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

W.P.No.10530 of 2005

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

The petitioner is a partnership firm carrying on business in the execution of works contracts. It was awarded the contract of excavation of tail race channel (balance length) near Revulapally Village, Mahaboobnagar District. It is the petitioner's case that, since the work is purely a labour contract and did not involve transfer of title to any goods, the 1st respondent was not entitled to deduct tax at source. It is further submitted that, in respect of works contracts, Rule 17(1) of the A.P. General Sales Tax Rules, 1957 (for short "the Rules") requires only 2% on 70% of the gross turnover to be deducted at source, and that the respondents had acted illegally in deducting 4% as TDS.

In the counter affidavit filed by A.P.GENCO, it is admitted that the nature of work awarded to the petitioner was purely a labour contract; while they were required to deduct only 2% on 70% of the gross turnover as per Rule 17(1) of the Rules, they had deducted 4% on 70%; so far, work contract tax of Rs.7,21,072/- was deducted against Rs.3,60,536/-; and the amount recovered in the 1st Running Account Bill of Rs.3,43,374/- was remitted to the Commercial Tax Officer. It is further submitted that the work contract tax deducted earlier, at 4% on 70% of the turnover, would be modified to 2% on 70% of the turnover as per Rule 17(1) of the Rules; and, from future bills, work contract tax would be recovered at 2% on 70% of the turnover.

In so far as the tax deducted at source by A.P.GENCO, and remitted to the Commercial Tax Department, is concerned, it is only on an assessment order being passed, and the tax liability of the petitioner determined, would the question of refund, of the excess tax paid, arise. In so far as the amount deducted by A.P.GENCO beyond

2% on 70% of turnover, and which is not remitted to the Commercial Tax Department, is concerned, the excess amount is liable to be refunded by A.P.GENCO to the petitioner in accordance with law.

Ends of justice would be met if the petitioner is permitted to make a representation to the A.P.GENCO in so far as excess tax deducted at source retained by them is concerned, and to the Commercial Tax Department for refund of the tax deducted by A.P.GENCO and remitted to the Commercial Tax Department is concerned. On such a representations being made by the petitioner, seeking refund both from A.P.GENCO and from the Commercial Tax Department, they shall be considered by both of them in accordance with law.

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

Date: 28.03.2016

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

W.P.No.10530 of 2005

-

-

Date:28.03.2016

JSU