
[2023] 152 taxmann.com 279 (Andhra Pradesh)[09-05-2023]

GST : Where assessment order was based on information obtained by department from third party service providers, and only question before High Court in writ petition against assessment order was whether that information was confined to third party's turnover for one state or it included other states, matter was remanded for giving opportunity to assessee to furnish separate data for their turnover of different states in question

GST : Where Divisions/Circles by way of restructuring had reduced Deputy Commissioner cadre strength to one, Deputy Commissioner other than that officer authorized by Joint Commissioner to audit and inspect assessee's premises, was proper officer for issuing assessment order



[2023] 152 taxmann.com 279 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

JBT (Jai Bharath Travels)

v.

Deputy Commissioner Service Tax^{*}

U. DURGA PRASAD RAO AND T. MALLIKARJUNA RAO, JJ.

WRIT PETITION NO. 1588 OF 2023

MAY 9, 2023

Demands - Tax or ITC involving fraud, etc. - Third party information - Period 2017-18 to 2019-20 - Assessee was plying passenger buses in Andhra Pradesh, Telangana, Tamil Nadu and Puducherry - In reply to show cause notice assessee alleged that department had obtained information from third party bus service provider, without bifurcation of AC and non-AC tickets, and based on that, wrongly assessed to tax assessee's total turnover for all four States for both AC and non-AC tickets - Assessee also alleged that department had to assess their turnover for A.P. State only and turnover for other States was excisable to tax as per statute of those states - Department alleged that even after several notices, assessee had not produced relevant records though they could easily do so - However, department neither in its counter nor arguments clarified whether assessment was based on assessee's total turnover - HELD : Only aspect that was to be considered was whether information obtained by department from third parties was confined to their turnover for A.P. State or it included remaining three States also - It was apposite to give assessee opportunity to furnish relevant data separately showing their turnover relating to A.P, Tamil Nadu, Telangana and Puducherry for appreciation of authorities and to make fresh assessment [Section 74, read with section 67, of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee/Matter remanded]

Search and seizure - Proper officer - Joint Commissioner (ST) on 29-10-2019 authorized Deputy Commissioner (ST), Intelligence, Chittoor only to audit and inspect assessee's premises - No authorisation issued for assessee post audit and inspection - However, assessment order was passed on 15-12-2022 by Deputy Commissioner (ST), Special Circle, Chittoor Division, who was neither jurisdictional assessing authority nor proper officer for assessee - Government explained that A.P. Gazette Notification No. 1071 dated 2-7-2022 had restructured Divisions and Circles and reduced cadre strength of Deputy Commissioner to

one - HELD : Government explanation was plausible - Hence, proper officer for assessment was Deputy Commissioner (ST), Special Circle, Chittoor Division [Section 67, read with section 2(91), Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 5] [In favour of assessee/Matter remanded]

Circulars and Notifications : A.P. Gazette Notification No. 1071, dated 2-7-2022

CASES REFERRED TO

W.P. No. 22198 of 2020, decided on 15-3-201 by Andhra Pradesh High Court (para 2).

G. Narendra Chetty, Adv. for the Petitioner.

ORDER

U. Durga Prasad Rao, J. - The petitioner challenges the Assessment, Penalty & Interest order bearing No.DIN3715122281260 dated 15.12.2022 passed by 1st respondent under the SGST and CGST Acts 2017 for the tax periods 2017-18, 2018-19 and 2019-20 (upto November 2019) as without jurisdiction, without authority, contrary to law and violative of principles of natural justice and set aside the said order.

2. The petitioner's case succinctly is thus:

- (a) The petitioner challenged the earlier Assessment Order dated 24.06.2020 on the ground that no personal hearing was accorded to the petitioner before passing such order and in W.P.No.22198/2020, this Court passed an order dated 15.03.2021 and remanded the matter to 1st respondent with a direction to afford personal hearing to the petitioner and to pass Assessment Order afresh on merits. Thereafter, the present impugned order dated 15.12.2022 was passed.
- (b) The petitioner engaged in plying passenger buses in different States i.e., Andhra Pradesh, Telangana, Tamilnadu and Puducherry. The 1st respondent obtained information from M/s Abhibus and wrongly assessed petitioner to tax in respect of the total turnover of the petitioner relating to all the four States. As per statute, the 1st respondent has to assess the petitioner to tax in respect of the turnover relating to A.P. State only and the turnover relates to other States will be excisable to tax as per the relevant statute of those States. Therefore, the impugned Assessment Order is unsustainable.
- (c) The petitioner inter alia argued that the Joint Commissioner (ST), Chittoor issued authorization in Form GST INS-01 to the 2nd respondent only for conducting inspection / auditing and not for making assessment, for which a separate Post Audit / Post Inspection, authorization is required to be issued by the Joint Commissioner (ST). However, such an authorization was not issued to the 2nd respondent. Further, the 2nd respondent has not passed the Assessment Order but the 1st respondent, who is not the jurisdictional Assessing Authority of the petitioner and who is not the Proper Officer, passed the Assessment Order. Therefore, the impugned order passed by 1st respondent is liable to be set aside for want of authorization and jurisdiction.

