

TAX INFO

Dated 27/12/2022

Latest update on GST Law: **Enhancement of demand in order beyond the scope of SCN is not sustainable** as given in judgement by **Andhra Pradesh High Court**.

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Name of Petitioner	Hajee AP Bava and Company Constructions Private Limited
Name of Respondent	Assistant Commissioner
Court	Andhra Pradesh High Court
Date of Judgement	12-07-2022
Appeal No.	W.P.No.18276 of 2022

Brief Facts of the Case Law:

The petitioner is a Company carrying on business in mechanical erection and fabrication of Cement and Steel plants. The petitioner has been filing returns regularly after adjusting the tax credit in terms of Section 16 of CGST/SGST Act, 2017. The Department inspected the business premises of the petitioner on 02.11.2020 and thereafter issued a notice dated 03.11.2020, invoking the power under Section 73/74 of APGST/CGST Rules, 2017, assessing the tax payable to the petitioner as Rs.69,12,453/- in respect of the assessment year 2018-19 and Rs.1,53,25,314/- in respect of the year 2019-20. Another SCN dated 10.08.2021 proposing to levy penalty and interest in addition to the tax already ascertained by him through Form DRC 01A was issued. The petitioner has given the explanation to the show cause notice mentioning the incorrectness in the show cause notice issued. Pursuant thereto, the authority passed an Order dated 17.11.2021, which is impugned in the present Writ Petition.

Contention of the Petitioner:

The order impugned dated 17.11.2021 is bereft of any reasons and the explanation given by the petitioner has not been considered. While the show cause notice is for payment of Rs.69,12,114/- under SGST and CGST Acts, the order impugned directs levying of Rs.5,20,39,891/- as the amount payable by the petitioner, which is beyond the amount demanded under the show cause notice. Apart from adding CGST and SGST, the authority concerned has imposed IGST interest to a tune of Rs.84,16,365/-, which is also beyond the purview of the show cause notice.

Findings and Decision of the Court:

As seen from the record, the show cause notice was issued on 10.08.2021, demanding the petitioner to pay a sum of Rs.69,12,114/- under CGST. On the very same day, another show cause notice was issued demanding payment of Rs.69,12,114/- under SGST Act. The petitioner submitted his explanation on 09.09.2021 explaining the mistake committed by the authority in arriving at the said figures. Thereafter, the impugned order came to be passed on 17.11.2021 fixing the liability at Rs.5,20,39,891/-. The said amount was arrived at after calculating interest and penalty to be paid by the petitioner, on the amount demanded. Not only that, an amount of Rs.84,16,365/- was added towards IGST which in our view is impermissible under law. Thus, the Order under challenge i.e., Form GST DRC-07, dated 17.11.2021, was set aside and the matter was remanded back to the authority to issue fresh notice and there after proceed further in accordance with law.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>