



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU
WRIT PETITION NO: 22402 OF 2022

Between:

1. M/s. B.A.M.S.M. Constructions, a Partnership Firm (Firm no. 13/2015), D. no. 44-18-G1, Viswa Apartment, Prakash Nagar, Kurnool, Andhra Pradesh, rep. by its Managing Partner, B. Aleem Miah

...PETITIONER(S)

AND:

1. The Deputy Assistant Commissioner (ST), O/o The Assistant Commissioner (ST), Kurnool-II Circle, 1st Floor, C.T. Complex, Opp. Indus School, No. 7, Gooty Road, Kurnool.
2. The Assistant Commissioner (ST), Kurnool-II Circle, 1st Floor, C.T. Complex, Opp. Indus School, No. 7, Gooty Road, Kurnool.
3. The State of Andhra Pradesh, rep. by the Principal Secretary to the Government, Revenue (CT) Department, Andhra Pradesh Secretariat Buildings, Velagapudi, Guntur District, Andhra Pradesh.
4. The Union of India, rep. by its Secretary (Finance), Ministry of Finance, North Block, New Delhi -110001.

...RESPONDENTS

Counsel for the Petitioner(s): G NARENDRA CHETTY

Counsel for the Respondents:

The Court made the following: ORDER



THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE A.V.RAVINDRA BABU
WRIT PETITION No. 22402 of 2022

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

1) The Petitioner herein filed the present Writ Petition under Article 226 of the Constitution of India, questioning the Assessment Order, dated 05.05.2022, passed by the first Respondent for the tax periods June, 2017 to September, 2019, under Integrated Goods and Services Tax Act, 2017, as contrary to the provisions of Goods and Services Tax, Act, 2017.

2) (i) The averments in the affidavit filed in support of the Writ Petition show that the Petitioner is a Special Class Civil Contractor executing various Civil Contracts for the State and Central Government with their entities in the States of Andhra Pradesh and Telangana.

(ii) The Petitioner is said to be a registered dealer in both the States even before the introduction of Goods and Services Tax, Act, 2017, [**GST Act**] and on introduction of GST,



migrated to GST, in both States having different GSTIN Numbers and is on the rolls of the second Respondent.

(iii) It is further averred that the first Respondent on an authorization given by Joint Commissioner, Kurnool, conducted inspection of the business premises of the Petitioner and after perusing all its books of accounts, records etc., assessed the case of the Petitioner though he is not a “Proper Officer” and though there is no authorization from Joint Commissioner to make an Assessment. It is alleged that, an Assessment Order came to be passed on 05.05.2022, imposing GST on certain Works Contracts said to have been executed in the State of Telangana and were reported to tax paid thereon in the State of Telangana.

(iv) It is said that, though the first Respondent has accepted and dropped levy of GST on certain Works Contract executed by the Telangana Branch of the Petitioner, in the State of Telangana, but imposed GST on certain Work Contracts, on the ground that in one of the invoices issued by the Petitioner, the GSTIN of A.P. was mentioned and that the Contractee has issued 2% TTD under IGST head, thereby holding that the Petitioner has executed Works Contract for TTD in the State



of Telangana, from Andhra Pradesh registered Firm only and not by its sister concern Office in the State of Telangana.

(v) The first Respondent also imposed GST on amounts received towards works executed by the Petitioner under VAT regime, on which GST is not attracted, on the ground that no documentary evidence is filed to show that these turnovers relate to VAT regime.

(vi) The first Respondent also disallowed the alleged excess claim of ITC by rejecting the explanation furnished by the Petitioner, as it claimed excess ITC under IGST by mistake instead of claiming the same under CGST and SGST.

(vii) The first Respondent also rejected the claim that TTD is a Government concern and that tax @18% is payable and not 12%, apart from imposing differential tax @ 6% on Works Contract executed by the Petitioner as Sub-Contractor of main contractor.

3) The said Order of the Assessing Authority came to be challenged on the following grounds, namely:-

(i) the imposition of GST by the State of Andhra Pradesh on the Works executed in the State of Telangana by the



Sister concern of the Petitioner, which is registered as a 'Dealer' in the State of Telangana, is without jurisdiction,

- (ii) The Works executed in the State of Telangana amounts to intra-state/local supplies of Works Contracts within the State of Telangana in terms of Section 8 of IGST Act read with Section 2(64) and (65) and that the State of Telangana alone has the jurisdiction to levy tax on the said transactions as per Section 9 of TGST Act and CGST Act, 2017,
- (iii) The turnovers fall outside the purview of Section 7 of IGST Act, as both the supplier and recipient are not in two different States but are located in the State of Telangana and, as such, no tax under Section 5 of IGST Act, could have been levied by A.P.G.S.T. Department Officers by exercising powers under Section 20 of the IGST Act.
- (iv) The first respondent is not the 'Proper Officer' for passing the Order, as he is not the jurisdictional Assessing Authority of the Petitioner. It is also stated



that, the Joint Commissioner (ST), Kurnool, has issued authorization in Form INS-01 only for conducting inspection and there was no further authorization to assess the case of the prosecution.

