
[2024] 159 taxmann.com 340 (Andhra Pradesh)[09-02-2024]

GST : Where Competent Authority had issued garnishee notice to assessee's bank seeking attachment of tax amount of Rs. 1.77 crores and assessee sought relief on ground that he had to pay salaries to employees, since tax payment was burden of assessee, attachment could not be raised, however assessee was to be granted liberty to make representation before GST authorities seeking reasonable time for payment of tax

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[2024] 159 taxmann.com 340 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Adhunik Infratech India (P.) Ltd.

v.

Assistant Commissioner of State Tax*

U. DURGA PRASAD RAO AND SMT. KIRANMAYEE MANDAVA, JJ.

WRIT PETITION NO. 3407 OF 2024

FEBRUARY 9, 2024

Recovery - Garnishee proceedings - Time for making payment of tax - Petitioner-assessee was a sub-contractor under main contractors who were executing works contract for State Government - Due amounts of main contractors and assessee were not received - GST authorities issued garnishee notice to assessee's bank seeking for attachment of tax amount - Assessee submitted that he had to incur a huge expenditure for payment of salaries to his workforce and if amount was attached and credited to departmental account, he would be put to much hardship and employees would be deprived of their salaries - Assessee had to pay more than Rs. 50 lakhs towards salary to his employees - HELD : Since tax payment was one of burdens of assessee, he could not be allowed to raise attachment of tax amount - However, alternative prayer was made by assessee for grant of reasonable time for payment of balance of tax amount - Assessee was to be directed to submit a representation to that effect to GST authorities - GST authorities were to consider same and after affording an opportunity of hearing to assessee, pass an appropriate order in accordance with law expeditiously [Section 79 of Central Goods And Services Tax Act, 2017/Andra Pradesh Goods and Services Tax Act 2017] [Paras 4 to 6] [Partly in favour of assessee]

Kotamreddi Ramesh *for the Petitioner.*

ORDER

U. Durga Prasad Rao, J. - In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks the following relief:

"pleased to issue Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the 1st Respondent in issuing Form GST DRC-13 dated 25.01.2024 to the Canara Bank of the V Petitioner directing to pay a sum of Rs.1,77,12,294/ to the Government forthwith or upon the money becoming due or being held in compliance of the provisions contained in Clause ci of sub-section 1 of section 79 of the CGST Act, 2017 as arbitrary high handed contrary to the Order of the Hon'ble Court dated 11.12.2023 in W.P.No. 31777 of 2023 and consequently direct the Respondent to adjust the tax arrears to an extent of 30 per cent from out of the bill amounts received from the third parties and the

Petitioner may be permitted to utilise 70 per cent of the bill amounts and when received to run its business activities".

2. When the matter came up for hearing, learned Senior Counsel Sri Shaik Jeelani Basha would submit that the petitioner is only sub-contractor under five main contractors who are executing works contract for the State Government and their due amounts are not still received and concomitantly the petitioner also not received his contract work amounts. However, in the meanwhile, the 1st respondent has issued a garnishee notice dated 25.01.2024 to the petitioner's bank i.e., Branch Manager, Canara Bank and sought for attachment of tax amount of Rs.1,77,12,294/-. As on the date, an amount of Rs.23,00,000/- was to the credit of petitioner's account which amount was received as a part payment from the main contractor. Now the petitioner's submission is that he has to incur a huge expenditure for payment of salaries to his workforce and if his amount is attached and credited to the departmental account, the petitioner will be put to much hardship and the employees will be deprived of their salaries. The petitioner has to pay more than Rs.50,00,000/- towards the salary to his employees.

3. Heard.

4. Since tax payment is one of the burdens of the petitioner, this Court is not able to consider the request of the petitioner to raise the attachment. The learned Senior Counsel made an alternative prayer that for payment of the balance of the tax amount, the department may grant him reasonable time.

5. Learned Government Pleader for Commercial Tax would submit that if the petitioner makes a representation to the 1st respondent explaining cogent reasons for seeking time, the same may be considered and suitable orders will be passed.

6. In that view, this Writ Petition is disposed of giving liberty to the petitioner to submit a representation to the 1st respondent seeking time for payment of the balance of the tax amount within two (2) weeks from today, in which case, the 1st respondent shall consider the same, and after affording an opportunity of hearing to the petitioner, pass an appropriate order in accordance with law expeditiously, but not later than one (1) week from the date of receipt of the representation. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

ANURAG

*Partly in favour of assessee.