

TAX INFO

Dated 01/12/2022

Latest update on GST Law: **Order passed without furnishing material evidence to assessee is against the principles of natural justice** as given in judgement by **Andhra Pradesh High Court**.

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Name of Petitioner	M. R. Metals
Name of Respondent	Deputy Commissioner
Authority	Andhra Pradesh High Court
Date of Judgement	29.09.2022
Appeal No.	Writ Petition No.31148 of 2022

Brief Facts of the Case Law:

The Department in pursuance of inspection conducted in the business premises of the petitioner, issued notice in GST DRC-01A, dated 31.01.2022, ascertaining an amount of Rs.11,15,41,133/- towards the tax payable by the petitioner. Detailed objections came to be filed requesting Department to drop the proposed action. Instead of considering the objections and the elaborate documentary evidence filed by the petitioner, Department issued notice in GST DRC-01, dated 07.04.2022, demanding an amount of Rs.22,58,49,854/-, which includes 100% penalty and interest under Section 50 of CGST/SGST Act. The petitioner once again submitted his explanation to the said notice along with the material. However, revised notice in GST DRC-01, dated 30.05.2022, came to be issued by Department demanding Rs.28,00,20,392/-. A reading of the order indicates that the said figures have been arrived at by Department mainly on the ground that the petitioner failed to produce original tax invoices for the entire turnover but instead placed on record xerox copies of invoices for part of the turnover. It was further based on the fact that some of the dealers, from whom the petitioner has purchased the goods, are not existing/fictitious. Enquiries with the toll gate authorities revealed that some of the vehicles did not pass through the said toll gates and some of the owners of the vehicles, denied hiring of the vehicles to the petitioner for transport of the goods. In response to the revised notice in GST DRC-01 dated 30.05.2022, the petitioner filed a letter dated 10.06.2022 seeking 15 days' time to file objections explaining the circumstances as to why he needs some time to file reply. Though the said letter was said to have been acknowledged by Department, there was no response from him either rejecting or restricting the time sought for by the petitioner. But the impugned order in Form GST DRC-07, dated 20.06.2022, came to be passed stating that the petitioner did not respond to the revised notice issued in GST DRC-01, dated 30.05.2022. The Department provisionally attached the bank account of the petitioner under Section 83 of the A.P.GST Act vide order, dated 07.05.2022. Challenging the same, the present writ petition was filed.

Contention of the Petitioner:

The order of assessment is bad in law, as the material relied upon by the assessing authority was not furnished to the petitioner, which disabled him from giving appropriate reply to the show cause notice. The provisional attachment order issued under Section 83 of the APGST Act is also bad in law for the reason that the Joint Commissioner has no power to issue the same coupled with the fact that the authority did not record his explanation before issuing the provisional attachment order.

Findings and Decision of the Court:

A perusal of the revised notice issued in GST DRC-01, dated 30.05.2022, would show that the authority relied upon the material, which was not furnished to the petitioner. The assessment order does not indicate the dealers, whom the assessing authority claimed to have been examined to show that the petitioner has purchased goods from the dealers who are non-existing/fictitious. Further, the names of the toll gates through which these vehicles, according to the assessing authority, did not pass, and also the names of the owners of the vehicles, who have not hired their vehicles to the petitioner were not furnished. Since this material forms part of the impugned order, the assessing authority ought to have furnished the said material enabling the petitioner to make a representation or produce any material contra to the same, to substantiate his plea. Non-furnishing of the same would be violation of principles of natural justice. Thus, the impugned order passed by Department Form DRC-07, dated 20.06.2022, was set aside and the matter was remanded back to the assessing authority. The assessing authority shall take into consideration the additional objections, if any, to be raised by the petitioner and pass order in accordance with law, after giving an opportunity of hearing to the petitioner. Consequently, the provisional attachment order passed by Department in Form GST DRC-22, dated 07.05.2022 was also set aside, giving liberty to the authority to issue fresh provisional attachment order, if required.

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