(v) It is further stated that, in view of Article 286(1) of the Constitution of India, no law of a State shall impose or authorize imposition of tax on the supply of goods or of services or both, where the supply takes place (a) outside the State, and (b) in the course of import of the goods or services or both into or export of the goods or services or both out of the territory of India,

(vi) The first Respondent, who is the Deputy Assistant Commissioner (ST), is not the Officer having territorial jurisdiction to assess the case of the Petitioner and it is only the Assistant Commissioner (ST), Kurnool – II Circle, who is competent to assess the case of the Petitioner.

4) Having regard to the above, Sri. G. Narendra Chetty, learned Counsel appearing for the Petitioner, would submit that the Order under challenge has to be set-aside. Apart



from that, while reiterating the averments made in the affidavit filed in support of the Writ Petition, the learned Counsel for the Petitioner took us through the Notification No.37, dated 30th June, 2017, issued by the Chief Commissioner of State Tax, to contend that, as the Order impugned is under Section 73 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017, the Proper Officers are, (i) Deputy Assistant Commissioner, (ii) Assistant Commissioner, and (iii) Deputy Commissioner, Officers having jurisdiction and not the territorial Assessing Authorities.

5) (i) On the other hand, Sri. Y.N. Viveknanda, learned Special Government Pleader appearing for the Respondents, opposed the same contending that the Joint Commissioner, gave authorization to the first Respondent to inspect the books of accounts and since the Officer is also having territorial jurisdiction over the Petitioner, assessed the case of the Petitioner, more so, being a Proper Officer in terms of Notification No. 37, dated 30th June, 2017.

(ii) He further submits that, 'any one of the Officer' referred to in the Notification, in the same Circle, will get jurisdiction to assess the case of the Petitioner. In other words, according



to him one of them would be the territorial Assessing Officer, having jurisdiction to assess the case of the Petitioner.

(iii) He further submits that, no prejudice is caused to the Petitioner, as the Appeal against order passed by any of the three [03] Officers, mentioned in the Notification and also by the territorial Assessing Authority [second Respondent as claimed by the Petitioner], would lie only before the Joint Commissioner and there is no inter-se appeal between the three Officers.

(iv) He further submits that, the argument of the Petitioner only makes us to presume that there was no work in the State of Andhra Pradesh and no movement of goods in the State of Andhra Pradesh, which factual aspect cannot be decided in this Writ Petition.

6) In reply, Sri. G. Narendra Chetty, learned Counsel appearing for the Petitioner, would submit that, in the absence of any material, it is not permissible for the Assessing Authority to come to the conclusion that there was intra-state service. He took us through Sections 5, 7, and 8 to contend



that, Order of assessment is illegal and the same is liable to be set-aside.

7) In order to appreciate the rival arguments advanced, it would be just and proper for us to refer to certain provisions of CGST and IGST Act.

8) The word “Proper Officer” is defined in Section 2(91) of the Act. It reads as under:

“Proper Officer” in relation to any function to be performed under this Act, means the Commissioner or the Officer of the Central Tax who is assigned that function by the Commissioner in the Board.”

9) Section 3 of C.G.S.T. Act, deals with “**Administration**”, which reads as under:

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,



(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

10) Section 5 deals with “**Power of Officers**”, which is as under:

“(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.



(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.”

11) Section 73 (i) of C.G.S.T. Act, which falls under Chapter XV deals with “***Demands and Recovery***” is as under:

“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.”

12) As stated earlier, the Order impugned came to be passed under Section 73 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. The Assessment Order also indicates that, the Assessing Officer passed a single Assessment Order for IGST, SGST and CGST. It is also not in dispute that the Order came to be passed by the Deputy Assistant Commissioner (ST)-I, Circle – II, Kurnool, who is



arrayed as first Respondent, while the second Respondent was shown as Assistant Commissioner (ST), Kurnool-II Circle. It is also not in dispute that the Assessment Order, dated 05.05.2022, was passed from the Office of the Assistant Commissioner (State Tax), Kurnool-II Circle.

