THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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T.R.C.No.18 of 2002

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ORDER: (Per Hon'ble Dr.Justice B.Siva Sankara Rao)

This Tax Revision Case is filed by the State of Andhra Pradesh represented by the State Representative who is respondent before the Sales Tax Appellate Tribunal(for short, 'STAT') at Hyderabad, impugning the orders, dated 06.06.2000 passed by the STAT in T.A.No.119 of 1996 filed by M/s. A.P.Heavy Machinery & Engineering Limited, Kondapalli, Krishna District.

2. The brief facts of the case are that M/s. A.P.Heavy Machinery & Engineering Limited, Kondapalli (hearinafter being called, 'the Assessee') was registered on the rolls of the Commercial Tax Officer, Company Circle, Vijayawada, Krishna District. The Assessee was engaged in manufacturing heavy engineering machinery and undertakes works of public sector undertakings and government companies.

3. The Commercial Tax Officer (for short, 'CTO') passed final assessment order in 401/85-86, dated 25.03.1989 rejecting the claim of the Assessee on certain turnovers relating to work contracts viz; based on the monthly turnover returns in form-A2 for the year 1985-86 reported by the Assessee with gross turnover of Rs.2,10,20,728.55paise and turnover on which exemption is claimed is of Rs.1,03,44,904.67 paise showing the net turnover of Rs.1,06,75,823.88 paise and the CTO in that regard called for books of accounts of the Assessee in the Course of final assessment and

having scrutinized, assessed the total turnovers of Rs.4,58,13,939.65 paise of APGST(Andhra Pradesh General Sale Tax) and CST (Central Sale Tax) respectively and verified the annual balance sheet of the Assessee which shows the Assessee received materials valued to an extent of Rs.66,82,162/- during the year 1985-86 from the VSP Steal Projects on cost recovery basis for execution of the contract entered with the VSP steal project, which reveals that the Assessee agreed 'for the work of supply, fabrication and erection of all building steel structures in Sinster Plant Zone of VSP Steel Projects." The CTO observed that on verification of the conditions in the agreement regarding works reveal that 'the employer may issue cement and steel materials for enabling works of the contractor and in case of such issues, the recovery rates will be the rates as indicated in schedule-A of this special conditions + any sales tax as applicable + departmental charges for the employer and it is further mentioned in the contract that the employer shall arrange to supply structural steal materials, plastes and sheets etc., to the extent available to the contractor on costs recovery basis and also supply of power for building work by charging at the rates of APSEB on the employer. The agreement further reads that all charges such as electricity, transportation, loading and unloading would be paid by the employer. The Assessee though raised of sale invoices, furnished the details to the extent of cost of material showing material does not belong to them and that is supplied from the respective companies. The CTO therefrom taken the turnovers computation total turnover of the Assessee company including costs of material supplied etc, by arriving of Rs.6,42,29,374.71paise by deducting exempted turnover of Rs. 1,79,78,944.92paise and by showing liability for the tax of the net turnover of Rs.4,62,50,430.00paise and by deducting the tax paid of Rs.5,28,605.62paise raised demand therefrom in form-B.3 for Rs. 17,53,510.00paise.

4. It is impugning the assessment order of the CTO supra, dated 25.03.1989 in G.I.No.401 of 85-86 , the Assessee preferred appeal vide Appeal No.20/89-90 before the Appellate Deputy

Commissioner, Commercial Tax, Vijayawada and by order, dated 30.11.1994 it was held by the Appellate Deputy Commissioner in relation to the disputed turnover of Rs.2,84,11,099/- and disputed tax in this regard of Rs. 14,20,554/- that the conditions of the contract and the sale invoices raised reveals the fact that the Assessee entered into an agreement with his customers for manufacturing articles according to the specifications of the buyers to deliver finished product and thereby undertaken manufacturer's work at their work shop at Kondapalli to deliver there finished products and therefrom fabrication, erection or alignment are not being done at the respective premises of the companies and even therefrom when the main object of the Assessee is sale to the contractee and treated the same as work contracts as per Section 3(a) of the CST Act by referring to a few expressions in this regard in setting the levy of tax on disputed turnover by partly allowing the appeal and confirming in other respects showing assessment proceedings did not execute buyer labour charges and assessment authority was right in treating entire contract as an individual work contract and brought the same to tax by directing to allow admissible percentage towards labour charges according to the objections.

