

**IN THE HIGH COURT OF ANDHRA PRADESH:
AT AMARAVATI**

Writ Petition No.26870 of 2021

Between:

M/s.Bommineni Ramanjaneyulu, Special Class Contractor (RWS), D.No.6-35, Main Road, Yendluru Village, S.N. Padu Mandal, Prakasam District – 523 225.

.... Petitioner

And

- 1) The Joint Commissioner of State Taxes, Nellore Division, Nellore – SPSR Nellore District & **Four** others.

....Respondents.

Date of Order pronounced on : 15.09.2022

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

JUSTICE C. PRAVEEN KUMAR

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....Respondents.

! Counsel for the Petitioner : Sri Shaik Jeelani Basha

Counsel for the Respondents: Sri Y.N. Vivekananda,
Government Pleader for
Commercial Tax.

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

Writ Petition No.26870 of 2021

ORDER:- *(per the Hon'ble Sri Justice C. Praveen Kumar)*

Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner and Sri Y.N. Vivekananda, learned Government Pleader for Commercial Tax, appearing for the respondents.

2. The present writ petition came to be filed, seeking issuance of Writ of *Mandamus* to declare the Authorization for access to Business premises issued under Section 71(1) of the Andhra Pradesh Goods and Services Tax Act, 2017 [for short, "APGST Act"] by the first respondent dated 28.10.2021 in favour of the second respondent as contrary to Sub-Section 91 of Section 2 read with Section 5(1) and 5(3) of the APGST Act.

3. The facts, in issue, in the present writ petition, are as under:-

(a) The petitioner was engaged in the business of works contracts and specialized in laying pipelines for water supply projects. He got registered as Special Class Contractor with RWS & Engineering Department, Government of Andhra Pradesh with GSTIN 37AEWPB4986Q1ZB, on the rolls of the third respondent. The case of the petitioner was selected for Audit in accordance with Section 65 of CGST Act, by the Central GST Audit Circle, Nellore, covering the period July-2017 to March-2019 *vide* proceedings dated 17.08.2020. Pursuant to the same, the records were submitted with the authorities for finalization of the Audit proceedings.

(b) The authorities visited the business premises of the petitioner on 29.10.2021 and obtained Xerox copies of certain files for further verification. Exercising power under Section 71(1) of the APGST Act, the first respondent issued the impugned authorization to inspect the business premises of the petitioner, verify and check the transactions to safeguard the interest of the Revenue. The said impugned proceedings came to be issued basing on an information furnished by the second respondent. Challenging the impugned authorization given by the first

respondent, in exercise of his power under Section 71(1) of the APGST Act, the present writ petition came to be filed.

4. A counter came to be filed by the first respondent, disputing the averments made in the affidavit filed in support of the writ petition.

(a) It is pleaded in the counter that initially the second respondent/Assistant Commissioner (ST), Ongole-II made scrutiny of returns in Form GSTR-3B and GSTR-1 filed by the petitioner. Thereafter, a report was submitted to the first respondent seeking authorization for verification the truthfulness and correctness of the business transactions. The first respondent issued authorization through enforcement module following the procedure contemplated under law. Pursuant to the said authorization, the second respondent visited the petitioner's firm on 29.10.2021, on which date, copies of the documents were furnished and thereafter a notice was issued on 07.12.2021 calling for records relating to period from 01.04.2019 to 31.03.2021. At that point of time, the authorities were informed about the filing of the writ petition.

(b) It is stated that the averment made in the affidavit filed in support of the writ petition that when once the Chief Commissioner has authorized the Joint Commissioner of the Division for accessing the petitioner, the Joint Commissioner cannot further sub-delegate the power to Deputy Commissioner or Assistant Commissioner is incorrect.

5. Similarly, such pleas came to be raised in the counter filed by the respondent nos.3 and 4.

6. A reply to the counters came to be filed by the petitioner, reiterating the averments in the affidavit filed to contend that under Section 5(3) of the APGST Act, the Chief Commissioner alone has the power of delegating his power to any other Officer subordinate to him.

7. The point that arises for consideration is, ***whether the authorization given to the second respondent herein by the Joint Commissioner is valid in law?***

8. In order to appreciate the same, it would be just and proper to refer to Section 71(1), Section 2(91) and Section 5 of the APGST Act.

(i) **Section 2(91) defines 'Proper Officer'** in relation to any function to be performed under this Act, means the Chief Commissioner or the Officer of the State Tax who is assigned that function by the Chief Commissioner.

(ii) **Section 5 Power of Officers:**

(1) Subject to such conditions and limitations as the Chief Commissioner may impose, an officer of State Tax may exercise the power and discharge the duties conferred or imposed on him under this Act.

(2) An Officer of State Tax exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Tax who is subordinate to him.

(3) The Chief Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegating his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an appellate authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of State Tax.

Section 71(1) Access to business premises:

(1) Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs,

computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

9. A reading of Section 71(1) of the APGST Act, clearly demonstrate that any Officer under this Act, authorized by a Proper Officer not below the rank of Joint Commissioner shall have access to place of any business of registered person to inspect the books of accounts, documents
The Proper Officer referred to in Section 71(1) of the Act would mean the Chief Commissioner or the Officer of the State who is assigned that function by the Chief Commissioner as defined in Section 2(91) of APGST Act.

10. It would also be relevant to refer to Gazette Notification issued on 09.12.2019 by the Government of Andhra Pradesh. The said notification postulate that in exercise of the authority conferred under sub section (91) of section 2 read with sub-section (1) of Section 5 of the Andhra Pradesh Goods and Services Tax Act, 2017, and in partial modifications of the proceedings/notifications issued, the Chief Commissioner of State Tax hereby orders

that the “Proper Officers” for various functions referred to in the Act, shall be those Officer (s) as mentioned against each function in the list enclosed.

11. Serial 21 of the list, refers to Section 71(1), (2) & (2)(i) of the Act. In the column ‘Function’, it is shown as “to access business premises, inspect books of accounts, documents, etc for Audit, Scrutiny, Verification”.

While in the column ‘Designation of Officer authorised’, it is mentioned as “JCST working in the divisions/Addl. CST/Commissioner ST working in the office of CCST entrusted with the enforcement activities”.

12. From the above, it is very much evident that the Proper Officer for the functions referred to Section 71(1) of the Act, would be the three officers referred to in the column designation of officer authorized and one such Officer being Joint Commissioner (ST) working in the Division. In the instant case, as seen from the impugned proceedings, the authorization for access to business purpose under Section 71(1) of APGST Act was issued by Joint Commissioner (ST). Hence, the argument though

appeared to be impressive at the first stage, but on a close perusal of the Notification issued, proved to be incorrect.

13. Therefore, the authorization given by the Joint Commissioner pursuant to the Gazette Notification issued by the Chief Commissioner authorizing certain categories of persons cannot be found fault with. It is also to be noted here that the authorization by the Chief Commissioner came to be issued in terms of Section 2(91) of the Act which categorically states that the “Proper Officer” would mean not only the Chief Commissioner but also Officer of the State Tax, who is assigned that function by the Chief Commissioner.

14. In view of the above, we see no grounds to grant the relief sought for by the petitioner, namely, to quash the proceeding issued by Joint Commissioner authorizing the Assistant Commissioner (ST) to conduct inspection/search etc. of the premises of the petitioner. Accordingly, the writ petition is **dismissed**. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE A.V. RAVINDRA BABU

Date: 15.09.2022

Note: LR copy to be marked.
B/o.MS

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

Writ Petition No.26870 of 2021
(per the Hon'ble Sri Justice C. Praveen Kumar)

Date: 15.09.2022

MS