THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.39 of 2015

ORDER: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

The validity of the assessment order passed by the 1st respondent on 17.12.2014, for the tax period 01.04.2009 to 31.03.2014, is questioned in this writ petition as being arbitrary and illegal.

Facts, to the extent necessary, are that the petitioner, an assessee on the rolls of the 2nd respondent, carries on business in the execution of works contracts to Government Departments like A.P.Housing Corporation Limited, Rural Water Supply projects etc. Pursuant to an authorisation issued by the Deputy Commissioner (CT), Vijayawada, the 1st respondent inspected the business premises of the petitioner to conduct an audit of their books of accounts for the tax period 01.04.2009 to 31.03.2013. The petitioner claimed the benefit of composition under Section 4(7)(c) of the A.P. Value Added Tax Act, 2005 (for short "the Act") on the plea that they had filed separate Form VAT 250 for each and every contract before commencement of execution of each of the works. Thereafter, the 2nd respondent issued show cause notice in Form VAT 305A on 28.04.2014 proposing to assess the petitioner to tax for the period 01.04.2009 to 31.10.2013, under Rule 17(1)(g) of the A.P.Value Added Tax Rules, 2005 (for short "the Rules"), after giving standard deduction of 30% on the total value of the contract; and to subject the goods to tax, on 70% of the value of the contract receipts, @14.5%. Rule 17(1)(g) of the Rules was applied on the ground that the petitioner had not filed Form VAT 250 seeking composition before commencement of execution of the works. The petitioner submitted their reply to the show cause notice on 10.05.2014. Thereafter the impugned assessment order came to be passed in Form VAT 305 on 17.12.2014.

Sri K.Raji Reddy, learned counsel for the petitioner, would question the validity of the assessment order on the following grounds:

(1) as the show cause notice issued on 28.04.2014 makes no reference either to Section 21(5) of the Act or to its ingredients, the assessing authority could not have applied the extended period of limitation, under Section 21(5) of the Act, to pass an order on 17.12.2014 for the tax period April 2009 to November 2010;

(2) since the show cause notice, proposing to assess the petitioner to tax, is for the tax period April 2009 to October 2013, the assessment order passed for the tax period upto March 2014 goes beyond the show cause notice; and to this extent the impugned assessment order, for the tax period November 2013 to March 2014, is liable to be set side; and

(3) the assessing authority failed to take into consideration the certificates issued by the authorities concerned which show that the petitioner had filed Form VAT 250, claiming the benefit of composition under Section 4(7)(c) of the Act, before commencement of execution of each of the works.

Learned counsel would rely on ***K.G.F.Cottons (P) Ltd. vs. Assistant Commissioner (CT)***[1] in this regard.

In so far as the tax period from April, 2009 to November, 2010 is concerned, a perusal of the show cause notice dated 28.04.2014 makes it clear that the assessing authority neither referred to Section 21(5) of the Act, nor to its ingredients therein, justifying invocation of the extended period of limitation under Section 21(5) of the Act. While fairly stating that the show cause notice is silent in this regard Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would however contend that the assessment order was passed applying the extended period of limitation under Section 21(5) of the

Act.

As held by the Division Bench of this Court in ***K.G.F.Cottons (P) Ltd.***[1], the period of limitation of four years must be computed for each tax period i.e for each month and, unlike the APGST Act, nor for an assessment year; it is mandatory that the show cause notice must contain allegations against the assessee falling within the four corners of Section 21(5) of the Act; unless the assessee is put on notice, he would have no opportunity to meet the case of the Department; and, in the absence of any such allegations in the show cause notice, the Revenue cannot sustain the notice or the order passed under Section 21(5) of the Act.

As the show cause notice dated 28.04.2014, admittedly, makes no reference either to Section 21(5) of the Act or to its ingredients, the assessment order cannot be sustained on this ground. It is liable to be, and is accordingly, set aside as barred by limitation for the tax period April, 2009 to November, 2010.

For the tax period November, 2013 to March, 2014 the assessment order, which the assessing authority could have passed in Form VAT 305, should have been preceded by a show cause notice in Form VAT 305-A and the assessee ought to have been given an opportunity to submit their objections thereto. Admittedly, in the present case, the show cause notice issued in Form VAT 305-A dated 28.04.2014 was only for the tax period April, 2009 to October, 2013 and, consequently, the assessment order passed for the period November, 2013 to March, 2014 is liable to be set aside for violation of principles of natural justice. It is made clear that this order would not preclude the assessing authority from issuing a show cause notice in Form VAT 305-A for the tax period November, 2013 to March, 2014, give the petitioner an opportunity of being heard, and thereafter pass an assessment order in accordance with law.

In so far as the third ground of challenge, regarding submission of Form VAT 250, is concerned, Section 4(7)(c) of the Act, prior to its omission by Act 21 of 2011 with effect from 15.09.2011, enabled any dealer, executing works contracts other than for the Government and a local authority, to opt to pay tax by way of composition @ 4% of the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed. Rule 17(2) of the Rules relates to treatment of works contracts under composition and, under Sub-Rule (c) thereof, in cases where the VAT dealer opts for composition he shall, before commencing execution of the work, notify the prescribed authority in Form VAT 250 of the details including the value of the contract on which the option has been exercised.

Sri K.Raji Reddy, learned counsel for the petitioner, would submit that, though the certificate dated 18.10.2010 is not in Form VAT 250, it reflects that the Form VAT 250 was submitted on 30.07.2008 prior to commencement of the work. On the other hand Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner did not even refer to these facts in their reply to the show cause notice; and it is only for the first time, in the affidavit filed in support of the writ petition, has such a contention been raised. While it was open to the petitioner to have these factual aspects adjudicated in appeal, before the Appellate Deputy Commissioner, they had invoked the jurisdiction of this Court under Article 226 of the Constitution of India on the ground that a part of the assessment order was barred by limitation, and another part related to a tax period beyond what is referred to in the show cause notice.

It is now not possible to relegate the petitioner to the appellate remedy, as the proviso to Section 31(1) of the Act bars the appellate authority from entertaining an appeal filed beyond the period of 60 days from the date of receipt by the assessee of a copy of the assessment order. We consider it appropriate, in such circumstances, to set aside the impugned assessment order for the period December 2010 to March 2014 and remand the matter to the assessing authority for his consideration afresh in accordance with law. Needless to state that, in view of Section 16 of the Act, the onus is on the petitioner to adduce evidence to establish that Form VAT 250, seeking composition under Section 4(7)(c) of the Act, was filed by them before commencement of execution of each individual works. The assessing authority shall, after giving the petitioner an opportunity of a personal hearing, pass an order afresh in accordance with law.

Before we part with the case, we must record our concern of the casual manner in which assessment orders are passed by assessing authorities ignoring the time stipulated under Section 21(4) of the Act. Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would point out, rightly so, that the impugned assessment order to the extent it has now been set aside as barred by limitation, for the tax period April, 2009 to November 2010, has resulted in a loss of revenue to the State Government for a sum exceeding Rs.25,00,000/-. We have come across several cases where the lethargy and indifference of the assessing authorities, and their failure to pass assessment orders within time, has resulted in a huge loss to the public exchequer. It is necessary that these officers be identified, disciplinary action be taken against them and, if need be, the loss caused to the public exchequer is recovered from each of such officers. We hope and trust that the Commissioner (CT) shall consider this issue with all seriousness and take necessary steps, including initiation of disciplinary proceedings against such officers, to safeguard public revenue.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

05th July 2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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