



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3488]

WEDNESDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.5385 & 5456 of 2021

WRIT PETITION NO: 5385/2021

Between:

M/s.sri Srinivasa Lorry Transport,

...PETITIONER

AND

The Assistant Commissioner St and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.SHAIK JEELANI BASHA

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL II

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1.SHAIK JEELANI BASHA

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL II

The Court made the following Common Order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

The petitioner is carrying on lorry transport business in Gundlapalli Village, Maddipalem Mandal, Prakasam District. The premises of the petitioner were inspected by the 1st respondent on 07.11.2019. At that time the petitioner was not a registered dealer under the Andhra Pradesh Goods and Service Tax Act, 2017 [for short "the APGST Act, 2017] or the Central Goods and Service Tax Act, 2017 [for short "the CGST Act, 2017]. A show-cause notice dated 17.12.2019 was issued, on the basis of the said inspection. This notice was received by the petitioner on 26.12.2019, after receipt of this notice, the petitioner had submitted a letter, dated 04.01.2020, seeking time to file objections. The said letter was received by the 1st respondent on 21.01.2020. Thereafter, an order of assessment was passed on 21.09.2020. Apart from this, an order of penalty was passed on 09.11.2020. It appears that the petitioner had filed objections to the assessment, in October-2020, after the order of assessment had been passed.

2. Aggrieved by these two orders, the petitioner has approached this Court by way of W.P.No.5456 of 2021, challenging the order of assessment dated 21.09.2020 and W.P.No.5385 of 2021 challenging the order of penalty dated 09.11.2020.

3. The common grounds in both these cases, raised in these Writ Petitions are as follows:-

I. The petitioner was not granted an adequate opportunity of hearing as the order had been passed even before the petitioner could file his objections in October-2020.

II. Section-75 of the CGST Act, 2017 requires three adjournments before an order can be passed, whereas no such adjournments were granted to the petitioner.

III. The provisions of the CGST Act, 2017 require the inspecting officer to have previous authorization from the competent authority under Section-67 of the CGST Act, 2017. Apart from this, a separate authorization has to be given for the said inspecting officer to take up assessment proceedings, if the said officer is not the proper officer under the provisions of the CGST Act, 2017. Here, a proper officer would be the territorial assessing authority. In the present case, the 1st respondent was the Assistant Commissioner (ST), Addanki Circle, whereas, the petitioner is presently being assessed by the Assistant Commissioner, Ongole-1 and as such, the 1st respondent ought to have obtained the previous authorization before passing any assessment order. No such authorization has been placed before this Court and consequently, the assessment order and the consequential penalty order would have to be set aside.

4. Sri Shaik Jeelani Basha, learned counsel for the petitioner, has raised the additional ground, that is not supported by pleadings, that the assessment order and the penalty order, impugned in the present Writ

Petition, do not have DIN numbers and the absence of such DIN numbers is fatal to both the orders. He relies upon the Judgment of a Division Bench of this Court in the case of M/s. Cluster Enterprises Vs. The Deputy Assistant Commissioner (ST)-2 & Ors, dated 24.07.2024 in W.P.Nos.13375 & 14045 of 2024.

5. The learned Government Pleader for Commercial Tax, in reply to the said contentions and in support of the counter-affidavit filed by the Assistant Commissioner, Ongole circle would submit as follows:-

I. Section-75 of the CGST Act, 2017 only stipulates that more than three adjournments cannot be given. It cannot mean that the three adjournments are compulsory and orders can be passed only after three adjournments.

II. Section-67 of the CGST Act, 2017 stipulates that no inspection of any dealer can be carried out unless the previous authorization is obtained from the Joint Commissioner or the Commissioner. In the present case, such previous authorization was obtained on 05.11.2019 and this an admitted fact. There is no provision for obtaining authorization for connecting assessment proceedings arising out of such inspection, if the assessing authority is the usual territorial assessing authority of such a dealer. In the present case, the petitioner was an un-registered dealer and an assessment of such un-registered dealer is to be carried out under Section-63 of the CGST Act,

2017. There is no provision in Section-63 of the CGST Act, 2017 for requiring any previous authorization.

III. The requirement of DIN numbers on the orders is not mandatory as long as a number is generated by the portal and is available on the order. The purpose of requiring a DIN number or a number generated by the portal is for the purposes of authenticating the orders and to ensure that un-authorized proceedings are not taken up. In the present case, both the order of assessment and the order of penalty contained such numbers generated by the portal and as such, there is substantial compliance.

