
[2022] 142 taxmann.com 23 (Andhra Pradesh)/[2022] 64 GSTL 452 (Andhra Pradesh)[12-04-2022]

GST : Demand in respect of IGST on ocean freight being stayed by High Court, proceedings in DRC-07 for levying tax on ocean freight was to be set aside; matter was remanded

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[2022] 142 taxmann.com 23 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Santhoshimathaa Edible Oils Refinery (P.) Ltd.

v.

Deputy Commissioner (ST)*

C. PRAVEEN KUMAR AND SMT. V. SUJATHA, JJ.

WRIT PETITION NO. 8100 OF 2022

APRIL 12, 2022

Adjudication - Demand and recovery – Personal hearing - Issue was with regard to alleged non-payment of tax on ocean freight - Petitioner claimed that he had already paid IGST on ocean freight on actuals under reserve charge for years 2017-18 and 2018-19 - No personal hearing was granted at time of passing impugned order - Demand in respect of IGST on ocean freight although stayed by this Court, proceedings came to be issued levying tax on ocean freight - Accordingly, impugned proceedings in DRC-07, dated 10-2-2022 was set aside and matter remanded back to pass appropriate orders after giving opportunity of personal hearing to petitioner, in accordance with law [Section 5 of Integrated Goods and Services Tax Act, 2017] [Paras 7, 8 and 10] [In favour of assessee]

Circulars and Notifications : [Notification No. 10/2017-IT\(Rate\), dated 28-6-2017](#) and [Notification No. 8/2017-IT\(Rate\), dated 28-6-2017](#)

K.V.J.L.N. Sastry, Ld. Sr. Counsel for the Petitioner.

ORDER

C. Praveen Kumar, J. —. Heard Sri K.V.J.L.N. Sastry, learned Senior Counsel for the petitioner and learned Government Pleader for Commercial Taxes. With their consent, the writ petition is disposed of at the admission stage.

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

"to issue a Writ of Certiorari or any other appropriate Writ or Order or Direction, quashing the DRC-07 proceedings dated 10-2-2022 for the years 2017-18, 2018-19 and 2019-20 along with the Annexure containing the adjudication for the DRC-07 dated 8-2-2022, as illegal, without jurisdiction and in violation of principles of natural justice, contrary to rule 26 of the CGST Rules and vitiated by the irregularities and inconsistencies and consequentially direct the 2nd Respondent to transfer the assessment proceedings either to the 3rd Respondent, who has issued notice for audit under section 65 of the SGST Act, 2017 or to any other authority for *de novo* consideration on merits and pass such other orders....".

3. The petitioner herein is a Private Limited Company registered under the Companies Act, 2013. It has two sister concerns namely (1) Santhoshimatha Oil Packaging Industries situated at Kakinada and (2) Santhoshimatha Oils and Fats Private Limited, Nellore. The 2nd respondent authorized the 1st respondent to inspect the business premises of the petitioner and to verify whether the petitioner has conducted business in accordance with the provisions of the Goods and Services Tax Act, 2017 (for short "GST Act"). It is stated that the petitioner participated in the inspection conducted on 25-11-2020 and produced all books of account. The 1st respondent also collected all the necessary material, namely, weigh-bridge reports, sale order books, stock registers, raw material purchases etc. The first respondent recovered a book containing details of orders placed by various brokers. According to the first respondent, there are some variations in the details contained therein with regard to sale of palmolein oil and palm fatty acid, distributed to various dealers from their refinery located at Kakinada as well as its related companies. On verification of sale details, no transactions are found in the sales registers. Hence, the first respondent assumed that the petitioner has suppressed the turnover.

4. The first show-cause notice was issued on 26-4-2021 calling upon the petitioner to clear the full amount as mentioned therein, by 25-5-2021. The petitioner gave a detailed reply dated 22-5-2021 enclosed several documents in support of his contention. Since the petitioner, who is assessee, disputed the issues raised in DRC-01A, DRC 01, dated 29-9-2021 came to be issued by the respondents. It is said that this notice is issued based on authorization for assessment under section 74(1) of the Act issued by the second respondent on 21-8-2021. The first respondent while dealing with the issues raised in DRC-01A and the reply filed by the petitioner, partly accepted and partly disagreed the submissions made by the petitioner.

5. The tax liability proposed for all the three years put together was Rs.14,96,92,177/- under IGST, Rs.7,23,99,139/- under CGST and Rs.7,23,99,139/- under SGST. The petitioner was called upon either to discharge the total tax under section 74 with interest under section 50 and penalty under section 74(8) on or before 18-10-2021 or to file objections and to avail personal hearing by the said date. As the petitioner decided to contest the show-cause notice, he gave reply dated 27-10-2021. The petitioner was present before the first respondent for personal hearing on 02-11-2021, at which point of time, he reiterated his contentions and also submitted that the seized material have to be returned in original since the Photostat copies were not legible. Accordingly, the first respondent is said to have returned the order confirmation books and other records filed at the time of inspection on 15-11-2021.

6. On 16-11-2021, the first respondent through e-mail dated 16-11-2021, called upon the petitioner to file specific objections on or before 22-11-2021 and ultimately a comprehensive reply was said to have been filed by the petitioner on 08-12-2021. The issue was with regard to alleged non-payment of tax on ocean freight. The petitioner claims that he has already paid an amount of Rs.60,73,106/- and Rs.94,46,893/- under IGST on ocean freight on actuals under reserve charge for the years 2017-18 and 2018-19. In support of his claim, the petitioner enclosed challans.

7. Therefore, the petitioner filed Writ Petition No.18525 of 2019, questioning the levy of IGST on ocean-freight by challenging the Notification Nos.10/2017-Integrated Tax (Rate), dated 28-6-2017 and 8/2017-Integrated Tax (Rate), dated 28-6-2017 respectively as unconstitutional. By its order dated 20-11-2019, this Court directed the respondents not to take any coercive steps for recovery of tax on ocean-freight.

8. While things stood thus, the proceedings dated 10-2-2022 came to be issued levying ocean freight though it was mentioned in Form DRC-07 that the demand is not pressed. Learned Senior Counsel would submit that when there is an order of this Court staying collection of penalty or tax on ocean freight, the authorities ought not to have demanded for payment of ocean freight known fully well about the same. He further submits that the proceedings clearly indicate that there was no personal hearing at the time of passing the impugned order.

9. Learned Government Pleader for Commercial Taxes would submit that the argument of the learned senior counsel that there was no personal hearing may not be correct as objections filed were taken into consideration at the time of passing of the order. The ocean freight alleged to have been paid is given credit and that no loss is caused to the petitioner. However, learned Senior Counsel for the petitioner would contend that in view of the notices issued there is every possibility of collecting ocean freight inspite of the order passed by this Court staying the same.

10. Having regard to the above, the impugned proceedings in DRC-07 dated 10-2-2022 is set aside and the matter is remanded back to the first respondent, who shall deal with the same and pass appropriate orders after giving an opportunity of personal hearing to the petitioner, in accordance with law.

11. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions pending, if any in this writ petition, shall stand closed.

KARTIK

*In favour of assessee.