

[2023] 157 taxmann.com 615 (Andhra Pradesh)/[2024] 81 GSTL 4 (Andhra Pradesh)/[2024] 101 GST 520 (Andhra Pradesh)[21-12-2023]

GST : Where petitioner was providing services of storage and warehousing to Andhra Pradesh State Civil Supplies Corporation Ltd. (APSCSCL) and SCN was issued stating that services provided by petitioner amounts to renting of immovable property were not exempted from tax and petitioner filed objections contending that same were exempted under Notification No. 12/2017-Central Tax (Rate), however, without considering reply of petitioner impugned notice and order was passed, since alternative remedy of appeal was available to petitioner, petitioner was given liberty to file an appeal against impugned order before appellate authority

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[2023] 157 taxmann.com 615 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Gali Bhanu Prakash

v.

State of A.P.*

U. DURGA PRASAD RAO AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 21055 OF 2023

DECEMBER 21, 2023

Appellate authority - Appeals to - Alternative remedy - Writ v. Appeal - Period 2017 and 2021 - Petitioner being owner of godown which were used to provide services of storage and warehousing to clients such as Andhra Pradesh State Civil Supplies Corporation Ltd. (APSCSCL) - Authorities inspected his warehouse and thereafter show cause notice was issued to assessee - SCN stated that services provided by petitioner amounts to renting of immovable property and therefore same was not exempted from tax - Petitioner filed objections contending that services provided by petitioner i.e. storage and warehousing of food grains were exempted under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - However, without considering reply of petitioner impugned order was passed by authorities - HELD : In view of case Assistant Commissioner (CT) v. Glaxo Smith Kline Consumer Health Care Ltd. 2020 SCC OnLine SC 440/[2020] 19 SCC 681 - It was held since alternative remedy of appeal was available to petitioner - Petitioner was given liberty to file an appeal against impugned order before appellate authority within four weeks and authorities were directed to admit appeal and after affording an opportunity of hearing, pass an appropriate order - No coercive action were to be taken under impugned order [Section 107 read with section 73 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]

CASE REVIEW

Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd. [2020] 116 taxmann.com 417/2020 (36) G.S.T.L. 305 (SC) (para 8) followed.

CASES REFERRED TO

Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd. [2020] 116 taxmann.com 417/2020 (36) G.S.T.L. 305 (SC) (para 6).

ORDER

U. Durga Prasad Rao, J. - In this Writ Petition filed under Article 226 of the Constitution of India, the petitioner seeks the following relief:

"to issue Writ of Mandamus or any other appropriate Writ or Order or Direction declaring the action of the 2nd Respondent in passing Order dated 10-7-2023 having reference No. DIN3716052325788/2017-18, DIN3716052314875/2018-19, DIN3716052378825/2019-20, DIN 3716052376971/2020-21 directing payment of tax Rs. 1,05,11,640/- penalty and Interest of Rs. 65,56,649/as arbitrary, contrary to law and in violation of principles of natural justice and/or pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstance of the case."

2. The petitioner's grievance is that he is the owner of the Godown Nos.03, 07, 08 & 09 having total capacity of 35000 Mts situated at M/s Jagadish & Others Warehouses, Bhanuprakash Nagar, Sitarampet Village, Yerpedu Mandal, Chittoor District. The said godown were used to provide services of storage and warehousing to clients such as Andhra Pradesh State Civil Supplies Corporation Ltd (APSCSCL). The petitioner received monetary consideration as per the agreement for the period between 2017 and 2021 a sum of Rs. 5.83,98,000/- . Later the Regional Vigilance and Enforcement Officer inspected his warehouse and thereafter a show cause notice was issued to the petitioner on 4-2-2022 stating that the services provided by the petitioner amounts to renting of immovable property and therefore the same is not exempted from tax. The petitioner filed objections contending that the services of storage and warehousing of food grains is exempted from levy of tax as per Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017. The activity undertaken by the petitioner is that it had entered into an agreement with APSCSCL for providing storage, warehousing services involving loading, unloading, stacking, packing, care, custody and security etc., of food grains and the activity of storage or warehousing of rice is specifically covered under entries prescribed in Sl.No.24 and also under Sl.No.3 or Sl.No.54 of Notification No. 12/2017- Central Tax (Rate), dated 28-6-2017 and it is exempted from payment of tax. However, without considering the reply of the petitioner in proper manner, the 2nd respondent held that the petitioner has let out 35000 Mts of space on monthly rental basis and delivered possession and therefore the said activity attracts tax @ 9% under SGST & CGST as prescribed in Entry No. 997212 and disagreed with the contention of the petitioner that the services rendered by the petitioner are exempted under Notification No.12/2017 - Central Tax (Rate), dated 28-6-2017:

