.

12. It may be true that the petitioner had paid GST under a composite scheme as per the option exercised in the web portal, for nearly four quarters, but, the option exercised by the petitioner was self-declaratory, which requires verification. Therefore, the argument of the learned Government Pleader that it took sometime for the authorities to examine the options exercised by all the taxpayers in the State cannot be brushed aside. Merely because the petitioner has exercised an option (which should be a correct one) and that it took time for the authorities to verify the genuinity or otherwise of the option exercised, cannot estop the respondents from directing the petitioner to pay tax as regulated under the provisions of the GST Act, if the option exercised was found to be incorrect.

13. Therefore, the word 'preceding financial year' appearing in section 10(1) of the Act is the crux of the issue. If the word 'preceding financial year' is restricted to the period commencing from GST regime, then all the assesses, who have submitted their returns with false declarations in the GST regime for the financial year 2017-2018, would go scot free and would not be liable to pay any tax, as there would not be any preceding financial year in the GST regime for the period 2017-2018. This could not have been the intention of the legislature at all. If the intention of the legislature was to exclude the declarations made under VAT regime, the same would have found place in section 10(1) of the Act itself. As the tax to be paid is to be determined

under the new regime, the legislature thought it fit to fix a limit in the turn over of the preceding financial year for the purpose of extending the benefit under the composite scheme. A reading of the objects and reasons and the provisions of GST Act makes it clear that GST Act has only replaced VAT Act. All the taxes to be paid under VAT are subsumed into a single tax called GST, simplifying the tax collection process and making it easier not only to the customer, but also the State and Central authorities.

14. Therefore, the argument that the turn over in the financial year starting from 1-7-2017 has only to be taken into consideration ignoring the previous turn over in the VAT regime does not sound to reason, because when the legislature at more than one place used the word 'preceding financial year', it would only mean that as on 1-7-2017, the turn over of the previous year under the VAT regime has to be reckoned with for the purpose of extending benefit under GST regime, provided the self-declarations made are correct. It is also to be noted that if during the course of business in subsequent year, the turnover comes down, such a declaration can be made seeking reduction of tax liability. But, the turn over of the previous year declared under a different tax collection process cannot be eschewed for fixing the liability under a new tax collection process. As stated earlier, by switching over from VAT to GST system, tax payment/collection on intra state supply of goods is being continued, but, however, in a different mode, thereby avoiding inconvenience and hardship to one and all.

15. In the instant case, the dispute in so far as interpretation of the word 'previous financial year' arose only for the financial year 2017-2018, as the GST regime commenced from 1-7-2017. If the intention of the legislature was that the turnover of the financial year under GST regime is only to be taken into consideration, then there would have been a clarification of the word 'preceding financial year'. Section 10 (1) of the Act would not carry any meaning if such an interpretation, as sought by the petitioner, is given, namely, the turn over in the VAT regime has to be excluded while computing the tax liability. If such a narrow interpretation to section 10(1) is given, as observed earlier, many of the businessmen would not only escape payment of GST for the year 2017-2018, though the self-declaration made is incorrect or false, but also end up paying minimum GST though their turnover is on a higher side. It is to be noted here that word 'preceding financial year' is appearing at more than one place in section 10 itself, hence, it cannot be said that there was any error in usage of the word "preceding" in section 10. The legislature was conscious enough, when the word 'preceding' was used before the word 'financial year' in section 10(1) and also in the second proviso to section 10(1)(*c*), while extending benefits under a scheme. The legislature in its wisdom observed that such a benefit can be extended to those whose turn over in the previous financial year does not exceed Rs. 50 lakhs. Therefore, the word 'preceding' appearing before the word 'financial year' cannot be ignored and if done, one would doing mockery of the words 'financial year does not exceed Rs. 50 lakhs'. Therefore, to fix a parameter for extending the benefits under the scheme and for payment of less tax in case of manufacturers and for those engaged in making supplies, the legislature thought it fit to take into account the turn over of the previous financial year. In so far as the financial year 2017-2018 under GST regime is concerned, the preceding financial year would be 2016-2017 under the VAT regime. The collection of tax under the GST Act, 2017 is not in addition to the provisions of VAT, but, this is being introduced as a substitute to VAT Act to deal with both goods and services, so as to maintain uniformity across the length and breadth of the country. This has been introduced to meet the requirements under the recommendations of the GST council, in which all the States and Union territories are the stakeholders.

16. Hence, we find no illegality in taking into consideration the previous year's turn over (under VAT regime) for the purpose of extending benefits under the composite scheme or for collecting taxes and penalty.

17. Accordingly, the Writ Petition is dismissed. No order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand closed.

POOJA