

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.382 of 2021

ORDER: (Per UDPR,J)

The challenge in this writ petition is to the assessment order A.A.O.No.ZH370820OD66970 dated 19.08.2020 passed by the 2nd respondent for the tax period from February 2016 to June, 2017.

2. The petitioner's case is thus:

a) The petitioner is M/s. OSTRO Anantapura Private Limited, Anantapuram, and a Company engaged in the business of generation and sale of wind power. The petitioner is a registered dealer under the A.P. VAT Act, 2005 *vide* TIN No.37828843491.

b) The petitioner during the relevant period purchased certain goods which are in the nature of wind power equipment and accessories which were used for setting up and operation of wind power plant. The total value of the equipment is Rs.62,40,13,181/-.

c) Subsequently, during the month of May, 2018, the operations of the Company were shifted from the premises at Dwaraka Villas, Kalyandurg Road to the present premises at Kovur Nagar and the change of address was intimated to the GST Department *vide* application dated 01.02.2019 on the portal for registration of Kovur

Nagar premises. The amended registration certificate was also issued to the petitioner on 15.05.2019.

d) While so, despite acknowledging the change in the address of the petitioner, the 2nd respondent issued notices dated 21.01.2019, 20.11.2019 and 27.11.2019 to the former address of the petitioner calling for the books of accounts for verification for the relevant period. The 2nd respondent also proceeded to issue show cause notice dated 20.03.2020 and personal hearing notices dated 22.05.2020 and 30.06.2020 to the former address of the petitioner which were returned to the 2nd respondent by the postal authorities which was acknowledged by the 2nd respondent in the impugned order itself.

e) Despite knowing that the notices were served to the petitioner, the 2nd respondent proceeded to issue the impugned assessment order confirming the demand of Rs.3,43,20,724/- to the present address of the petitioner. Since the impugned order was passed without serving pre-assessment show cause notice and personal hearing notice to the correct address of the petitioner, the petitioner had no opportunity to submit its case and thereby the principles of natural justice were grossly violated.

f) The impugned order is unsustainable, also for the reason that the demand under the assessment order was bared by limitation.

Hence the writ petition.

3. The 2nd respondent filed counter *inter alia* contending thus:
- a) Firstly it is contended that the writ petition is not maintainable, in view of availability of efficacious and alternative remedy of appeal under the Statute.
 - b) The claim of the petitioner regarding purchase of taxable goods was not covered by valid purchase bills being used in erection of windmill for generation of wind energy. Thus, it was not a levy of tax on purchase of exempted goods as alleged by the petitioner.
 - c) The 2nd respondent exercised all kinds of possible modes of service *inter alia*, sending of notices for books of accounts, show cause notice, hearing notices by way of registered post and also by e-mail ID of the Company existing now and then i.e., Deepakagerwal@astro.in. The petitioner has not objected the service of notice of intimation for audit in Form VAT 304 dated 12.06.2016 and notices calling for books of accounts dated 21.01.2019 and 20.11.2019. In fact, in pursuance of receipt of notice dated 21.01.2019, the petitioner filed a letter seeking 30 days time for submission of information/documents. An endorsement was also given to the petitioner by the 2nd respondent on 30.01.2019 duly providing 15 days time and in pursuance to the said endorsement, the petitioner furnished certain documents on 15.02.2019 along with a letter head containing the address of the Corporate Office, Delhi, but not with the local address as furnished by the petitioner in the present