3. Learned Government Pleader for Commercial Taxes-II filed the counter and opposed the writ petition.

4. Heard Sri G.Narendra Chetty, learned counsel for petitioner, and learned Government Pleader for Commercial Taxes-II representing the respondents.

5. As can be seen, the Annexure to DRC-07 dated 13.12.2022 appended to the impugned Assessment Order dated 15.12.2022 shows that the Joint Commissioner (ST), Chittoor has issued authorization for inspection in GST INS-01 dated 29.10.2019 to the Deputy Commissioner (ST), Intelligence, Chittoor / 2nd respondent vide proceedings dated 29.10.2019 to inspect the premises of the petitioner. However, the impugned Assessment Order dated 15.12.2022 was passed by the Deputy Commissioner (ST), Special Circle, Chittoor Division / 1st respondent.

6. Regarding the above discrepancy, learned Government Pleader in his counter submitted that the proposal of the Chief Commissioner of State Tax was approved by the Government as per the A.P. Gazette notification No.1071 dated 02.07.2022 and notified the cadre strength of the officers and staff of the officers of the Chief Commissioner of State Tax and restructured the Divisions and Circles, in that view, the cadre strength of the Deputy Commissioner in the restructured divisions was reduced to one. Therefore, the proper officer for

assessment shall be 1st respondent and hence, the 1st respondent has passed the impugned Assessment Order. We find the above explanation of the G.P as plausible one.

7. It is further stated in the counter that the 1st respondent has given show cause notice (DRC 01), dated 12.09.2022 calling upon the petitioner to offer their objections and same was served on the petitioner through RPAD on the same day and through e-mail on 13.09.2022. The petitioner has not responded to the show cause notice. Then personal hearing dated 21.09.2022 was fixed and served to the petitioner providing seven days time for production of records or documents. The petitioner sought for sixty days time. Thereafter a notice dated 29.09.2022 was issued to the petitioner providing opportunity of thirty days for production of relevant records. Later several notices were served and finally the petitioner replied on 12.12.2022. The main contention of the petitioner was that the bifurcation of AC and NON-AC tickets was not taken into account. However assessment was done on both AC and NON-AC buses and also data received for revenue from third parties i.e., M/s ABHI BUS and RED BUS. Basing on the record the tax and penalty were imposed U/s 74 of CGST/SGST Act, 2017. It is further argued that the data requested by the tax payer has been completely furnished to him. Even after several notices the petitioner has not produced relevant records though petitioner can easily obtain data of his services, he unnecessarily filed the writ petition.

8. In the light of above counter averments reiterated in the argument of learned G.P the only aspect to be considered is whether the information obtained by the 1st respondent from the third parties i.e., Ms/ ABHI BUS and RED BUS is confined to the turnover of the petitioner relating to A.P. State or it includes the remaining three States also. The petitioner's grievance is that the respondent obtained total turnover basing on which the assessment was made which is wrong. Neither in the counter nor in arguments, that aspect has been clarified by the respondents. Therefore, we deem it apposite to give an opportunity to the petitioner to furnish the relevant data showing the turnover of the petitioner relating to A.P, Tamilnadu, Telangana and Puducherry separately for appreciation of the Authorities and to make fresh assessment in accordance with law.

9. The Writ Petition is allowed and the impugned Assessment Order dated 15.12.2022 passed by 1st respondent under SGST /CGST Acts, 2017 for the tax periods 2017-18, 2018-19 and 2019-20 (up to November, 2019) is hereby set aside and liberty is given to the petitioner to submit the relevant records showing the turnover relating to his bus business separately for the States of Andhra Pradesh, Telangana, Tamilnadu and Puducherry for the relevant period before 1st respondent, on the condition of petitioner depositing admitted tax less the tax already deposited within three (3) weeks from the date of receipt of copy of this order, in which case, the 1st respondent shall consider the same and after affording an opportunity of hearing to the petitioner, pass fresh assessment order for the relevant period on merits and in accordance with the governing law and rules expeditiously. No costs.

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

VIVEK

*Partly in favour of assessee