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APHC010438542024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3543]**
(Special Original Jurisdiction)

WEDNESDAY, THE 8th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 22371 OF 2024

Between:

1. PHOENIX MEDICAL SYATEMS PRIVATE LIMITED, 480/2, ANDHRAPRADESH MEDITECH ZONE LIMITED, MAIN ROAD, VISAKHAPATNAM, ANDHRA PRADESH - 520031.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS SECRETARY, REVENUE (CT), DEPARTMENT, SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH - 522503
2. THE ASSISTANT COMMISSIONER ST FAC, STEEL PLANT CIRCLE, VISAKHAPATNAM - II DIVISION, ANDHRA PRADESH
3. THE DEPUTY ASSISTANT COMMISSIONER ST, OFFICE OF ASSISTANT COMMISSIONER (ST), STEEL PLANT CIRCLE, VISAKHAPATNAM - II DIVISION, ANDHRA PRADESH
4. THE ADDITIONAL COMMISSIONER ST AND APPELLATE AUTHORITY ST, , VIJAYAWADA, KRISHNA DISTRICT, ANDHRA PRADESH

...RESPONDENT(S):

Counsel for the Petitioner:

1. P SRAVAN KUMAR REDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

The Court made the following ORDER: ***(Per NJS,J)***

Petitioner, a company incorporated under the Companies Act, is engaged in the business of manufacturing of Neonatal Medical Equipments.

2) 2nd respondent issued Notice dated 09.03.2023 to the petitioner in Form GST ASMT-10, under Rule 99(1) of the GST Rules pointing out certain discrepancies upon comparing the returns filed by the petitioner i.e., e-way bills turnover for the period 2021-2022. Petitioner failed to respond to the said notice and thereupon, the 3rd respondent issued show cause notice dated 06.05.2023 under Section 74 (1) of the APGST, to which it is asserted that a reply dated 05.06.2023 was submitted seeking certain details while submitting the preliminary objections. Thereafter, the 3rd respondent issued proceedings dated 16.06.2023 vide DRC-07 under Section 74 of A.P. GST Act along with the summary of the Order, directing the petitioner to pay Tax due amount of Rs.14,30,814.96 Ps.,

3) Learned counsel for the petitioner made submissions *inter alia* to the effect that the impugned proceedings are violative of principles of natural justice, in as much as the same were issued without taking into consideration the reply of the petitioner dated 05.06.2023. That apart, a reading of Notice dated 06.05.2023 in Form GST DRC-01 Under Section 61(1) of the Act would go to show that the 3rd respondent already made up his mind for determining the alleged tax due, even before submitting explanation / objections. Further, referring to Section 75(4) of the Act, he also submits that before passing any adverse order / taking adverse decision, an opportunity of hearing as

contemplated under said Section was not granted and therefore, the proceedings dated 16.06.2023 are liable to be set aside. In this regard, learned counsel placed reliance on the decision of a Coordinate Bench of this Court in W.P.No.9162 of 2021, dated 28.04.2021. He also placed reliance on the decision of another Coordinate Bench in W.P.No.31675 of 2023 dated 18.12.2023 to contend that as the initial Order / proceedings of the 3rd respondent is unsustainable in Law, the Endorsement of the Appellate Authority dated 15.05.2024 rejecting the Appeal on the premise that the same is barred by limitation is also legally not sustainable. Making the said submissions, learned counsel seeks to allow the Writ Petition.

4) Learned Government Pleader, Mr.M.V.Krishna Rao, on the other hand made submissions to the effect that the impugned proceedings does not suffer from any illegality, much less on the ground of violation of principles of natural justice. He submits that as per the statue / CGST Act, the petitioner has a remedy of appeal and instead of filing the same, it chose to file the present Writ Petition and the same is liable to be dismissed on the said ground. While not disputing the decisions on which reliance is placed by the learned counsel for the petitioner, he however, submits that the same are not applicable to the facts of the case. Learned counsel urges for dismissal of the Writ Petition as the same is devoid of merits.

5) This Court has considered the submissions and perused material on record.

6) At the outset, it may be appropriate to mention that on a perusal of the documents annexed to the Writ Petition, it is evident that pursuant to the notice dated 09.03.2023 and 06.05.2023 petitioner submitted its reply dated 05.06.2023 (Ex.P4), requesting certain details. 3rd respondent in his counter affidavit has not denied the said aspect, but stated that *"the alleged reply dated 05.06.2023 stated to have been submitted in this office has not reached my notice. Hence, not considered."* In the light of the said statement, the contention of the learned counsel for the petitioner that the proceedings under challenge are violative of principles of natural justice merits acceptance.

7) In so far as the other contention with reference to Section 75(4) of the Act, it is clear that as seen from the reference in the proceedings dated 16.06.2023 there was no mention about the issuance of a notice in tune with the said provision, which reads as follows:

> Section 75 (4): An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or <u>where any adverse decision is contemplated against such person</u>. (emphasis supplied)

8) The above provision makes it clear that an opportunity of hearing shall be granted where a specific request is received in writing from the person chargeable with tax or penalty or <u>whether any adverse decision is contemplated against such person</u>. Second limb of the provision is explicit and mandates that even in the absence of a request for personal hearing by the concerned person chargeable with tax or penalty, an opportunity of hearing shall be afforded in the event, any adverse decision is sought to be

taken against such person. Interpreting the said provision of law, a Coordinate Bench of this Court in W.P.No.9162 of 2021, dated 28.04.2021, while setting aside the order of assessment *inter alia* held as follows:

> "8. In the instant case, admittedly, proposing an adverse action, by way of a show cause notice, 1st respondent initiated action under the above provision of law. It is evident from a reading of the impugned order that on the ground that the petitioner herein failed to respond to the show cause notice by way of filing objections, 1st respondent herein confirmed the demand. When such a course of action is adopted by 1st respondent herein prejudicial to the interest of the assessee, the mandatory requirements of law as provided under sub-section (4) of Section 75 of the CGST Act, 2017 are required to be followed scrupulously. Therefore, the impugned order, in the considered opinion of this Court, is liable to be set aside not only on the ground of deviation from the mandatory provisions under sub-section (4) of Section 75 of the CGST Act, 2017 but also on the ground of violation of principles of natural justice. As such, the contention of the learned Additional Advocate General-II as regards the availability of alternative remedy of appeal under Section 107 of the CGST Act, 2017, is liable to be rejected and is, accordingly, rejected."

9) The impugned proceedings of 3rd respondent, in view of the above stated factual and legal position, is not sustainable in law. In the present case, though the petitioner carried the matter by way of Appeal and suffered an order of rejection, as initial assessment proceedings of the 3rd respondent itself have no legal efficacy and not sustainable for the conclusions set out above, the order of the Appellate Authority against the said proceedings is also not sustainable.

10) For the aforegoing reasons, the proceedings of the 3rd respondent dated 16.06.2023 is set aside and the consequential actions pursuant thereto are declared unsustainable in law. The Writ Petition is accordingly allowed.

11) This Order, however, shall not preclude the 3rd respondent to issue appropriate notice to the petitioner and proceed further in the matter, in accordance with Law. No costs.

NINALA JAYASURYA,J

T.C.D.SEKHAR,J

Date:08.07.2026
Ssv

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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