THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.10230 of 2009

ORDER: (*Per Hon'ble Sri Justice R. Subhash Reddy*)

This writ petition is filed questioning the order dated 24.03.2009 in CCT.Ref.LV(2)/292/2008 passed by the 3rd respondent-Joint Commissioner (CT) Legal, Hyderabad, whereby the proposed revision for the year 2002-03 under the A.P. General Sales Tax Act (for short 'the APGST Act') was confirmed by setting aside the order of the 2nd respondent-Appellate Deputy Commissioner (CT), along with the consequential orders, if any, passed thereon, and restoring the assessment order of the 1st respondent-Commercial Tax Officer, Governorpet.

The petitioner is a contractor registered with A.P. Government, Government of Madhya Pradesh, Government of Karnataka and other public sector undertakings. He is also a registered dealer under the provisions of the APGST Act at the relevant time and an assessee on the rolls of the 1st respondent. During the assessment year 2002-03, the petitioner has executed certain contract works including sub-contract works in the

State of Andhra Pradesh and outside the State of Andhra Pradesh. For the said assessment period, the 1st respondent, who is the assessing authority, has passed final assessment order dated 09.01.2006, determining net turnover of Rs.11,41,41,970/- and levied tax of Rs.45,65,679/-. It is the case of the petitioner that the said net turnover includes a turnover of Rs.1,24,10,995/- relating to works executed in Madhya Pradesh i.e., outside the State of Andhra Pradesh, and a turnover of Rs.97,43,260/- relating to the sub-contract works carried out by him on behalf of the main contractor M/s. S.S. Constructions, Hyderabad. The grievance of the petitioner is that with regard to sub-contract turnover of Rs.97,43,260/-, he is not liable to pay tax on the same as the main contractor has already paid tax thereon. Regarding the turnover of Rs.1,24,10,995/-, it is the case of the petitioner that the same relates to the works executed by him at Mandla in the State of Madhya Pradesh, where he has got separate sales tax registration and an assessment order was also passed by the concerned authorities assessing the said turnover, as such, the same cannot be assessed to tax in the State of Andhra Pradesh.

Aggrieved by the order of the assessing authority, the petitioner preferred appeal before the 2nd respondent, who by his order dated 22.05.2007 remanded the matter for fresh consideration by the assessing authority. The operative portion of the said order reads as under:

> "The appeal is therefore remanded to the assessing authority to call for and verify the books of account of the dealer and to allow exemption on the works executed outside the state covering the turnover of Rs.1,24,10,995/- and also address the Commercial Tax Officer, Nacharam Circle, Hyderabad and obtain his report as to whether S.S. Constructions HMT Nagar, Nacharam, Hyderabad who is principal contractor were granted exemption on the sub-contract turnover of Rs.97,43,260 awarded to M/s. V.Rama Mohana Rao or they were assessed to tax on the said turnover and then pass order afresh."

As against the order of the appellate authority, the 3rd respondent, the revisional authority, invoking the powers of revision under Section 20 (2) of the AP GST Act, passed the impugned order dated 24.03.2009, confirming the proposed revision for the year 2002-03 under APGST Act by setting aside the order of the appellate authority along with the consequential orders if any passed thereon and restoring the assessment order of the assessing authority.

In this case, it is the case of the petitioner that since he was not given opportunity by the assessing authority to produce the relevant records relating to the turnovers of contracts executed outside the State as well as the turnover relating to sub-contract works, which are wrongly included in the assessment order, the appellate authority considered his plea and remanded the matter for fresh consideration. Even revisional authority, without recording proper findings, has interfered with the reasoned order passed by the appellate authority.

On the other hand, it is the contention of the learned Government Pleader appearing for the respondents that in spite of giving sufficient opportunities, the petitioner has not produced any material in support of his claim for excluding certain turnovers, as such, the impugned order came to be passed by the revisional authority and there are no grounds to interfere with the same.

We have heard learned counsel for the parties and perused the orders of the assessing authority, appellate authority and the revisional authority.

With regard to turnover of Rs.1,24,10,995/- relating to the work executed by the petitioner at Mandla of Madhya Pradesh, it is his case that he is also a contractor registered with the State of Madhya Pradesh, wherein assessment order was passed by the concerned authorities assessing the said turnover and, as such, it does not attract levy of tax in the State of Andhra Pradesh. So far as the turnover of Rs.97,43,260/- is concerned, the petitioner contends that the same relates to the sub-contract works carried out by him on behalf of M/s. S.S. Constructions, Hyderabad, who has also addressed a letter certifying the same, and tax thereon was already paid by the main contractor S.S.Constructions, and therefore, he is not liable to pay tax on the said turnover.

From a perusal of the findings of the revisional authority, it is clear that the claim of the petitioner is not accepted on the ground that he has not produced any evidence except the assessment order with regard to turnover of Rs.1,24,10,995/-. Further, with regard to the letter addressed by M/s. S.S.Constructions, which was furnished by the petitioner, it is observed that the letter merely shows that M/s. S.S.Constructions has not claimed any exemptions, but it does not specify as to whether the turnover relating to the sub-contract works executed by the petitioner was disclosed and assessed to tax in the hands of M/s. S.S.Constructions or not. When the order of the appellate authority is a remand order, the petitioner has got an opportunity to place the material in support of his claim to exclude the alleged wrongly mentioned turnovers. Having regard to the findings recorded by the appellate authority, the revisional authority ought not to have interfered with the order passed by the appellate authority. In view of the findings recorded by the appellate authority and the revisional authority, we are of the view that it is a fit case for fresh consideration by the assessing authority as per the directions issued by the appellate authority.

For the aforesaid reasons, the order under challenge is set aside and the petitioner is permitted to furnish the relevant material in support of his claim before the assessing authority within a period of four weeks from today. On filing such material, it is open to the assessing authority to pass the order of assessment afresh, in any event not later than three months from today, duly giving an opportunity of hearing to the petitioner, as per the directions issued in the order of the appellate authority, and communicate the same to the petitioner.

With the above observations and directions, the writ petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

10.02.2015

v v