writ petition. However, the petitioner has not submitted the purchase invoices relating to the inputs purchased for use in the erection of windmill. Therefore, the 2nd respondent issued notice in Form VAT 310 calling upon the petitioner to produce the documents mentioned in the counter. The said notice in Form VAT 310 was also sent for service by way of registered post with acknowledgement due, but it was returned unserved. As the 2nd respondent left with no other go, issued a show cause notice in Form VAT 305-A dated 20.03.2020. The said notice was sent for service to the place of business as well as the house address of Active Director of the firm Sri Rajath Kumar Gupta, S/o Ved Prakash, B/501, Hindon Apartments 25, Vasundhar Enclave, New Delhi, but the copy sent to the place of business was left un-served, but the copy sent to the said Active Director of the firm was served, but no reply was received so far. Thereafter, personal hearing notices dated 22.05.2020 and 30.06.2020 were sent to the aforementioned address, but only the copy sent to the Active Director was served. A copy of the show cause notice was also affixed on the Board of Local Chamber of Commerce, Anantapuram, as a substitute mode of service. In spite of receipt of said notices by the Active Director, they did not choose to comply. All the notices mainly show cause notice and hearing notices were served on the petitioner through official mail of the Company. The petitioner purposefully seeks to derive undue advantage under the guise of violation of principles of natural justice.

d) It is submitted that the petitioner informed the details of shifting from the premises of Dwaraka Villas, Kalyandurg Road to the present premises at Kovur Nagar to the concerned jurisdictional commercial Tax Officer i.e., Anantapur Circle-II but not to the 2nd respondent. The petitioner ought to have instructed the postal authorities to redirect the posts received in its name from old address to new address. The petitioner wantonly avoided to produce the books of accounts and therefore, it cannot plead violation of principles of natural justice. It is reiterated that the 2nd respondent served all the copies of hearing notices and show cause notice not only by way of registered post but also through official e-mail ID of the Company. Therefore, there is no reason why the petitioner was not aware of the audit and assessment.

e) The 2nd respondent made attempts to serve all the proceedings related to assessment of the petitioner not only to the address left unserved but also to the residential address of the Active Director of the firm as well as tried level best for service of the same through official e-mail ID of the company. The 2nd respondent passed orders and levied tax only upon service of correspondence properly on the Active Director through registered post and on the firm through e-mail besides registered post as specified under Rule 64 of the AP VAT Rules, 2005. Thus, there was no violation of principles of natural justice and the writ petition may be dismissed.

4. The petitioner filed rejoinder affidavit against the counter filed by the 2nd respondent.

a) With regard to availability of efficacious and alternative remedy is concerned, it is contended that the impugned order was received by the petitioner on 19.12.2020 and the writ petition was filed on 04.01.2021 i.e., the prescribed period for filing appeal and therefore, the writ petition is maintainable and the decision in *Assistant Commissioner (CT) LTU, Vs. Glaxo Smith Kline Consumer Health Care Limited*¹ has no application. Further, since the petitioner raised the legal point that the assessment is barred by limitation, on that score also the writ petition is maintainable.

b) Denying the averments in para 5 of the counter mentioning that the notice of intimation for audit in Form VAT 304 dated 12.06.2016 and the notices dated 21.01.2019 and 20.11.2019 calling for books of accounts were served on the petitioner and on petitioner's request letter seeking 30 days time, the 2nd respondent *vide* his endorsement dated 30.01.2019 granted 15 days time, the petitioner in its rejoinder vehemently contended that none of the aforementioned notices were received by the petitioner. In fact, those notices were served on M/s. OSTRO A.P. Wind Private Limited which is a group company of the petitioner and in response thereof, the said company filed a letter dated 28.01.2019 seeking 30 days time and the 2nd respondent granted 15 days time and therefore, it is frivolous to contend that notices were

¹ 2020 SCC Online SC 440

duly served on the petitioner. The petitioner has not received any notices to its new address.

c) Then, regarding the averment in para 5 of the counter that notices were sent to the e-mail ID of Deepakagerwal@astro.in, is contended in the rejoinder that he was the erstwhile employee of the petitioner, who resigned from the company on 15.10.2018 itself and therefore, sending notices to his e-mail ID would not serve any purpose.

e) Then, with regard to the averment in the counter that the show cause notice in form VAT 305-A dated 20.03.2020 was sent for service to the place of business as well as to the house address of the Active Director, namely, Rajath Kumar Gupta S/o Ved Prakash, New Delhi, it is contended in the rejoinder that the said Rajath Kumar Gupta resigned on 20.03.2018 itself and hence, any notice served to the erstwhile Director would not serve any useful purpose.