5. It is when impugned before the STAT, the Bench of the Tribunal consisting of Chairman and Departmental member vide order dated 06.06.2000 passed by the Chairman, observed that the impugned agreements would show that there is stipulation mentioned in Clause 37.0 that all materials supplied by the employer shall remain absolute property of the employer and at all times it shall be open for inspection by the employer by its engineer. The contractor shall not defer or convert any such material for their own use or for any other use not connected with the works contract. It is also observed without actual involvement of the steel supplied, the contractor cannot fabricate any of the items but
that itself does not show any transfer of interest in the steel supplied for fabrication; For nothing to show in deemed sale acquiring title by the contractor from the contractee and, in turn, transfer to the

contractee, that too, the terms of the agreement clearly mentions the title with the contractee who supplies the material and having control over the same, and thus, by no stretch of imagination, one can presume that there was a deemed sale of the value of the material supplied by the contractee, to say having sold back to the contractee by supply of finished goods. It was therefrom observed that labour charges paid by the employer to the Assessee will be repaid only job work charges and cannot be treated as works contracts as was done by the Appellate Deputy Commissioner or the CTO. It was observed that the Appellate Deputy Commissioner erred in treating the work done by the works contractor on a wrong impression for supply of material merely involved. It was observed therefrom categorically that, the contractee did not pay total value of the fabricated structures to the Assessee, to say any element of sale or deemed sale involved, but for given material to fabricate by keeping material under the control of the contractee with no any transfer of interest of any little element therein. It is also observed that the tribunal already held in I.A.No.396 of 1998,dated 25.01.1993 that the Assessee is only deed job work and the amounts received not liable to tax as a result of which the Appeal is allowed by setting aside the orders covered by the disputed assessment amounts by the CTO modified by the Appellate Deputy Commissioner.

6. Even to impugn the same in the present revision filed by the State by mainly contending that the tribunal is not justified in setting aside the orders of the disputed assessment amounts by treating work done by the Assessee a job work, as the same involves deemed sale of material for manufacturing articles as per the specifications of the buyers by delivery of finished products to them and hence to set aside the same. Whereas, the respondent to the revision supported the impugned order.

7. Heard both sides and perused the material on record.

8. The parties hereinafter are referred to as they were arrayed before the STAT.

9. Now the points that arise for consideration are:

1. Whether the order passed by the STAT dated 06.06.2000 in T.A.No.119 of 1996 is unsustainable and requires interference by this Court while sitting in revision, if so, with what observations?

2. To what relief?

Point No.1:

10. In fact, as referred supra between the same parties the earlier judgment in T.A.No.396/89 dated 25.01.1993 was reached finality unchallenged even, by the department between the same parties in holding that it is only a job work. The same can, therefore, be taken as relevant to the present lis to decide though not a *res-judicata*, for the subsequent assessment periods. Apart from it, as can be seen from the terms of the contract, the material supplied is under the total control of the employer/contractee- company, with right of inspection at any time and with condition of ownership retained and the material cannot be used other than to the purpose of fabrication and to give the finished goods by that job work and even the contractee has to transport the material to the place of work shop of the Assessee and take the finished product. Thereby there is no element of sale, that too, even the electricity charges, incurred if any, also mentioned to reimburse by the contractee as the contract clearly speaks that employer has to bear. When there is no transfer of ownership over the raw material supplied for fabrication and the work entrusted is only for fabrication and the amount paid thereby is only for the work contract and nothing beyond, as rightly concluded by the tribunal. Thus, for this Court while sitting in revision within the limited scope under Section 22(1) of the APGST Act from the factual findings reached finality besides no question of law involved, there is no illegality or impropriety in the impugned order of the tribunal to interfere. Accordingly, point No.1 is answered.

Point No.2:

11. In the result, the revision is dismissed. Miscellaneous Petitions, if any, pending in this revision shall stand closed. No costs.

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

Date:16.02.2015

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