

[2022] 145 taxmann.com 127 (Andhra Pradesh)/[2023] 95 GST 702 (Andhra Pradesh)[29-09-2022]

GST : Assessment order and provisional attachment order passed without disclosing to noticee materials and information relied upon, was not sustainable

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[2022] 145 taxmann.com 127 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

M.R. Metals

v.

Deputy Commissioner (ST) Joint Commissioner (ST) Chief Commissioner of State Tax (Int.)*

SRI C. PRAVEEN KUMAR AND SRI A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 31148 OF 2022

SEPTEMBER 29, 2022

Provisional attachment - Non-disclosure of materials - Department issued DRC-01A notice alleging that original tax invoices were not produced, suppliers were fake and goods were not transported - Petitioner submitted letter seeking extension of time to respond but order was passed without providing opportunity to response - Bank account of petitioner was also provisionally attached - HELD: Details like name of suppliers, name of toll gate through which goods were allegedly not transported and name of vehicle owners who allegedly claimed that their vehicles were not hired for transportation were not furnished in impugned order to defend or make representation by petitioner - Such non-disclosure of details violated principles of natural justice - Impugned order and provisional attachment order was to be set-aside [Section 83 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 6 and 9] [Partly in favour of assessee]

Bhaskar Reddy Vemireddy , Ld. Counsel for the Petitioner. **Sri Y.N. Vivekananda**, Ld. Govt. Pleader for the Respondent.

ORDER

Sri C. Praveen Kumar, J. - Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, and Sri Y.N.Vivekananda, learned Government Pleader for Commercial Tax appearing for respondent Nos.1 to 4, and perused the record. With their consent, this Writ Petition is disposed of at the stage of admission.

2. The present Writ Petition came to be filed under article 226 of the Constitution of India seeking the following relief :-

"..... to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus

(i) declaring the action of the 2nd respondent in provisionally attaching the petitioner's properties through the impugned proceedings in Form GST DRC 22 dated 7-5-2022 as illegal, arbitrary, high handed, without authority of law and jurisdiction and contrary to the provisions of the Act,

(ii) declare that the impugned order passed by the 1st respondent in Form DRC-07 dated 20-6-2022 as illegal, arbitrary, high handed, without authority of law and jurisdiction, contrary to the provisions of the CGST/SGST Act, 2017 and in violation of principles of natural justice and set aside the same and pass

3. As seen from the record, the petitioner has been regularly filing returns and paying resultant tax in terms of Section 16 of the Central Goods and Services Tax Act, 2017/the State Goods and Services Tax Act, 2017. It is submitted that respondent No. 1, in pursuance of inspection conducted in the business premises of the petitioner, issued notice in GST DRC-01A, dated 31-1-2022, ascertaining an amount of Rs. 11,15,41,133/- towards the tax payable by the petitioner. Detailed objections came to be filed requesting respondent No. 1 to drop the proposed action. Instead of considering the objections and the elaborate documentary evidence filed by the petitioner, respondent No. 1 issued notice in GST DRC-01, dated 7-4-2022, demanding an amount of Rs. 22,58,49,854/-, which includes 100% penalty and interest under section 50 of CGST/SGST Act. The petitioner once again submitted his explanation to the said notice along with the material. However, revised notice in GST DRC-01, dated 30-5-2022, came to be issued by respondent No. 1 demanding Rs. 28,00,20,392/-.

A reading of the order indicates that the said figures have been arrived at by respondent No. 1, mainly on the ground that the petitioner failed to produce original tax invoices for the entire turnover but instead placed on record xerox copies of invoices for part of the turnover. It was further held that some of the dealers, from whom the petitioner has purchased the goods, are not existing/fictitious. Enquiries with the toll gate authorities revealed that some of the vehicles did not pass through the said toll gates at Chittoor. It was also held that some of the owners of the vehicles, denied hiring of the vehicles to the petitioner for transport of the goods and information in respect of some of the vehicles is not available on the transport website.

It is also submitted that in response to the revised notice in GST DRC-01 dated 30-5-2022, the petitioner filed a letter dated 10-6-2022 seeking 15 days' time to file objections explaining the circumstances as to why he needs some time to file reply. Though the said letter was said to have been acknowledged by respondent No. 1, there was no response from him either rejecting or restricting the time sought for by the petitioner. But the impugned order in Form GST DRC-07, dated 20-6-2022, came to be passed stating that the petitioner herein did not respond to the revised notice issued in GST DRC-01, dated 30-5-2022.

It is also to be noted here that respondent No. 2 provisionally attached the bank account of the petitioner under section 83 of the A.P.GST Act *vide* order, dated 7-5-2022.

Challenging the same, the present writ petition is filed.

4. Reiterating the averments in the affidavit filed in support of the writ petition, Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would contend that the order of assessment is bad in law, as the material relied upon by the assessing authority was not furnished to the petitioner, which disabled him from giving appropriate reply to the show cause notice. He further submits that the provisional attachment order issued under section 83 of the APGST Act is also bad in law for the reason that the Joint Commissioner has no power to issue the same coupled with the fact that the authority did not record his explanation before issuing the provisional attachment order.

5. Sri Y.N.Vivekananda, learned Government Pleader for Commercial Tax appearing for respondent Nos.1 to 4, on instructions, opposes the same. He would submit that the argument of the learned counsel for the petitioner that the Joint Commissioner could not have issued provisional attachment order under section 83 of the APGST Act may not be correct. Insofar as the assessment order is concerned, according to him, the same came to be passed basing on the material available with the assessing authority and as such, the Court cannot find fault with it.

6. A perusal of the revised notice issued in GST DRC-01, dated 30-5-2022, would show that the authority relied upon the material, which was not furnished to the petitioner. The assessment order does not indicate the dealers, whom the assessing authority claimed to have been examined to show that the petitioner has purchased goods from the dealers who are non-existing/fictitious. Further, the names of the toll gates through which these vehicles, according to the assessing authority, did not pass, and also the names of the owners of the vehicles, who have not hired their vehicles to the petitioner, are not furnished. Since this material forms part of the impugned order, we are of the view that the assessing authority ought to have furnished the said material enabling the petitioner to make a representation or produce any material contra to the same, to substantiate his plea. Non-furnishing of the same, in our view, would be violation of principles of natural justice.

7. Ergo, the impugned order passed by respondent No. 1 in Form DRC-07, dated 20-6-2022, is set aside and the matter is remanded back to the assessing authority. It is made clear that the petitioner herein shall make an application within ten (10) days from the date of receipt of a copy of this order, requesting the authority to

furnish documents which are relied upon by him in passing the impugned order, in which event, the authority shall do the needful within a period of ten (10) days thereafter. Further, the assessing authority shall take into consideration the additional objections, if any, to be raised by the petitioner and pass order in accordance with law, after giving an opportunity of hearing to the petitioner.

8. Consequently, the provisional attachment order passed by respondent No. 2 in Form GST DRC-22, dated 7-5-2022, is set aside, giving liberty to the authority to issue fresh provisional attachment order, if required. Insofar as issuance of fresh provisional attachment order is concerned, the authority shall follow the procedure contemplated under section 83 of the A.P.GST Act, 2017.

9. Accordingly, this Writ Petition is allowed and the matter is remanded back to respondent No. 1/assessing authority. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

GK

* Partly in favour of assessee.