5. Heard Sri Sujit Ghosh, learned senior counsel, representing Sri D. Satya Siva Darshan, learned counsel for the petitioner, and learned Government Pleader for Commercial Taxes appearing for the respondents.

6. Refuting the counter averments, learned senior counsel for the petitioner vehemently argued that none of the notices were served on the petitioner and, in fact, some notices were served on the petitioner's group company and therefore, the petitioner had no

occasion to submit any reply. Learned senior counsel further argued that some notices were served to the residential address of Sri Rajath Kumar Gupta, but he was the erstwhile Director and hence, the petitioner cannot be imputed with the knowledge of the notices. Learned senior counsel further contended that some notices were sent to the e-mail address of Mr. Deepak Agerwal who was the employee of the petitioner. However, he too resigned from the company on 15.10.2018 itself and in that context also, the petitioner cannot be found fault for not submitting reply. Leaned senior counsel thus argued that in the instant case, assessment order was passed without serving pre-audit and pre-assessment show cause notices and without giving an opportunity to the petitioner to submit its explanation and without affording a personal hearing to the petitioner. Therefore, principles of natural justice were grossly infringed.

7. In oppugnation, learned Government Pleader for the respondents argued that the change of address was not properly communicated to the concerned Department and further, notices were served to the one of the employees of the petitioner, but he must have informed to the petitioner about the said fact. He further argued that the writ petition is not maintainable, in view of availability of efficacious and alternative remedy.

8. The point for consideration is, whether there are merits to allow the writ petition?

9. **POINT:** *Inter alia*, the first and foremost contention of the respondents is that as against the impugned assessment order, an appeal is maintainable before the Appellate Deputy Commissioner (CT), Tirupati, under Section 31 of the AP VAT Act 2005 and on that ground, the writ petition is not maintainable. We are unable to countenance the said argument. The entire gamut of the pleadings in the writ petition as well as the rejoinder is aimed at projecting how the petitioner was not served with pre-audit, pre-assessment show cause notices and other notices and thereby how the petitioner was deprived the valuable opportunity of submitting their explanation and how the petitioner was not afforded a personal hearing thereby depriving the principles of natural justice.

10. In normal circumstances, this Court desists from entertaining the writ petition on the availability of efficacious and alternative remedy. However, under certain special circumstances, violation of principles of natural justice being one, this Court would exercise its preliminary jurisdiction. It was so held by the Apex Court in *Whirlpool Corporation Vs. Registrar of Trade Mark*² thus:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative

² MANU/SC/0664/1998

remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

11. Going by the above jurisprudence, if the petitioner is ultimately able to establish the violation of principles of natural justice, this writ petition will definitely be maintainable.

12. The next contention of the respondents is also on the argument that in view of the dictum laid by the Apex Court in ***Glaxo Smith Kline case*** (1 supra), the writ petition is not maintainable. However, this argument also does not hold much water, in view of the distinction drawn by the petitioner between the facts in the said decision and in the instant case. As rightly pointed out by learned senior counsel for the petitioner, unlike in the said case, the petitioner filed the writ petition well within the period of limitation available for filing appeal. In such a case, having regard to the totality of the facts, this Court can entertain the writ petition.

13. Then, coming to the aspect of violation of principles of natural justice clamored by the petitioner, the impugned order as well as the counter refers to certain notices. So far as CTO (Int), ATP Form VAT 304 dated 12.06.2016 (reference No.2 in the assessment order) is concerned, the petitioner denied to have received the said notice in the

writ petition and rejoinder. However, in para 5 of the counter, it is stated as if the said notice and other notices were sent by registered post as well as through e-mail ID of the firm i.e., Deepakagerwal@astro.in. The contention of the petitioner is that the said Deepak Agarwal, who was the erstwhile employee of the petitioner company, resigned from the company on 15.10.2018 itself and therefore, they did not receive any notice dated 12.06.2016. In this context, the petitioner filed the proceedings dated 30.10.2018 issued by the Senior Manager, Human Resources, stating that Mr. Deepak Agarwal worked as Deputy Manager in Finance, Legal and Secretarial (Taxation) from 22.01.2016 to 15.10.2018. Therefore, as rightly argued by the petitioner, the notice dated 12.06.2016 cannot be said to be received by the petitioner.

