

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO**

WRIT PETITION No.6307 of 2022

ORDER:- (Per Hon'ble Sri Justice C.Praveen Kumar)

Heard Sri Vivek Chandra Sekhar, learned counsel representing Sri J.V.Rao, learned counsel for the petitioner, and the learned Government Pleader for Commercial Tax appearing for the respondents and with their consent, this Writ Petition is disposed of at the stage of admission.

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, Order or Direction one in the nature of Mandamus:

a. declaring the order dated 30.12.2021 (served on 08.02.2022), passed by the 2nd Respondent, confirming the orders dated 05.10.2020 passed by the 1st Respondent, under the provisions of the Central Goods and Services Tax Act, 2017 and Andhra Pradesh State Goods and Services Act, 2017, for the period July, 2017 to June, 2018, as void, bad in law, arbitrary, highhanded, mechanical, without jurisdiction and bereft of any valid reasons, apart from being illegal, violative of principles of natural justice and Articles 14 & 265 of the Constitution of India; and pass such other order or orders may deem fit and proper in the circumstances of the case.

OR, in the alternative,

b. direct the Respondent Authorities to either adjust the amounts paid by the Petitioner under the Integrated Goods & Services Tax Act, 2017 towards the alleged dues determined under Central Goods & Services Tax Act, 2017 & Andhra Pradesh State Goods & Services Tax Act, 2017, respectively; and to pass such other order or orders as this Hon'ble Court may deem fit, just and proper in the circumstances of the case.”

3. As seen from the record, the petitioner herein is a Works Contractor, engaged in business of execution of contracts,

manufacturing or sale of machinery and general goods. The petitioner company also manufactures industrial products like gears, centrifugals, castings and gauges. After bifurcation of the State of Andhra Pradesh, the petitioner became a registered dealer in the State of Andhra Pradesh under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 with effect from 31.08.2014 and is on the rolls of respondent No.1.

The petitioner is said to have received a work order from Ministry of Defence (R&D), Government of India, "Aakanksha" Development Enclave, Rao Tularam Marg, New Delhi – 110 010 on 08.08.2011 for execution of aggregation work on defence vessels, S3 & S4, in line with the technical specifications given by the Department of Defence, New Delhi. In terms of the work order, the bills are to be raised in the name of Programme Director, Headquarters ATVP, New Delhi. The orders were to be executed in terms of the contract and on the instructions of Advance Technology, Vessel Programme Wing of the Ministry of Defence, New Delhi. The works/services have been executed at the site i.e., The Project Director, Ship Building Centre, Varuna Block, Godavari Gate, Scindia Road, Naval Base Post, Visakhapatnam. In terms of the contract, the payments were to be released from the Ministry of Defence, New Delhi based on the completion of work from stage to stage. The petitioner executed the works/services as per the terms of the contract in the recipient's location at Visakhapatnam. As the impugned transactions are interstate transactions, the petitioner collected Integrated Goods & Services Tax (for short, "I.G.S.T.") from the recipient and remitted the same to the Government. In the present transaction, the location of the supplier and the place of supply are in two different states. The

petitioner, in terms of Section 7 of the I.G.S.T. Act, collected I.G.S.T. and remitted the same to the exchequer.

However, on 15.11.2018, respondent No.1 issued a show cause notice proposing to treat the transactions as intrastate supply of goods instead of interstate supply of goods. Objections came to be made by the petitioner on the said proposals through letters, dated 22.02.2019 and 27.03.2019. Without considering the same, on 05.10.2020, respondent No.1 is said to have completed the assessment treating the transaction as an intrastate supply of goods and levied Central Goods & Services Tax (for short, "C.G.S.T.") and Andhra Pradesh State Goods & Services Tax (for short, "S.G.S.T"). In view of the above, the petitioner requested the authorities *vide* letter, dated 27.03.2019, to adjust the monies paid under I.G.S.T. towards the dues payable under C.G.S.T. and S.G.S.T. but the same came to be rejected by respondent No.1. Hence, an appeal came to be preferred before respondent No.2, which was also dismissed *vide* order, dated 30.12.2021, against which, the present writ petition came to be filed.

4. Though various grounds are raised, learned counsel for the petitioner mainly submits that when the nature of transaction is admitted, the authorities ought to have adjusted the amount paid by him towards I.G.S.T. In any event, he would contend that he will pay the C.G.S.T. and S.G.S.T. due to the authorities and thereafter, he may be permitted to claim refund of the amount paid towards I.G.S.T.

5. The same is not seriously opposed by the learned Government Pleader for Commercial Tax.

6. Even in the assessment order, dated 05.10.2020, passed by respondent No.1/Assistant Commissioner (ST), Kurupam Market Circle, Visakhapatnam, it is held that the office cannot make adjustment of I.G.S.T. into C.G.S.T. and S.G.S.T. The taxable person may claim refund of I.G.S.T. after payment of C.G.S.T. & S.G.S.T. and in view of the same, the objections filed by the taxable person were held not tenable.

7. Having regard to the above and in view of the fact that the nature of transaction is not in dispute, the present Writ Petition is disposed of directing the petitioner to pay C.G.S.T. and S.G.S.T. within a period of three (3) weeks from today and thereafter, make a claim for refund of the amount under I.G.S.T., which the petitioner is entitled to, before respondent No.1, in which event, respondent No.1 shall deal with the same as early as possible, preferably, within a period of four (4) weeks thereafter. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE TARLADA RAJASEKHAR RAO

Date : 21.7.2022
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