CONSIDERATION OF THE COURT:-

6. Section-67 of the CGST Act, 2017 requires previous authorization from the competent authority before any officer of the tax department can inspect the premises of the dealer or conduct an audit of the accounts of a dealer. In the present case, such previous authorization had already been given on 05.11.2019.

7. On the question of authorization being necessary for conducting an assessment based on such inspection or audit, the provisions in the CGST Act, 2017 require a closer look. The provisions relating to assessment of a dealer are contained in Chapter-XII of the CGST Act, 2017 consisting of Sections-59 to 64. The provisions relating to demands and recovery are contained in Chapter-XV of the CGST Act, 2017 consisting of Sections-73 to 84.

8. In the present case, the relevant provision would be Section-63 of the CGST Act, 2017 which regulates the assessment of un-registered persons. Section-63 of the CGST Act, 2017 reads as follows:-

“Section-63: Assessment of unregistered persons.

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.”

9. This provision authorizes the appropriate officer to assess the tax liability of any taxable person who has not obtained registration even though he is liable to obtain such registration. The language in Section-63 of the CGST Act, 2017 does not provide for any prior authorization being necessary where the assessment has been done by the proper officer. The term “proper officer” is defined, in Section-2(91) of the CGST Act, 2017, to mean an officer to whom any function to be performed under this Act is assigned by the Commissioner. The territorial limit of each assessing officer is assigned by the Commissioner. The learned Government Pleader for Commercial Tax, draws the attention of this Court to the paragraph No.4 of the counter-affidavit filed by the 1st respondent. It is stated that the Adanki circle was the territorial circle for the area in which the petitioner was carrying on business and it was subsequently disbanded and merged into Ongole-1 circle by way of G.O.Ms.No.502, Revenue (CT-1) Department, dated 01.07.2022, which was published in Andhra Pradesh Gazette on 05.07.2022. In the circumstances, it must be held that the 1st respondent, being Assistant Commissioner (ST),

Addanki Circle was the appropriate assessing authority and as the territorial assessing authority did not require any authorization under Section-63 of the CGST Act, 2017.

10. Section-75 (5) of the CGST Act, 2017 reads as follows:-

“Section -75: General provisions relating to determination of tax.

(1) ...

(2)....

(3) ...

(4)

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.”

11. The language in this provision is clear and unambiguous. The said provision only places an outer limit on the number of adjournments that can be granted and the said language does not lend itself to an interpretation that a minimum of three adjournments have to be given before any order can be passed.

12. The petitioner had raised the ground that an adequate opportunity of hearing had not been given to the petitioner. The show-cause notice was received by the petitioner on 26.12.2019. A letter for adjournment was submitted by the petitioner on 21.01.2020. Thereafter, there is absolute silence and no material has been placed before this Court to show that the petitioner had sought further adjournments any kind. In such circumstances, the passing of the assessment order in September-2020 cannot be faulted on this ground.

13. However, Section-75(4) of the CGST Act, 2017 reads as follows:-

“Section -75: General provisions relating to determination of tax.

(1)

(2)

(3)

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”

14. This provision requires an opportunity of hearing to be given if the assessing officer contemplates an adverse decision even if the person does not make any request for such hearing. The show-cause notice dated 17.12.2019 only provides for filing written objections and no personal hearing has been granted. In the circumstances, the said assessment order would have to be set aside leaving it open to the respondents to grant such a personal hearing and to pass orders thereafter.

15. In view of this direction, it would not be necessary for this Court to go into the question of whether a DIN number is needed on every order or not.

16. Accordingly, these Writ Petitions are disposed of setting aside the assessment order, dated 21.09.2020, as well as the penalty order, dated 09.11.2020, impugned in the present Writ Petitions while leaving it open to the 1st respondent to undertake a fresh assessment proceeding and consequential proceeding, if any, after giving an opportunity of personal hearing to the petitioner. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J.

HARINATH.N, J.

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.5385 & 5456 of 2021

(per Hon'ble Sri Justice R. Raghunandan Rao)

Date: 11.09.2024

BSM