

[2020] 122 taxmann.com 254 (Andhra Pradesh)/[2020] 37 GSTL 168 (Andhra Pradesh)/[2021] 83 GST 733 (Andhra Pradesh)[06-03-2020]

GST : Deputy Assistant Commissioner cannot pass order of prohibition under section 67(2)

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[2020] 122 taxmann.com 254 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Mahendra Kumar Indermal

v.

Deputy Asstt. Commissioner (ST)*

J.K. MAHESHWARI, C.J.

AND NINALA JAYASURYA, J.

WRIT PETITION NO. 6146 OF 2020

MARCH 6, 2020

Section 67 of the Central Goods and Services Tax Act, 2017/Section 67 of the Andhra Pradesh Goods and Services Tax Act, 2017 - Search, seizure, etc. - Power of inspection, search and seizure - Deputy Assistant Commissioner passed order of prohibition under section 67(2) on assessee - Assessee filed writ petition contending that authority competent to pass order under section 67(2) should not be below rank of Joint Commissioner while impugned order had been passed by Deputy Assistant Commissioner, who was not competent to pass order of prohibition; therefore, said order so passed was unsustainable in law - Whether as per section 67(2), it is clear that an officer, not below rank of Joint Commissioner, in pursuance to inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which shall be useful for or relevant to any proceedings under Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things - Held, yes - Whether since as per provisions of section 67(2) Deputy Assistant Commissioner was not authorised by proper officer not below rank of Joint Commissioner to conduct a search on assessee, order of prohibition so passed by Deputy Assistant Commissioner under section 67(2) was illegal and without jurisdiction - Held, yes - Whether since power so exercised by Deputy Assistant Commissioner was not in conformity with provisions of Act, impugned order deserved to be set aside - Held, yes [Para 8][In favour of assessee]

(NR)

Dandu Srinivas *for the Petitioner.*

ORDER

J.K. Maheshwari, C.J. - Being aggrieved by the order of Prohibition issued in Form GST INS 03, dated 21-12-2019 by the 1st respondent-Deputy Assistant Commissioner (ST), Jaggaiahpet unit, Nandigama Circle, Bhavanipuram, Vijayawada, this writ petition has been preferred.

2. Learned Counsel for the petitioner has advanced solitary contention emphasizing the jurisdiction of the 1st respondent, who passed the order of Prohibition as contemplated under section 67(2) of the Central Goods and Services Tax Act, 2017 (hereinafter be called as "CGST"). It is urged that the authority competent to pass the

order should not be below the rank of Joint Commissioner while the order impugned has been passed by the Deputy Assistant Commissioner, who is not competent to pass the order of Prohibition, therefore, the order of prohibition so passed confiscating the goods is unsustainable in law.

3. On the other hand, learned Government Pleader for Commercial Tax appearing on behalf of the respondents though opposed the prayer, but on reference to the provision so contemplated under section 67(2) of the Act, he consented to adjudication of the case on merits.

4. After hearing the learned Counsel for both the parties, and looking to the fact that the issue involved regarding jurisdiction of the authority in the matter of search, seizure and confiscation, in the matter, has not been found from the order impugned, however, being a legal issue, it can be heard and decided on merits as rightly conceded by the learned Government Pleader for the respondents.

5. In the present case, the order of Prohibition issued in Form GST INS 03 is under challenge. The said Form was issued in terms of Rule 139(4) of the Central Goods and Services Tax Rules, 2017, which prescribes that, to carry out the purpose of the Act specified under section 67(2) of the Act, how it can be proceeded with. At present, the provisions of the Act i.e., 67(1) and (2) of the Act are relevant. However, it is reproduced as under:

Section 67: Power of Inspection, search and seizure.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that--

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act,

6. On perusal thereto, it reveals that under sub-Section (1), where the officer not below the rank of Joint Commissioner has reasons to believe that the person has suppressed the transaction relating to supply of goods or services or both or the stock of goods in hand or claimed input tax credit in excess to his entitlement or indulged in contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade tax under this Act, (or) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods, which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax, in that contingency, he may authorise any other officer of Central Tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown as the case may be. Meaning thereby, under sub-section (1) of Section 67 of the Act, competent officer is the joint commissioner, but in case, he has reasons to believe of the aforesaid facts, he may authorize any person in writing or any other officer of the Central Tax to inspect. As per section 67(2) of the Act, it is clear that an

officer, not below the rank of Joint Commissioner, in pursuance to the inspection carried out under sub-section (1), or otherwise, has reasons to believe that any goods liable for confiscation or any documents or books or things, which shall be useful for or relevant to any proceedings under the Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things. The first proviso makes it clear that where seizure of any good is not practicable, then, he may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. The second proviso deals with the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

7. In the present case, Form GST INS 03, which deals with the order of Prohibition, has been issued to the Proprietor of MAT Parcel Service premises. However, this is an order issued under section 67(2) of the Act by an officer *i.e.*, 1st respondent-Deputy Assistant Commissioner (ST). In the said order of Prohibition, nothing is mentioned, *viz.*, by which written order he has been authorized by officer so specified in section 67(2) of the Act. It is also the contention of the petitioner that even for the purpose of section 67(1) of the Act, in respect of the search including the inspection, written authorization is required. It is conspicuously missing in the present case. Therefore, the order of prohibition passed by the 1st respondent is illegal and without any jurisdiction.

8. After perusal of the provisions of the Act, we find much substance in the argument of the learned Counsel for the petitioner. As per the provisions of section 67(1) of the Act, power of inspection is specified to an officer not below the rank of joint commissioner. The said officer for the purpose of search as specified in section 67(1) (a) and (b) may authorize in writing any other officer of Central Tax for inspection of any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown, as the case may be. Similar is the provision of section 67(2) of the Act. For the purpose of seizure where the authority is having a reason to believe that proceedings of the confiscation are required in the matter, to which inspection has been carried out, after recording the said reason, he may exercise such power for seizure by authorising in writing any of the officers of the Central Tax Department. In this view of the matter and looking to the order of prohibition so passed in GST INS 03, the said order passed by respondent No. 1, without reference to the order of authorisation in writing, is illegal and without jurisdiction. Therefore, it is hereby set aside. It is made clear that this Court has passed this order looking to the competency of the authority and having found that the power so exercised by respondent No. 1 is not in conformity with the provisions of the Act, but not on the merits of the case.

9. With the aforesaid, the Writ Petition is allowed. No costs. As a sequel all the pending miscellaneous applications shall stand closed. However, the authority is at liberty to take recourse as permissible under law.

S.K. JAIN

* In favour of assessee.