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

WRIT PETITION No.2708 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the assessment order passed by the third respondent on 14.05.2015, levying tax at 4/5% on the contractee for their failure to comply with Section 22 (3) of the Andhra Pradesh Value Added Tax Act 2005 (for brevity, 'the Act') in deducting TDS from the bills of the contractors, the petitioner preferred an appeal to the Appellate Deputy Commissioner and, on their appeal being rejected, they have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri Karan Talwar, learned counsel for the petitioner, would fairly state that, while the petitioner did not raise any contention, regarding their failure to deduct TDS from the bills of the contractor, before the assessing authority, they had put forward elaborate submissions, both oral and written, before the appellate authority, contending that the turnover, which was subjected to tax for failure to comply with Section 22 (3) of the Act, included Inter-State works contracts and pure service contracts, both of which fell outside the ambit of the provisions of the Act. Learned counsel would take us through the grounds of appeal, and the additional written submissions filed by the petitioner before the appellate authority, to buttress his contention that a substantial part of the turnover relates to Inter-State works contracts and pure service contracts. According to the learned counsel, from out of a total turnover of Rs.160,24,66,630/-, the local works contracts were only for Rs.75,91,18,136/- whereas the turnover of Inter-State works was Rs.31,89,26,302/-, and the turnover relating to pure service contracts was Rs.52,44,22,192/-; while the petitioner was fastened with a tax liability of Rs.5,51,27,785/-, even if the local works contracts were to be subjected to tax, their tax liability would be only Rs.2.06 Crores whereas they have already paid Rs.4.27 Crores to the Department.

Even with regards local works contracts, Learned counsel would draw attention of this Court to Rule 18 (1) (bc) of the Andhra Pradesh Value Added Tax Rules, 2005 (for brevity, 'the Rules') to contend that failure of the contractor, to furnish Form-501-A to the petitioner-contractee, had resulted in the petitioner-contractor's failure to deduct tax at source; as the contractors had already paid tax on this turnover, requiring the petitioner to pay tax on the very same transactions, would amount to double taxation; and the petitioner, on their furnishing proof to the assessing authority, regarding payment of tax on this turnover by the contractors, should be absolved of their tax liability as VAT, on the deemed sale of goods involved in the execution of local works contracts, had been levied on the contractors.

While submitting that, in terms of Rule 18 (1) (a) of the Rules, the contractor ought to have made an application to the Assistant Commissioner for a provisional assessment, and their failure to do so obligated the petitoner to deduct tax at source in terms of Section 22 (3) of the Act, Sri S. Suri Babu, learned Standing Counsel for Commercial Taxes, would fairly state that, as the appellate authority had considered the objections raised by the petitioner, the matter could be remanded to the assessing authority instead of the appellate authority as, even if the matter were to be remanded to the appellate authority, he would, in turn, have to remand the matter to the assessing authority to verify the records and ascertain whether a part of the turnover, for which tax had not been deducted at source, related to Inter-State works contracts and pure service contracts.

The jurisdiction to levy tax under the Act is only on the deemed sale of goods involved in the execution of an intra-state works contract, and not on Inter-State works contracts and pure service contracts. If the contractor desired to have a provisional assessment made, for the turnover relating to local works contract, he should then have, in accordance with Rule 18 (1) (a) of the Rules, made an application for provisional assessment to the Assistant Commissioner of Commercial Taxes. Failure on the part of the contractor to make such an application, would not fasten liability on the petitioner-contractee to deduct TDS in relation to works contracts which are Inter-State in character or with regards pure service contracts. Their liability, under Section 22 (3) of the Act, is only to deduct tax at source, from the amount payable by them to the contractor in respect of only such works contracts which fall within the ambit of the Act i.e. Intra-State works contracts alone. Failure of the contractor to seek provisional assessment in terms of Rule 18 (1) (a) of the Rules would not fasten liability on the petitioner-contractee to deduct TDS on inter-state works contracts or pure service contracts, as the jurisdiction of the respondents to levy tax under the Act is only on Intra-State works contracts, and not on Inter-State works contracts or pure service contracts.

We are, however, not impressed with the submission of Sri Karan Talwar, learned counsel for the petitioner, that failure of the contractor to furnish Form-501-A to the contractee, in terms of Rule 18 (1) (bc) of the Rules, absolved the petitoner of their obligation to deduct tax at source. On a conjoint reading of Rules 18 (1) (bc) and (bd), it is evident that the contractor is required to obtain Form-501-A from the Assistant Commissioner, and supply the same to the contractee; the contractee is required to complete the Form and supply the same to the contractor within fifteen days from the date of each payment; and the contractor is required to submit Form-VAT-501 or Form VAT-501-A, duly certified by the contractee, together with Form VAT 200 by the 20th of the month, following the month in which the payment was received by them. On deducting tax at source from the bills of the contractor, the contractee is obligated to remit the tax deducted at source to the Government. Filing Form-501-A, along with their monthly returns, would enable the contractor to adjust the tax deducted at source, from their bills by the contractee, with the tax payable by them on their turnover. That does not absolve the contractee to deduct tax at source as it is a statutory obligation cast on them under Section 22 (3) of the Act.

The submission of Sri Karan Talwar, learned counsel for the petitioner, on the aspect of double taxation cannot, however, be brushed aside. If, as is now contended before us, the contractors, from whose bills the petitioner had failed to deduct tax at source, had, in turn, paid tax on the entire turnover relating to the local works contracts executed for the petitioner-contractee, then levying tax on the petitioner also could well result in double taxation i.e., subjecting the very same deemed sale, involved in the execution of a works contract, to tax twice over. We, however, do not consider it necessary to examine these aspects, as the matter is, in any event, being remanded to the assessing authority. Suffice it to make it clear that the assessing authority, while examining whether a part of the turnover on which tax has been levied on the petitioner consists of Inter-State works contracts and pure service contracts, shall also consider whether, even in respect of local works contracts, the contractors had paid tax thereon and, if the petitioner furnishes proof of payment of tax by the contractors on the very same turnover, to then consider whether tax can be levied on the petitioner as it may then amount to taxing the very same deemed sale of goods twice. The amount already paid by the petitioner i.e., for Rs.4.27 Crores, shall remain with the Department till a fresh assessment order is passed. The assessing authority shall, after giving the petitioner an opportunity of being heard and a personal hearing, pass orders afresh in accordance with law at the earliest, in any event within three months from the date of receipt of a copy of this order.

The Writ Petition stands disposed of accordingly. 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

09th February, 2016.
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