

[2024] 159 taxmann.com 369 (Andhra Pradesh)/[2024] 103 GST 331 (Andhra Pradesh)/[2024] 84 GSTL 507 (Andhra Pradesh)[12-01-2024]

GST : Where liability for taxes under section 16 of CGST Act against assessee was confirmed, subsequent recovery notice issued before expiry of statutory limitation period for filing appeal was not sustainable, since assessee wanted to file appeal against demand, assessee was to be allowed to file appeal

GST : Where liability for interest under section 50(1) of CGST Act against assessee was confirmed and assessee was ready to make payment in instalments under section 80 of CGST Act, application for same not being accepted by system electronically, assessee was to be allowed to file application manually; concerned authority was to be directed to consider to fix instalments under section 80 of CGST Act

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[2024] 159 taxmann.com 369 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Penna Cement Industries Ltd.

v.

State of Andhra Pradesh*

RAVI NATH TILHARI AND HARINATH NUNEPALLY, JJ.

WRIT PETITION NO. 1413 OF 2024

JANUARY 12, 2024

Input tax credit - Appeals to appellate authority - Order under section 73(9) of CGST Act was passed against assessee confirming liability for taxes under section 16 of CGST Act – Impugned notice for recovery proceedings was also issued even before expiry of statutory limitation period of 90 days for appeal under section 107 of CGST Act/APGST Act, against impugned order – HELD : In view of section 78 of CGST Act, assessee had three months time, which had not expired, for making payment under impugned order - Consequently, impugned notice for recovery proceedings was not to be issued – Further, since assessee wanted to file appeal with respect to demand of tax under section 16 of CGST Act, assessee was to be allowed to file appeal as per law [Section [16](#) read with section [107](#) of the Central Goods And Services Tax Act, 2017/ Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 11 and 12] [In favour of assessee]

Recovery of instalments – Interest on delayed payment of tax – Order under section 73(9) of APGST/CGST Act was passed against assessee confirming liability of assessee for interest under section 50(1) of CGST Act – It was submitted that assessee was ready to make payment of aforesaid amount in instalments, under section 80 of CGST Act, however, application for same, electronically, was not accepted by system for interest only - HELD : Section 80 of CGST Act provides for concerned authority to fix instalments for payment – Hence, assessee was to be directed to file application, manually, under section 80 of CGST Act – Further, concerned authority was to be directed to consider assessee's request for fixing instalments under section 80 of CGST Act [Section [80](#) read with section [50](#) of the Central Goods And Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 14 and 15] [In favour of assessee]

L. Sai Manoj Reddy, Ld. Counsel for the Petitioner. Shreyas Reddy, Ld. GP for the Respondent.

JUDGMENT

Ravi Nath Tilhari, J. - Heard Sri L. Sai Manoj Reddy, learned counsel for the petitioner and Sri Shreyas Reddy, learned GP for Revenue, appearing for the respondents.

2. The writ petition is being disposed of finally with the consent of the learned counsels for the parties at this stage.

3. This writ petition has been filed under Article 226 of the Constitution of India for the following relief:

". to issue a writ or order or more in direction or Writ of Mandamus declaring the action of the respondents in not allowing the manual filing of FORM DRC-20 and initiating recovery proceedings *vide* notice dated 1.01.12024 even before the statutory limitation period of 90 days for appealing an order U/s.107 of Section 107 of the Central Goods and Services Tax Act,2017/Andhra Pradesh Goods and Services Tax Act, 2-17 as illegal, arbitrary and in violation of Articles 14 and 19(1) (g) of the Indian Constitution and consequently direct the respondents to allow the petitioner to manually file FORM DRC 20 against the interest demands of Rs. 2,28,19,815/- (IGST Rs. 1,68,66,853/- + CGST Rs. 29,76,481/- + SGST Rs. 29,76,481/-) other than the remaining contested demand and pass such other order or orders."

4. Learned counsel for the petitioner submits that the Order in FORM DRC-07 under section 73 (9) of APGST/CST Act 2017 was passed on 1-11-2023 against the petitioner confirming the following liability of the petitioner for taxes/interest/penalty, in total for an amount of Rs. 2,53,69,897/-.

