

Opportunity of hearing must be provided to the assessee before passing of an order

The Hon'ble Telangana High Court in *M/s Suvarna Traders v. Assistant Commissioner of State Tax [Writ Petition No. 33292 of 2022 dated December 15, 2022]* set aside the order confirming the excess claim of Input Tax Credit (“ITC”) passed by the Assistant Commissioner (ST) on the ground that the Petitioner was not granted fair opportunity of hearing.

Facts:

M/s Suvarna Traders (“the Petitioner”) has filed this petition challenging the legality and validity of the Order dated May 5, 2022 (“the Impugned Order”) passed by the Assistant Commissioner (ST) (“the Respondent”) wherein excess claim of Input Tax Credit (“ITC”) of INR 41,10,622/- under Central Goods and Services Tax (“CGST”) and equivalent amount of State Goods and Services Tax (“SGST”) each was confirmed.

The Respondent submitted the copy of Show Cause Notice (“SCN”) dated April 31, 2021 followed by the reminder dated June 2, 2021 issued to the Petitioner. Further, the Impugned Order and the notice of personal hearing was uploaded on the common portal of the Petitioner, which is an accepted mode of service under Section 169 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”).

However, the Petitioner submitted that the GST registration of petitioner was cancelled on January 19, 2021, therefore, the Petitioner could not access the common portal.

Issue:

Whether the Impugned Order is passed against the principles of natural justice?

Held:

The Hon'ble Telangana High Court in *Writ Petition No. 33292 of 2022* held as under:

- Opined that, it would only be in the interest of justice if the Petitioner is granted an opportunity of hearing by the Respondent before passing the fresh order.
- Set aside the Impugned Order and remanded the matter to the Respondent for passing a fresh order in accordance with law.
- Held that, though the Impugned Order has been set aside, may be construed as the SCN. Further, directed the Petitioner to submit its reply within 15 days.

Relevant Provisions:

Section 169 of the CGST Act:

“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.”

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