

[2024] 161 taxmann.com 794 (Andhra Pradesh)/[2024] 103 GST 700 (Andhra Pradesh)/[2024] 86 GSTL 166 (Andhra Pradesh)[13-03-2024]

GST : Where assessee filed writ petition challenging impugned order and also DRC-07 proceedings, in view of fact that in another case, Division Bench of Instant High Court had passed an interim order directing respondent authorities not to pass any final order in writ proceeding and not to take any coercive steps against assessee, same protection was to be provided in instant case

GST : Where assessee filed writ petition challenging impugned order and also DRC-07 proceedings, same was to be dismissed on ground of statutory remedy of appeal

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[2024] 161 taxmann.com 794 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Kalyani Press

v.

Deputy Assistant Commissioner, State Tax, Guntur*

RAVI NATH TILHARI AND HARINATH N., JJ.

WRIT PETITION NO. 6126 OF 2024

MARCH 13, 2024

Demands - Tax or ITC not involving fraud, etc. - Stay of proceedings - Period July, 2017-March, 2018 - Assessee filed instant writ petition challenging impugned order and also DRC-07 proceedings - HELD : In writ petition in another case, Division Bench of Instant High Court had passed an interim order directing respondent authorities not to pass any final order in proceeding initiated in writ petition and no coercive steps was to be taken against assessee as per assessment order - Same order and same protection was to be provided in instant case also [Section [73](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 6 and 7] [In favour of assessee]

Demands - Tax or ITC not involving fraud, etc. - Alternate remedy of appeal - Period April, 2018-January, 2023 - Assessee filed instant writ petition challenging impugned order and also DRC-07 proceedings - Preliminary objection had been raised by respondent authority that order was appealable - HELD : Writ petition was to be dismissed on ground of statutory remedy of appeal [Section [73](#), read with section [107](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 16] [In favour of revenue]

CASE REVIEW

W.P. No. 2851 of 2024, dated 05.02.2024 (para 7) *followed*.

Karthik Ramana Puttamreddy for the Petitioner. **Y.V. Anil Kumar** , (Central Govt. Counsel) for the Respondent.

ORDER

1. Heard Sri Karthik Ramana Puttamreddy, learned counsel for the petitioner and Sri Shekar, learned Government Pleader for Commercial Tax for the respondent Nos.1 to 4.

2. Sri Y. V. Anil Kumar, learned Central Government Counsel accepted notice for the respondent No.5, Union of India.

3. This petition challenges the order dated 16.12.2023 passed by the respondent No.1 for the period from July, 2017 to January, 2023 as also the DRC-07 proceedings dated 16.12.2023 for the said period.

Consideration for the period July 2017 to March 2018:

4. Learned counsel for the petitioner submits that so far as the period from July, 2017 till March, 2018 is concerned, the controversy as involved in this petition is similar to the controversy which is attracting the attention of this Court in W.P.No.2851 of 2024, dated 05.02.2024 and the same order may be passed in the present case also.

5. Sri Shekar submits that he has no objection to the extent as aforesaid and the same order may be passed and the time may be granted to file the counter affidavit.

6. The order dated 05.02.2024 passed in W.P.No.2851 of 2024 reads as under:-

"Learned counsel for the petitioner seeks permission of this Court to amend the cause title by impleading Central Board of Indirect Taxes, as a necessary party in the instant the writ petition.

Permission is accorded. Let necessary steps be taken in this regard by the petitioner.

Mr.Bhaskar Reddy and Ms.Smitha Rohini, learned Assistant Government Pleader for respondent Nos.1 to 4 and Mr.B.Mukharjee, learned counsel appearing on behalf of Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.5. Hence issuance of notice is dispensed with.

When the matter is taken up for hearing today, it has been brought to the notice of this Court that a similar writ petition was taken up for consideration by the Hon'ble Division Bench-I, of this Court in W.P.No.2123 of 2024, and the said Division Bench-I has passed an interim order directing the respondent authorities not to pass any final order in the proceeding initiated pursuant to show cause notice under the challenge in that writ petition.

In view of the fact that a similar matter is already been seized by the Hon'ble Division Bench-I, we are also inclined to follow the same.

Accordingly, let counter be filed within a period of three weeks and the matter be listed on 28.03.2024.

Let no coercive steps be taken against the petitioner pursuant to the final assessment order passed which is under challenge in the instant case till further orders."

7. Consequently we pass same order as in W.P.No.2851 of 2024, dated 05.02.2024, giving the same protection to the petitioner for the period July 2017 to March 2018.

Consideration for the period April 2018 to January 2018:

8. With respect to the period from the April, 2018 to January, 2023, learned counsel for the petitioner submits that the ground of challenge which is for the period from July, 2017 upto March, 2018 is not available for this period.

9. The preliminary objection has been raised by the learned Government Pleader that the order is appealable as well and the petitioner can avail the statutory alternative remedy of appeal.

10. Learned counsel for the petitioner submits that the petitioner filed the reply and in the reply affidavit, it was submitted that certain documents as mentioned therein were not returned by the Tax Authorities so as to enable the petitioner to file the proper reply.

11. A perusal of the impugned order dated 16.12.2023, Ex.P1 shows that it mentions as under:-

"all the records and documents return back to the tax payer through their Auditor i.e. P. Nagesh on 05.08.2023 which were submitted by the tax payer at the time of inspection".

12. After mentioning the details of those documents, it further mentions as under:-

"the entire 18 items of the above material is not the basis for any proposals of liability in the show cause notice and therefore there is no prejudice caused to the tax payer. And again no liability is finalised based

on the incriminating material and therefore no prejudice caused to the tax payer."

13. Learned counsel for the petitioner submits that the said P. Nagesh was not authorized to receive the documents.

14. The submission as advanced by the petitioner's counsel with respect to the return of the documents raises a disputed question of fact. There is specific mention in the order that the documents were returned. The question whether they were returned or not returned or said P. Nagesh, was the person authorized by the petitioner to receive those documents or not, deserve not to be entered into and decided, in the exercise of the writ jurisdiction, being the disputed questions of fact, might be requiring proof of so many other factual aspects.

15. Consequently, we do not find any ground of violation of the principles of natural justice, on the argument advanced, so as to entertain the writ petition and to by-pass the statutory remedy of appeal.

16. The writ petition is dismissed on the ground of statutory alternative remedy for the period with effect from April, 2018 to January, 2023.

17. It is clarified that the writ petition survives for the period from the July, 2017 to March 2018.

No order as to costs.

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

ANURAG KUMAR

*In favour of assessee.