Sl. No.	Particulars	Section	CGST	SGST	IGST Interest	CGST Interest	SGST Interest	Penalty @10%	Penalty @10%
1.	Ineligible ITC availed on account of taxpayers whose registration has been cancelled	16	830739	830739	0	361228	361228	83074	83074
2.	Interest payable on delayed payment of tax in cash	50(1)	0	0	16866853	2976481	2976481	0	0
	Total		830739	830739	16866853	3337709	3337709	83074	83074

5. He submits that the said order is appealable for which the period of limitation is three months under section 107 (1) of APGST Act, 2017 (in short 'the Act'). He further submits that so far as the amount under Sl.No.1 (*supra*) is concerned, the petitioner intends to file the appeal for which the period of limitation has yet not expired.

6. He further submits that so far as the amount under Sl.No.2 (*supra*) is concerned, the petitioner is ready to make the payment thereof, but in instalments, for which there is provision under section 80 of the Act. The petitioner is ready to make written application under section 80 of the Act before the concerned authority electronically, but the system is not accepting the same, for Sl.No.2 (*supra*) only. He submits that electronically the petitioner will have to apply for the total amount including both the Sl. Nos.(1) & (2) (*supra*), where as the petitioner intends to challenge the Order to the extent of Sl.No.1 (*supra*). The petitioner's application if filed manually would not be accepted by the Authority.

7. His further submission is that the impugned notice dated 1-1-2024 was issued within period of three months whereas under section 78 of the Act the recovery proceedings can be initiated only when the amount is not paid within a period of three months from the date of service of the order. He submits the since the period of limitation has not expired, the impugned notice could not be issued keeping deadline of 7 days for compliance.

8. Sri Shreyas Reddy submits that the petitioner has a remedy of appeal against the order, dated 1-11-2023 and he should file statutory appeal making due compliance of the statutory provisions for pre-deposit. However, he admits that the period of limitation has not yet expired, to file the appeal. He further submits that the petitioner has not filed any proof to show that the petitioner has approached the authority as per law under Rule 158 of the CG & ST Rules 2017, by applying electronically, asking for fixing of instalments in respect of

Sl.No.2 (*supra*) of the table or to show that any such grievance with respect to the system not accepting, only for Sl.No.2, was raised before the Authority.

9. Learned GP however does not dispute the legal position and also submits that the amount though mentioned under Sl. Nos.(1) & (2) cannot be bifurcated for applying under section 80 or under section 107 of the Act, electronically, which is the prescribed procedure.

10. We have considered the aforesaid submissions of the learned counsels for the parties.

11. We are of the considered view that in view of Section 78 of the Act the petitioner has three months time, which has yet not expired, for making payment under the impugned order, may be in Sl.No.1 or/and Sl.No.2. Consequently, the impugned notice could not be issued or even if it has been issued, it cannot be implemented within the statutory period to make the payment.

12. In view of the submissions advanced by the learned counsel for the petitioner, that the petitioner wants to file appeal with respect to the liability/the amount under Sl.No.1, let the petitioner file appeal within the statutory period after complying with the legal provisions to that extent.

13. It is clarified that so far as the amount under Sl.No.1 is concerned, if the appeal is not filed within the statutory period of three months, the respondents would be at liberty to proceeding further pursuant to the same impugned notice with respect to the amount under Sl.No.1.

14. So far as the amount under Sl.No.2 is concerned, since the petitioner is ready to make the payment of the amount thereunder, in instalments and Section 80 of the Act provides for the concerned authority to fix instalments for payment, to that extent, the petitioner shall approach the authority by filing appropriate application, manually, as it is submitted that the same is not being accepted electronically, under section 80 of the Act, in the prescribed format, within a period of one week from the date of receipt of copy of this Order. The authority shall thereafter consider the petitioner's request for fixing the instalments for payment as per law.

15. It is further clarified that if the petitioner does not approach the authority for Sl.No.2, as aforesaid, it shall be open for the authority to proceed with respect to Sl. No.(2) as well as per law, pursuant to the impugned Order/notice.

16. We also observe that if the petitioner's grievance with respect to the system not accepting electronically the application for fixing instalments under section 80 or for filing appeal under section 107 with respect to the part of the liability amount of tax/penalty or interest, as the case may be, is correct and the system is accepting only such request electronically for the entire amount or entire order to avoid inconvenience to the other dealers, such grievance may be attended and appropriately resolved for future.

17. With the aforesaid observations and directions, the writ petition is disposed of. No order as to costs.

18. Let a copy of this Order be sent to the 2nd respondent-the Chief Commissioner (ST), Kunchanapally, Guntur District.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

AJAY

*In favour of assessee.