

***HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
*HON'BLE SRI JUSTICE A. V. RAVINDRA BABU
+WRIT PETITION No.29397 OF 2023**

%10.11.2023

M/s. SRK Enterprises,
Rep. by its Proprietor,
Mr. M. Sivarama Krishna,
SK-09-03, Paramount Towers,
Yendada, Panaroma Hills,
Law College Road,
Visakhapatnam – 530045.

.....Petitioner

And:

\$1. Assistant Commissioner (ST),
Bheemili Circle,
Visakhapatnam – I Division,
Andhra Pradesh
and others.

....Respondents.

!Counsel for the petitioner

: Sri Karthik Ramana
Puttamreddy

^Counsel for the respondents

: Sri T. C. D. Sekhar,
learned Government Pleader
for Commercial Tax for the
respondent Nos.1 and 2

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>Head Note:

? Cases referred:

1. (2014) 9 SCC 124

HIGH COURT OF ANDHRA PRADESH

WRIT PETITION No. 29397 of 2023

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DATE OF JUDGMENT PRONOUNCED: 10.11.2023.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE A. V. RAVINDRA BABU**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

A. V. RAVINDRA BABU, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE A.V.RAVINDRA BABU
WRIT PETITION No.29397 OF 2023

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Karthik Ramana Puttamreddy, learned counsel for the petitioner and Sri T. C. D. Sekhar, learned Government Pleader for Commercial Tax for the respondent Nos.1 and 2.

2. With the consent of the parties counsels, the petition is being decided finally at this stage.

3. While challenging the impugned order dated 28.03.2023 passed under Section 73(9) of the APGST/CGST Act, 2017 passed by the Assistant Commissioner (ST), Bheemili, Visakhapatnam, I Division, learned counsel for the petitioner raised two grounds.

- 1) that the impugned order is unsigned and is no order in the eyes of law which cannot be enforced.
- 2) that the order has been passed on the ground that upon verification of the bank statement of the tax payer, it was found that they received payment of Rs. 93,62,630/- from the Andhra Pradesh Mineral Development Corporation Limited in the Financial Year 2020-21, which was not reflected in their GSRTR – 3B return, but in the show

cause notice dated 31.01.2023, the said ground was not mentioned. In his submission, the show cause notice is on one ground and the order has been passed on different ground. The petitioner had no opportunity of reply, to the ground on which the order has been passed resulting into violation of the principles of natural justice.

4. Sri T. C. D. Sekhar, learned Government Pleader on the basis of instructions received, pursuant to our oral order, submits that the impugned order has not been signed as on today. But, he submits that the said order was uploaded and the uploading could be done only by the Authority competent to pass the order. He has placed reliance in Section 160 of the Central Goods and Services Tax Act, 2017 (in short, the CGST Act) to contend that no assessment, re-assessment, initiated in pursuance of any of the provisions of the GST Act, shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, etc are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any existing law. He has also placed reliance in Section 169 of CGST Act 2017, which relates to the service of notice in certain circumstances.

5. Section 160 of the Central Goods and Services Tax Act, 2017 reads as under:-

“Section 160:- Assessment proceedings, etc., not to be invalid on certain grounds:-

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.”

6. Section 169 of the Central Goods and Services Tax Act, 2017 reads as under:-

“Section 169:- Service of notice in certain circumstances:-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made

thereunder shall be served by any one of the following methods, namely:—

- a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- d) by making it available on the common portal; or
- e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

7. On consideration of the submissions advanced and the legal provisions, we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under “any mistake, defect or omission therein” as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter i.e. validity of the order.

8. We are of the further view that Section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.

9. In the case of **A. V. Bhanoji Row vs. Assistant Commissioner (ST)** in W.P.No.2830 of 2023 decided on 14.02.2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue.

10. Paragraph 6 of **A. V. Bhanoji Row (supra)** is reproduced as under:-

“6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. **In the guise of the same, the signatures cannot be dispensed with.** In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action.”

11. The writ petition deserves to be allowed on the first ground itself.

12. Consequently, we are not entering into the merits of the second ground, leaving it open to the concerned authority to consider, if the ground as in the impugned order, is different than the one contained in the show cause notice, and if it is so, it shall be open for the Authority to issue fresh notice, if it is proposed to proceed on such ground. However, at this stage, learned counsel for the petitioner submits that the petitioner has submitted reply to the show cause notice dated 31.01.2023 and he shall also file additional reply, with respect to the alleged new ground as in the impugned order of his own, within a period of four (04) weeks from today.

13. Accordingly, this writ petition is allowed in part, on the ground that the order does not contain the signatures. The impugned order is set aside with direction to the Competent Authority to pass fresh order in accordance with law considering the petitioner's reply already filed as also the additional reply, if so filed, as submitted by the learned counsel for the petitioner within the aforesaid period with respect to the alleged new ground.

14. The entire exercise be completed preferably within a period of six (06) weeks from today.

15. No order as to costs.

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

RAVI NATH TILHARI, J

A.V.RAVINDRA BABU, J

Date: 10.11.2023

Note:-

Issue C. C in ten (10) days

L.R Copy to be marked

B/o:- SCS

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

WRIT PETITION No.29397 OF 2023
(per Hon'ble Sri Justice Ravi Nath Tilhari)

Date: 10.11.2023

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