

[2022] 139 taxmann.com 465 (Andhra Pradesh)/[2022] 61 GSTL 25 (Andhra Pradesh)/[2022] 92 GST 501 (Andhra Pradesh)[27-01-2022]

GST : Where alternative remedy of appeal was available, writ jurisdiction against assessment order cannot be exercised in absence of circumstances required for invoking writ jurisdiction

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[2022] 139 taxmann.com 465 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Pride Constructions

v.

Deputy/Assistant Commissioner of STGST, Nellore*

AHSANUDDIN AMANULLAH AND MS. B.S. BHANUMATHI, JJ.

WRIT PETITION NO. 1797 OF 2022

JANUARY 27, 2022

Appeals to appellate authority - Writ jurisdiction - Petitioner had challenged impugned assessment order of levying GST on Transferable Development Rights in respect of joint development of land and construction of flats on it - However, none of circumstances as enumerated in Apex Court judgment in Asstt. CST v. Commercial Steel Ltd. [\[2021\] 130 taxmann.com 180/88 GST 799](#), viz., breach of fundamental right, violation of natural justice, lack of jurisdiction and challenge to vires of law, for High Court to exercise writ jurisdiction, were found present in petition - Further, detailed examination of elements for levy of tax was required to be done by appellate authority only - In view of this and availability of alternative remedy of appeal against aforesaid assessment order, writ jurisdiction was not exercised - Liberty was given to petitioner to file appeal to appellate authority [Section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Article [226](#) of Constitution of India] [Paras 5 to 9] [In favour of revenue]

CASES REFERRED TO

Asstt. CST v. Commercial Steel Ltd. [\[2021\] 130 taxmann.com 180/88 GST 799 \(SC\)](#) (para 5).

S. Suribabu, Adv. for the Petitioner. **Y.N. Vivekananda**, Government Pleader for the Respondent.

JUDGMENT

Ms. B.S. Bhanumathi, J. - Heard Mr. S. Suribabu, learned counsel for the petitioner and Mr. Y. N. Vivekananda, learned Government Pleader, Commercial Tax, for the respondents.

2. The petitioner has moved the Court, for the following relief:

" ...to issue a Writ or order or direction particularly one in the nature of the Writ of mandamus setting aside the impugned assessment order passed by the first respondent in Form GST DRC - 07 dated 1-9-2021 passed for the tax period July, 2017 to November, 2019 *vide* AAO No. ZH370921OD51289 in seeking to levy tax on Transferable Development Rights pursuant to the Joint Development Agreement-cum-General Power of Attorney entered into by the petitioner with the land owners on 30-10-2017 along with interest and penalty as illegal, arbitrary, without Authorization, against Principles of Natural Justice, contrary to the provisions of the CGST Act, 2017 and APGST Act, 2017, contrary to the Notification and

Circular issued by the Union of India, unsustainable in law, passed without application of mind, not considering any of the objections filed by the petitioner and is without jurisdiction; and"

3. Learned counsel for the petitioner submitted that the petitioner undertook to develop 25 flats and entered into an agreement with the land owner and in consideration thereof, he receives 11 flats, whereas the land owners get 14 flats. He further submitted that the petitioner had paid tax under C.S.T and A.P.G.S.T for all 25 flats, however, again, charged with G.S.T on the ground that he rendered service under the development agreement, but the same, if at all liable, is to be paid by the owners and not by the developer. He further submitted that the impugned order of assessment suffers from three illegalities, firstly, none of the objections raised by the builder/assessee was considered as can be seen from para No. 49 of the assessment order, wherein all the objections raised by the petitioner were rejected; secondly, the learned counsel submitted that the Assessing Officer lacks jurisdiction and thirdly, the tax was paid for 25 flats and again, he was charged with tax under the guise of tax on service for development of the very same flats.

4. Learned Government Pleader, Commercial Tax, submitted that the Assessing Authority had given vivid reasons as to why the objections of the assessee were rejected and since appellate forum is provided, the petitioner has to first approach there and avail that alternative remedy before approaching this Court under writ jurisdiction.

5. At this juncture, it is relevant to mention the decision of the Hon'ble Supreme Court in *Asstt. CST v. Commercial Steel Ltd.* [\[2021\] 130 taxmann.com 180/88 GST 799](#), where conditions are enumerated at paragraph 11 with regard to the circumstances, under which a party can move before High Court, when alternative remedy is available. It reads as under:

- "(i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation."

6. This decision has already been taken note by this Court in the order in W.P.No.30212 of 2021 dated 22-12-2021.

7. In view of the above decision, as the petitioner could not satisfy any of the circumstances enumerated above and there is an effective alternative remedy before the appellate authority, this Court feels that the matter does not require any interference.

8. Further, in the present case, it needs a detailed examination of the elements in the taxing proposal and all the points raised by the petitioner herein can be considered by the appellate authority. This Court finds no glaring illegality in the assessment order, which requires indulgence of this Court by exercising its jurisdiction under article 226 of the Constitution of India, at this stage.

9. Accordingly, the writ petition is disposed of with liberty to avail the alternative remedy available under law i.e., to approach the appellate forum. There shall be no order as to costs.

10. Miscellaneous petitions, if any pending, also stand disposed of.

SB

*In favour of revenue.