- (a) It is the case of the petitioner that under Notification No. 12/2017, all the services related to supplies like loading, unloading, storage or warehousing including those of renting and leasing is exempted from tax if such supplies are made to the Government or Government Authority. The APSCSCL is apparently a Government Authority as the Government holds more than 90% on equity shares and therefore, the transaction exempted from tax.

Hence the writ petition.

3. The 2nd respondent filed counter and opposed the writ petition:

- (a) It is firstly contended that the writ petition is not maintainable under law since the petitioner has an efficacious and alternative remedy of appeal. On merits of the petitioner's case it is contended that as per agreement dated 30-1-2021 entered into by the petitioner with APSCSCL, the service rendered by the petitioner to APSCSCL is merely supply of rental space of non-residential property. Further, any further services rendered by the petitioner are also on the basis of working of such service charges into the rental component. Such renting of space cannot be said to be service related to storage or warehousing of the goods. Rental income received by the applicant from renting warehouse to storage of food grains is a consideration for supply and the activity is covered under section - 7 (Schedule II) of the CGST Act, 2017. The Notification No. 12/2017 the entries of which the petitioner places reliance, pertains to tabulated classifications of only such services as against the Government prescribes "NIL" rate. The income derived from rental agreement squarely falls under GST Taxation purposes i.e., Sl.No.16(Heading 9972) - "Real Estate Services" under Notification No. 11/2017. The respondent challenged the writ petition also on different grounds.

4. Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes-II representing respondents.

5. While learned counsel for the petitioner Sri Shaik Jeelani Basha reiterated his pleadings in his argument, learned Government Pleader took a fundamental objection regarding the entertainability of the writ petition on

the ground that the petitioner has an efficacious and alternative remedy of appeal and therefore the writ petition is not maintainable. He placed reliance on the decision of Hon'ble Apex Court in *Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.* 2020 SCC OnLine SC 440 = [\(2020\) 19 SCC 681/\[2020\] 116 taxmann.com 417/2020 \(36\) G.S.T.L. 305 \(SC\)](#).

6. The point for consideration is whether there are merits in the writ petition to allow?

7. POINT:- We gave our anxious consideration to the above respective submissions, particularly the preliminary objection of learned Government Pleader regarding the entertainability of the writ petition. Admittedly, the petitioner has an efficacious and alternative remedy to file appeal. The said fact is also mentioned in the impugned order to the effect that an appeal lies against the impugned order before the Appellate Joint Commissioner (ST), Tirupathi.

8. In that view of the matter and also in view of the decision in *Glaxo Smith Kline Consumer Health Care Ltd's* case (*Supra 1*) wherein the Hon'ble Apex Court held that the High Court ought not to have entertained the writ petition when an efficacious and alternative remedy of appeal is available to the petitioner, without expressing our opinion on the merits of the petitioner's case, we deem it apposite to give liberty to the petitioner to file an appeal against the impugned order.

9. Accordingly, the writ petition is disposed of giving liberty to the petitioner to file an appeal against the impugned order dated 10-7-2023 passed by the 2nd respondent before the concerned Appellate Authority within four (4) weeks from the date of receipt of a copy of this order, in which case, the Appellate Authority shall admit the appeal and after affording an opportunity of hearing to both parties, pass an appropriate order on merits in accordance with governing law and rules expeditiously. Till the time granted for filing of appeal is over, the respondent authorities shall not take any coercive action against the petitioner for recovery of demanded tax under the impugned order. No costs.

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

RITESH

*In favour of assessee.