

[2023] 152 taxmann.com 269 (Andhra Pradesh)/[2023] 98 GST 997 (Andhra Pradesh)/[2023] 77 GSTL 90 (Andhra Pradesh)[31-03-2023]

GST : Where explanation was filed in response to show cause notice but adjudication order was passed without providing opportunity of personal hearing to assessee though same was sought, order was passed in violation of principles of natural justice and hence, same was to be set aside

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[2023] 152 taxmann.com 269 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Preca Solutions India (P.) Ltd.

v.

Assistant Commissioner*

A.V. SESA SAI AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

W.P. NO.7980 OF 2023

MARCH 31, 2023

Demand and recovery - Adjudication order - Natural Justice - Show-cause notice was issued to assessee to which explanation was filed - Assessee made a request to respondents-authority to afford an opportunity of personal hearing - Order was passed without any personal hearing and in order it was stated that vide First reference, notice was issued affording an opportunity of personal hearing to assessee which failed to avail - HELD: First reference in impugned order was only an authorization issued by Joint Commissioner, but no notice affording an opportunity of personal hearing was issued - Therefore, order had been passed in violation of mandatory provisions of section 75(4) of CGST Act, 2017 and violation of principles of natural justice - Impugned order was to be set aside [Section 75 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 6 and 7] [In favour of assessee]

Varun Byreddy, Ld. Counsel for the Petitioner. Sai Kumar, Ld. Asstt. Govt. Pleader for the Respondent.

ORDER

A.V. Sessa Sai, J. - Heard Sri Varun Byreddy, learned counsel for the petitioner and Sri Sai Kumar, learned Assistant Government Pleader for the respondents.

2. The order passed by the Assistant Commissioner (State Tax)-1st respondent herein *vide* proceedings No.F.Y.2018-19(GST), dated 18.11.2022, is under challenge in the present Writ Petition filed under Article 226 of the Constitution of India.

3. Anterior to the impugned order, the Assistant Commissioner (State Tax) issued a show-cause notice dated 22.06.2022 to the petitioner. There is absolutely no controversy with regard to the factum of filing explanation on 01.08.2022 in response to the said show-cause notice issued by the Assistant Commissioner (State Tax). The principle contention advanced by the learned counsel for the petitioner in the instant Writ Petition is that in contravention of the mandatory requirements of law as provided under sub-section (4) of Section 75 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act, 2017") and in violation of principles of natural justice, the Assistant Commissioner (State Tax)-1st respondent herein passed the impugned order and as such, the impugned order is liable to be set aside on the said ground.

4. On the other hand, Sri Sai Kumar, learned Assistant Government Pleader contends that since the 1st respondent herein issued a show-cause notice and the petitioner herein submitted an explanation in response to the same, it cannot be construed by any stretch of imagination that the impugned order is in violation of principles of natural justice and in contravention of the mandatory requirements of law.

In this context, it would be appropriate and apposite to refer to the Section 75 of the Act, 2017, which deals with the general provisions relating to determination of tax. Sub-section (4) of section 75 of the Act, 2017, mandates that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or any adverse decision is contemplated against such person.

5. A perusal of the order impugned in the present Writ Petition discloses in unequivocal terms that the petitioner made a request to the respondents to afford an opportunity of personal hearing. The impugned order also states that *vide* reference 1st cited in the impugned order, notice was issued affording an opportunity of personal hearing and the petitioner failed to avail the same. However, the fact remains that the 1st reference in the impugned order is only an authorization issued by the Joint Commissioner, but not the notice said to have been issued to the petitioner, affording an opportunity of personal hearing. The above aspects drives this Court towards irresistible conclusion that the 1st respondent herein passed the impugned order not only in violation of mandatory provisions under sub-section (4) of section 75 of the Act, 2017, but also in violation of the principles of natural justice. Therefore, the impugned order is liable to be set aside.

6. Accordingly, the Writ Petition is allowed, setting aside the impugned order dated 18.11.2022 passed by the 1st respondent. However, this order will not preclude the authorities from passing order afresh, after hearing the petitioner. No order as to costs.

7. Miscellaneous petitions, if any, pending in this case, shall stand closed.

AJAY

*In favour of assessee.