
[2024] 159 taxmann.com 660 (Andhra Pradesh)[10-01-2024]

GST : Where unsigned order was passed by respondent-department against petitioner-assessee and unsigned order was no order in eyes of law, further, unsigned order could not be covered under any mistake, defect or omission therein as used in Section 160, therefore, impugned assessment order was set aside

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[2024] 159 taxmann.com 660 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Srinivasa Enterprises

v.

Assistant Commissioner of State Tax*

RAVI NATH TILHARI AND HARINATH N., JJ.

WRIT PETITION NO. 221 OF 2024

JANUARY 10, 2024

Assessment proceedings not be invalid on certain grounds - Unsigned Order - Show cause notice was issued against petitioner-assessee by respondent-department - Assessment Order in FORM GST 07 dated 4-8-2023 was passed against petitioner by respondent - Writ petition was filed against aforesaid order on ground that impugned order had not been signed - Held : Unsigned order could not be covered under any mistake, defect or omission therein as used in Section 160 - Further, Section 169, which deals with service of orders, did not apply because issue in this case was not service of order but of signature and validity of order itself - In W.P.No.30109 of 2023, it was held that in guise of Section 160 read with Section 169, signatures could not be dispensed with, therefore, in absence of signature impugned unsigned order was set aside - In instant case, impugned order was not signed neither manually nor digitally - Therefore, following judgment of co-ordinate bench, impugned order was quashed only on ground that it had not been signed - Respondent was directed to pass fresh orders in accordance with law - Writ Petition was disposed of [Sections [160](#) and [169](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 10 to 13] [In favour of assessee]

Sri Bhaskar Reddy Vamireddy, Ld. Sr. Counsel for the Petitioner. Shreyas Reddy, Ld. Govt. Pleader for Commercially for the Respondent.

ORDER

1. Heard Sri Bhaskar Reddy Vemireddy, learned senior counsel for the petitioner and Sri Shreyas Reddy, learned Government Pleader for Commercial Tax.
2. The challenge in this writ petition under Article 226 of the Constitution of India is to the impugned order in FORM GST 07 dated 4-8-2023 vide DIN No. MA3708230062617
3. While challenging the said order, learned senior counsel appearing through virtual mode submits that the order has not been signed and without signature there can be no order in the eyes of law. Such an order cannot be given effect to. He placed reliance in the judgments of coordinate bench of this Court in W.P.No.29397 of 2023 decided on 10-11-2023 and W.P.No.30109 of 2023 decided on 21-11-2023, in which it has been held that the provisions of Section 160 and 169 of Goods and Services Tax Act, 2017 (GST Act, 2017) are not attracted and in the guise of those legal provisions, signature cannot be dispensed with.

4. The another submission advanced by the learned senior counsel is that the impugned order has been passed on a ground which was not mentioned in the show cause notice. In other words, the order has been passed on a ground different than as mentioned in show cause notice.

5. On 5-1-2024 we passed the order granting time to the learned Government Pleader to obtain instructions if the impugned order was signed or not. We also called for the affidavit of the respondent No. 2 - Chief Commissioner of the State Tax, Andhra Pradesh, bringing on record as to what steps had been taken pursuant to the direction issued in W.P.No.30109 of 2023 decided on 21-11-2023.

6. By the order dated 21-11-2023, the Chief Commissioner State Tax, Andhra Pradesh was directed to issue necessary instructions/directions to all concerned to ensure that the orders are signed manually or digitally, as the case may be, and then to be uploaded.

7. Sri Shreyas Reddy, learned Government Pleader submits that the impugned order was not signed neither manually nor digitally.

8. He further submits that the respondent No. 2 Chief Commissioner of State Tax, Andhra Pradesh, has issued necessary directions, *vide* CCST's e office File No. REV03-22021/7/2023-L1 SEC-CCT, dated 15-12-2023, to comply with the order in W.P.No.30109 of 2023. A copy of the same has been placed before us. In view thereof, filing of the affidavit, by the Chief Commissioner, *vide* order dated 5-1-2024, is dispensed with.

9. It is apt to reproduce para Nos.5 to 9 of the judgment in W.P.No.30109 of 2023, as under:

"5. In *M/s.SRK Enterprises'* case (cited *supra*), this Court referred to the previous order of the Co-ordinate Bench in the case of *A.V.Bhanoji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14-2-2023 and held that the signatures cannot be dispensed with and the provisions of Section 160 & 169 of the CGST Act, 2017 would not come to the rescue. This Court held that:

"7. On consideration of the submissions advanced and the legal provisions, we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under "any mistake, defect or omission therein" as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter *i.e.* validity of the order.

8. We are of the further view that Section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.

9. In the case of *A. V. Bhanoji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14-2-2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue.

10.Paragraph 6 of *A. V. Bhanoji Row (supra)* is reproduced as under:-

"6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action."

6. In view of the aforesaid, we allow this petition and *set aside* the proceedings/order issued by respondent No. 1 dated 25-9-2023. The respondent authorities to pass fresh orders in accordance with law, expeditiously.

7. We observe that this is not the first case in which the order is not signed by the concerned authority but uploaded. The challenge to such kinds of order has been upheld. This defect and consequently passing fresh orders, delays the proceedings in tax matters. Also unnecessarily burdens this Court.

8. We therefore issue direction to the Chief Commissioner of the State Tax, Andhra Pradesh, to issue necessary instructions/directions to all concerned to ensure that the orders should be signed manually or digitally as the case may be and then to upload the same.

9. The Writ Petition stands allowed in part in the aforesaid terms."

10. Following the judgements of the Co-ordinate Bench, the impugned order is quashed only on the ground that it has not been signed.

11. The authority shall pass fresh orders preferably within the period of four (04) weeks from the date of receipt of a copy of this order, in accordance with law.

12. We clarify that we have not entered into the merits of the impugned order, and have also not observed anything with respect to the contention of the learned counsel for the petitioner that the impugned order was passed on a ground different than as mentioned in the show cause notice.

13. The writ petition stands allowed in part in the above terms.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand dismissed.

SHREYA

*In favour of assessee.