


Case Summary by Dr. Avinash Poddar

Hon'ble High Court of Telangana
in the matter of

M/S Golden Mesh Industries Vs. Assistant Commissioner State Tax

Petition/Appeal No		Citation	
WP No. 7789/2021		AP-763	
Bench	Hon'ble Judge(s)	Date of Order	In Favour of/Outcome
Division	Justice M S Ramachandra Rao Justice Vinod Kumar	31.03.2021	Petitioner
Issue		Relevant Section / Rule / Notification	
1. Whether best judgement order can be passed without stating by which method principal amount was arrived to the best of their knowledge? 2. Whether penalty can be levied without mentioning under which section penalty is being levied?		Section 46 of CGST Act, 2017	
Brief Facts of the Case	<ul style="list-style-type: none"> The Petitioner did not file the GSTR-3B for the month of November, 2018. On 29.01.2019 notice u/s 46 of CGST Act was issued to the petitioner. Petitioner did not comply with the notice and did not file its return. On 27.12.2019 assessment order was passed by the Assistant Commissioner State Tax to the best of his knowledge by making a demand of Rs. 1,50,000 each under the head of SGST, CGST and IGST. Amount of Rs. 1,50,000 was arrived by multiplying the average monthly SGST of Rs. 50,000 by 3. Penalty of 100% of tax amount was levied upon the petitioner but section under which penalty was levied was not mentioned in the order. As aggrieved by the abovementioned order, Petitioner has filed a writ petition in the Hon'ble High court of Telangana. 		
Brief Arguments by Petitioner/ Appellant		Brief Arguments by Respondents	
Learned counsel for petitioner contends that though the 1st respondent is entitled to do best judgment in the absence of filing of GSTR-3B, the method adopted by 1st respondent in multiplying by 3 times the monthly SGST tax of Rs. 50,000/- to determine the tax liability is arbitrary and not based on any principle. He also contended that 100% penalty has been levied without indicating under which provision of the Act the same has been levied.		Learned Assistant Government Pleader attached to the Office of the learned Advocate General appearing for respondents is unable to point out what is the principle followed by the 1st respondent in doing best judgment assessment in the manner indicated above i.e. multiplying 3 times the monthly average SGST, and adopting it as a basis for assessing the petitioner to tax for the month of November, 2018. He also could not indicate under which provision of law 100% penalty is levied on the petitioner	
Cases relied upon by	Petitioner	Respondent	
-	-	-	
Judgement/ Ratio (in brief)	In this view of the matter, since the impugned order appears to be prima facie arbitrary and contrary to the provisions of the Telangana GST Act, 2017, the impugned order is set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent shall issue notice to the petitioner indicating the method of assessment under the best judgment assessment provision contained in Section 62 of the said Act; grant a personal hearing to the petitioner; and then pass a reasoned order both with regard to levy of tax but also with regard to interest and penalty afresh within eight (8) weeks from the date of receipt of a copy of this order. In view of setting aside of the impugned order dt.27-12-2019 passed by 1st respondent, consequential attachment orders/garnishee orders issued by respondent Nos. 1 to 3 are also set aside. The Writ Petition is allowed as above. No costs. Consequently, miscellaneous petitions, pending if any, shall stand closed.		
Head Note/ Judgement in Brief	Whether best judgement order can be passed without stating by which method principal amount was arrived to the best of their knowledge. NO. Whether penalty can be levied without mentioning under which section penalty is being levied. NO		

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	<p><i>Authors View</i></p> <p><i>The first issue in this was that the best judgement assessment was done by the learned Assistant Commissioner. The manner in which the amount was calculated was not having any proper base and explanation. The officer has also imposed 100% penalty in the order but the section that was invoked for the imposition of penalty was not specified. Therefore, the Hon'ble Court was pleased set aside the order of assessment and remanded the case back to the officer asking for afresh assessment to be done in 8 weeks.</i></p>	
Current Status of the Case	-	QR Code for the Judgement
Other Judgments (Similar Ratio)		
Other Judgments (Different Ratio)	-	
Link for downloading the Judgement	https://1drv.ms/b/s!AixCc9pbfcxG-hX7QnEU_VqR-Xv_?e=Qz6j0Y	