13) The first question that would arise for consideration is, *whether the first Respondent is competent to pass the impugned Order? [The objection raised by the learned Counsel for the Petitioner that the first respondent is not the territorial Assessing Authority and that the second Respondent herein is the territorial Assessing Authority].*

14) Section 73 of the CGST Act, speaks only of Proper Officer. “Proper Officer” is defined in Section 2(91) of the CGST Act, which states that the ‘Proper Officer’, for the acts to be performed under the CGST Act means, *the Commissioner or the Officer of the Central Tax, who is assigned that function by the Commissioner in the Board.*

15) The Chief Commissioner of State Tax, while exercising power under Section 2(91) read with sub-section 1 of Section 5 of APGST Act, 2017, issued Notification, dated 30th June,



2017, stating that the “Proper Officer” for various functions, referred to in the CGST Act, would be Officers as mentioned against each function in the list enclosed to the said Order.

16) Insofar as Sections 73 and 74 are concerned, which deals with “*non willful evasion*” and “*willful evasion*”, the Proper Officers are (i) Deputy Assistant Commissioner, (ii) Assistant Commissioner, and (iii) Deputy Commissioner, Officers having jurisdiction.

17) In the instant case, the Petitioner was assessed by one of the Officers specified therein. Merely because the second Respondent happens to be a territorial Assessing Authority, does it preclude the first Respondent from assessing the case of the Petitioner, more so, when the case of the Petitioner falls within the territorial jurisdiction of the first Respondent as well. Apart from that, it is also to be noted that, no prejudice would cause to the Petitioner, if the case of the Petitioner is assessed by any of the Officers, for the reason that, no inter-se appeal would lie against the Order passed by one Officer to the other Officer. On the other hand, the Assessment Order passed by any of the Officers can be challenged only before



the Joint Commissioner, who is the Appellate Authority as contemplated under the Act.

18) The learned Counsel for the Petitioner submits that, the authorization was issued by the Joint Commissioner only to conduct inspection of the business records relating to Taxable person vide Form GST INS-1, dated 20.11.2019, and that no power was given to the first Respondent to assess the case of the Petitioner.

19) A perusal of Form GST INS-01 coupled with Rule 139 (1) would show that, the Officer to whom the authorization is given in Form GST-1S can only inspect and search the business records and also seize the same in terms of Rule 139. But, here is a case where the Officer to whom the authorization was given, is also the Officer, who has been declared as a “Proper Officer” in terms of Section 73 of the CGST Act, for proceeding under the provisions of Sections 73 and 74 of the Act. Further, the Act does not anywhere contemplate an authorization from higher authority for assessing the case of a dealer, falling within the territorial jurisdiction of the Officer. In view of the Notification issued by the Chief Commissioner and as held earlier, the first



Respondent is the Proper Officer to proceed against the dealer under Sections 73 and 74 of the Act, more so, when the dealer falls within his territorial jurisdiction. Therefore, the argument that the first Respondent could not have passed the Assessment Order basing on the said authorization, though appeared to be correct at the first blush, but on a close perusal of the record, coupled with the Notification given, we hold that there is no illegality in first Respondent assessing the case of the Petitioner.

20) The next issue that arises for consideration is, *whether the procedure followed by the authorities with regard to passing of the Order under Section 73 of the CGST Act read with Section 20 of the IGST Act is correct?*

21) Sections 73 and 74 of the CGST Act fall under Chapter XV, which deal with **“Demands and Recovery”**. Section 73(1), 73(4), 73(5) and 73(6), reads as under:

“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has



not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*
- (5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*
- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.”*

22) Rule 142 of the Central Goods and Services Tax Rules, 2017 [**C.G. & S.T. Rules**] reads as under:



“142. Notice and order for demand of amounts payable under the Act.-

(1) *The proper officer shall serve, along with the –*

*(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,*

*(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.”*

23) It is to be noted that the said Rule also falls under Chapter “***Demands and Recovery***”. Rule 142 (1A), reads as under:

*“(1A) The [proper officer may]¹, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, [communicate]² the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**”*

24) Sub-Section 5 of Section 73 states that, *before service of notice under sub-section (1) or the statement under sub-section (3), the person chargeable with tax may pay the amount of tax along with interest payable thereon under Section 50 on the*

¹ Substituted for “proper Officer shall” vide Noti. No. 79/2020-Central Tax, dt. 15-10-2020, w.e.f. 15.10.2020.

² Substituted for “shall communicate”, *ibid.*



basis of his own ascertainment of such tax or as ascertained by the proper officer and inform the proper officer in writing of such payment.