14. Then, in the 3rd reference of the assessment order, notices dated 21.01.2019, 20.11.2019 and 27.11.2019 were mentioned stating that books of accounts were called for from the office of the petitioner through those notices. In paras 5 and 10 of the counter, it is mentioned as if the petitioner received those notices and submitted a letter seeking additional time for furnishing the information and in fact an endorsement dated 30.01.2019 was made by the 2nd respondent granting 15 days time. Further, the petitioner furnished the counter affidavit mentioned documents on 15.02.2019 containing the address of the Corporate Office, Delhi, but not the local address. Thus, it is the case of the 2nd respondent that the petitioner had in fact received

all the notices. In this regard, the contention of the petitioner is that the notices were sent to M/s. OSTRO A.P. Wind Private Limited a group company of the petitioner and on their request, time might have been granted. Thus, it is contended that the petitioner did not receive the aforementioned notices. The petitioner produced copies of the notices sent to M/s. OSTRO A.P. Wind Private Limited. A perusal of the same would show that a final notice under Section 64(1) of the AP VAT Act, 2005 dated 21.01.2019 was issued by the 2nd respondent to M/s. OSTRO A.P. Wind Private Limited, C/o Renew Power Venture India Private Limited, Service Road, Rudrampeta, NH 44, Kovur Nagar, Anantapuram, and also through e-mail ID ostroapwind@gmail.com. Admittedly, the petitioner's concern is M/s. OSTRO Anantapura Private Limited which is a different one. Then, the letter dated 30.01.2019 styled as endorsement (mentioned in reference No.4 of the assessment order) would show that the 2nd respondent granted 15 days time to the dealer as against their request letter dated 28.01.2019. This letter was also addressed to M/s. OSTRO A.P. Wind Private Limited. Then in reference Nos.6 and 7, show cause notice dated 20.03.2020 and personal hearing notice dated 22.05.2020 were sent by the 2nd respondent to the dealer but they were returned by the postal authorities as addressee was left. Thus, admittedly those two notices were also not received by the petitioner. It is stated in the counter that the notice in form VAT 305-A dated 20.03.2020 was sent to the house address of one of the Directors Sri Rajath Kumar Gupta of New Delhi. However, the petitioner's

contention is that Rajath Kumar Gupta has resigned from the Directorship on 28.03.2018 itself. To this effect, the petitioner filed a copy of Form No.DIR-XII which shows that the Director Rajath Kumar Gupta, S/o Ved Prakash, resigned from the Directorship on 28.03.2018. Hence, notice sent to him cannot be attributed to the petitioner. Notice date 20.03.2020 was also said to be sent by e-mail, but as already discussed supra, the concerned employee left service.

15. Above all, the GST registration certificate of the petitioner shows that the address of the petitioner was changed with effect from 01.02.2019. So, for this reason also, the petitioner cannot be said to be received the notices which if they were sent to old address.

16. Thus, on a conspectus, we are of the view that the petitioner did not receive any of the notices said to be sent by the 2nd respondent and therefore, they had no occasion to submit their explanation/objection. So also, they had no occasion to submit their case personally. Consequently, the principles of natural justice are violated in the instant case. Therefore, the impugned assessment order is liable to be set aside.

17. Accordingly, this writ petition is allowed and the impugned assessment order A.A.O.No.ZH370820OD66970 dated 19.08.2020 passed by the 2nd respondent is set aside and the 2nd respondent is directed to permit the petitioner to submit its records and documents in support of its case and consider them and after affording the

personal hearing to the petitioner, pass assessment order afresh in accordance with the governing law and rules expeditiously. There shall be no order as to costs.

As a sequel, interlocutory applications, if any, pending for consideration shall stand closed.

U. DURGA PRASAD RAO, J

J. UMA DEVI, J

8th March, 2021
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