Merely exercising option under composite scheme cannot prevent Revenue Department from demanding the recovery of GST

The Hon'ble Andhra Pradesh High Court in ***Godway Furnicrafts vs. the State of AP [Writ Petition No.10350 of 2020, dated November 11, 2020]*** confirmed the demand for recovery of Goods and Services Tax (**"GST"**) by Revenue Department and held that merely because the assessee has exercised an option under the composite scheme and that it took time for the Revenue Authorities to verify the genuineness, it cannot prevent them from directing the assessee to pay tax, if the option exercised was found to be incorrect.

Facts:

Godway Furnicrafts **("the Petitioner")** is engaged in the business of furniture. The Petitioner's claim for payment of tax under the composite scheme was rejected on the ground that the turnover of the Petitioner for the "previous year" under the Value Added Tax **("VAT")** regime was INR 2.09 crores. Revenue Department **("the Respondent")** issued a Show Cause Notices **("SCNs")** in terms of Section 74 and Section 10(5) of the Central Goods and Services Tax Act, 2017 **("CGST Act")**, stating that the Petitioner was liable to pay GST @28% from the date of initial registration.

Further, an explanation to the SCNs were given twice by the Petitioner, but the same was rejected by the Respondent, confirming the demand along with interest and penalty. Subsequently, the Petitioner preferred an appeal, challenging the order passed by the Respondent, but the same was also rejected. Being aggrieved by the order passed, the present writ petition has been filed.

The Petitioner has contended that the Respondent having accepted the option exercised by the Petitioner in the GST portal and having permitted him to pay tax at 1% of the total turnover in terms of the composite scheme, cannot now turn around and reject the option exercised and consequently direct the Petitioner to pay GST as per the regular rates.

While the Respondent has contended that, merely because the Petitioner has exercised an option, which was on his own, and that the authorities have collected the taxes for four quarters based on self-declaration, the same does not by itself mean that the authorities have accepted the scheme opted by the Petitioner. Further, the GST regime came into effect from July 1, 2017, it took some time for the officials to process all the options exercised and in the process accepted the tax paid.

Issues:

- Whether the Petitioner is liable to pay GST under the composite scheme, as his turnover in the GST regime was less than INR 1 crore?
- Whether the authorities were right in directing the Petitioner to pay GST at regular rates of GST i.e. @28%?

Held:

The Hon'ble Andhra Pradesh High Court in ***Writ petition no. 10350 of 2020 dated November 11, 2020,*** held as under:

- Observed that, it may be true that the Petitioner had paid GST under a composite scheme as per the option exercised in the GST portal, for nearly four quarters, but, the option exercised by the Petitioner was self-declaratory, which required verification. Therefore, the contention of the Respondent cannot be brushed aside.

- Further observed that, merely because the Petitioner has exercised an option of composite scheme and that it took time for the Revenue Authorities to verify the genuineness or otherwise of the option exercised, cannot prevent the Respondents from directing the Petitioner to pay tax as regulated under the provisions of the GST Act, if the option exercised was found to be incorrect.

- Stated that, the word 'preceding financial year' appearing in Section 10 (1) of the CGST Act is the crux of the issue. Further, noted that, if the word 'preceding financial year' was restricted to the period commencing from GST regime, then all the assesses, who had submitted their returns with false declarations in the GST regime for the financial year 2017-2018, would go scot free and would not be liable to pay any tax, as there would not be any preceding financial year in the GST regime for the period 2017-2018.

- Opined that, the turnover in the financial year starting from July 1, 2017 has only to be taken into consideration ignoring the previous year's turn over in the VAT regime does not sound reasonable, because when the legislature at more than one place used the word 'preceding financial year', it would only mean that as on July 1, 2017, the turnover of the previous year under the VAT regime has to be

reckoned with for the purpose of extending benefit under GST regime, provided the self-declarations made are correct.

- Held that, there is no illegality in taking into consideration the previous year's turn over (under VAT regime) for the purpose of extending benefits under the composite scheme or for collecting taxes and penalty.

Relevant provisions:

Section 10 of CGST Act –

"Composition levy

10. (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,-

1) one percent of the turnover in State in case of manufacturer;

2) two and a half percent of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II; and

3) Half percent of the turnover in State in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council."

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