25) Similarly, sub-section 5 of Section 74 makes it clear that, *before service of show cause notice under sub-section (1), such person may pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 50% of such tax on the basis of his own ascertainment of such tax or the tax as may be ascertained by the proper officer and inform the proper officer in writing of such payment.*

26) The Scheme of the Act is that, a person be given an opportunity of making payment towards tax before taking steps under sub-section (1). If he makes payment under sub-section (5), then he gets benefit under sub-section (6), whereby, the proper officer on receipt of payment would not proceed further in issuing notice under sub-section (1) in respect of taxes so paid or any penalty payable under the provisions of the Act or the Rules.



27) At this stage, it would also be relevant to state that, intimation under sub-section 5 would strictly be in FORM GST DRC-01A. The said Form is only an intimation, in which the dealer will be informed, that if he fails to make the payment, the next step will be action under sub-section (1) of Section 74, in FORM GST DRC-01. A reading of the provision of the Act and the Forms would clearly show that it cannot be show-cause notice.

28) It will be very much relevant to refer to Rule 142 of C.G. & S.T. Rules, which states as under:

“142. Notice and order for demand of amounts payable under the Act.-

(1) The proper officer shall serve, along with the –

*(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,*

*(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.”*

(1A) *The [proper officer may], before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, [communicate] the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**”*



29) A reading of the above provisions makes it clear that, under Rule 142, the Proper Officer shall serve along with the notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01.

30) Rule 142 (1A), as it stands today, state that the Proper Officer “**may**”, [which came into effect from 15.10.2020], before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

31) It is also to be noted that, prior to the amendment, the word used in the first sentence was “**shall**”, which is now substituted with “**may**” and the word “shall” used before the word “**communicate**” has been deleted. It is to be noted that this amendment came into effect from 15.10.2020.



32) Having regard to the above, the learned Government Pleader would contend that, since the word used there is “may”, and as the Order impugned came to be passed after the amendment, it is not mandatory to issue GST DRC-01A and that the Officer can proceed directly under Section 73(1), meaning thereby, the procedure contemplated under Section 73(5) has to be dispensed with.

33) Sri. G. Narendra Chetty, learned Counsel appearing for the Petitioner, would contend that the argument of the learned Government Pleader would hold good provided corresponding amendments are made in Section 73(5) of CGST Act, 2017, and in the absence of the same, he would contend that the procedure followed is contrary to the Act.

34) The situation that boils down is, *whether intimation under Sub-section (5) of Section 73 and sub-section (5) of Section 74, by issuing notice in FORM GST DRC-01A should be followed?*

35) In the instant case, as seen from the record, authorization to inspect and search in Form GST INS01 is dated 20.11.2019, and the business premises was searched



on 27.11.2019 by the first Respondent. Notice for production of records was issued on 27.11.2019 and the same were submitted by the Petitioner on 21.01.2020.

36) From the above, it is clear that, the entire process of issuing authorization, submission of documents and books of accounts etc., were prior to the amendment of Rule 1A i.e., 15.10.2020, meaning thereby, that the Proper Officer “shall”, before service of notice under Sub-section 1 of Section 73 or 74, indicate the details of tax, interest and penalty in Form GST DRC-01A.

37) That being so, the question is, *whether such Forms were issued?*

38) As seen from the reference column, in the Order impugned, dated 05.05.2022, GST DRC-01A dated 05.10.2021, was issued, to which the taxable person sought 30 days time to file objections vide letter, dated 14.10.2021. On 05.11.2021, a reply came to be submitted by the taxable person in Part-B and ultimately a notice in FORM GST DRC-01 was issued on 27.01.2022, followed by a notice of personal hearing on 02.03.2022, to which a reply was received in Form



GST DRC-06 on 14.03.2022. After following the other mandatory requirements, the impugned Order came to be passed on 05.05.2022. Ergo, it is very much clear that, the procedure, as required under the Act, namely, issuance of Form GST DRC-01A, followed by a reply in Form GST DRC-06, as contemplated under the Act, have been followed.

39) However, Sri. G. Narendra Chetty, learned Counsel appearing for the Petitioner, tried to contend that, the procedure, as contemplated under the Act, has not been followed.

40) The Assessment Order makes it very much clear that, the Petitioner was given an opportunity to file documentary evidence i.e., work orders, Form VAT 250 [Option to pay at composition under AP VAT 205), VAT-200 returns, filed along with RA bills VAT-501 and 501A certificates filed with A.P. and Telangana. Also GSTR-3B and GSTR-1 reports and details of invoice number, date and period of month which was reported to the respective States to be made available, on or before 15.11.2011, failing which the turnovers, sales/service relating to GST period, attracts levy of tax under GST Act, 2017.



41) Having received the endorsement, the Petitioner vide letter, dated 26.11.2021, sought six weeks time. Though three months time was granted to file all the business records claiming exemption from the proposed tax, the Petitioner addressed another letter, dated 13.12.2021, seeking eight more weeks time. Even after availing the time granted, as stated above, the Petitioner failed to file documentary evidence in support of the objections raised in DRC-01 B, dated 02.11.2021.

42) Having regard to the above and since the notice came to be issued much prior to amendment to Rule 142 (1A), the mandate that was required to be followed has been followed. Hence, the argument of the learned Counsel for the Petitioner that the procedure contemplated under the Act was not followed falls to ground.

43) The next issue raised by the learned Counsel for the Petitioner is, *whether one single Assessment Order can be passed for IGST, CGST and SGST, and whether the very same Officer can pass the Assessment Order for IGST also?*



44) In order to answer the jurisdiction of the authorities to pass the Assessment Order under IGST, Section 4 of the IGST Act, would solve the issue. It would be appropriate to extract the same, which is as under:

“4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.”

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.”

45) This Section, *inter alia*, contemplates that, the Officers appointed under the SGST Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council notify. In the absence of any notification being placed on record, exempting the first Respondent from passing assessment order, it can be said, without any hesitation, that the Officer, who is competent to pass assessment under SGST, is also competent to assess the case of the assessee under IGST Act. In view of the above, it cannot be said that, the first Respondent is not competent to assess the case of the Petitioner under IGST Act.



46) The only other issue, which remains consideration, is *whether a single Assessment Order can be passed for IGST, SGST and CGST?*

47) It is to be noted that, except stating that single Assessment Order could not have been passed, no provision under law debarring the Authority from following such procedure has been placed on record. Further, the prejudice that is caused in passing single Assessment Order is also not shown. Apart from that, neither IGST nor CGST Act, anywhere prohibit making a single assessment under both the enactments. When the same Officer is authorized to assess the case of the dealer under IGST and SGST, we feel that there is nothing wrong in single assessment being made unless grave prejudice is show, which is not, in the case on hand. In-fact, the prejudice does not even appear to be inherent also in passing the single assessment order.

48) The only other ground on facts, which came to be urged is that, there was no activity in the State of Andhra Pradesh and, as such, the authority in Andhra Pradesh has no jurisdiction to pass the order of assessment. The learned Counsel for the Petitioner took us through Sections 7 and 8 of



IGST Act, to contend that, in the absence of any finding as to whether there was any *Inter-State supply* or *Intra-State supply*, the authority erred in passing the Assessment Order.

49) Section 7 of IGST Act, deals with “**Inter-State supply**”, while Section 8 deals with “**Intra-State supply**”. It is the case of the Petitioner that whatever happened, in the instant case, was within the State of Telangana in terms of Section 8 of the Act and there was no movement of goods, leave alone any activity in the State of Andhra Pradesh. The first Respondent could not have assessed the case of the Petitioner, even assuming for the sake of argument that he has authority to do so. But, the Order impugned shows that, the taxable person is doing civil works, contract services to State Government of A.P. and also with the Government of Telangana and Karnataka, apart from effecting sub-contract works to prospective Works Contract service providers.

50) The Assessing Authority perused the income tax returns, balance sheet and profit and loss accounts, coupled with E-way bills etc., to come to a conclusion that the Petitioner was liable to be taxed in the State of Andhra Pradesh as well.



51) This issue, in our view, namely as to whether the turnovers falls outside the purview of Section 7 of the IGST and, as such, no tax under Section 5 of IGST can be levied by the first Respondent herein is a factual aspect, for which, this Court under Article 226 of the Constitution of India, cannot embark on investigating the same, more so, when a remedy of Appeal is available to the Petitioner. Hence, the argument that the Assessment Order is hit by Article 286 of the Constitution of India, cannot be gone into and answered in this Writ Petition.

52) For the aforesaid reasons, we see no merit in the Writ Petition. Accordingly, the Writ Petition is ***dismissed***. No Order as to costs.

53) As a sequel, interlocutory applications, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

A.V.RAVINDRA BABU, J

Date: 25.11.2022.
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HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE A.V.RAVINDRA BABU

WRIT PETITION No. 22402 of 2022
(Per Hon'ble Sri Justice C. Praveen Kumar)

Dt. 25.11.2022

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