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

WRIT PETITION No.33329 of 2015

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

The order under challenge in this Writ Petition is the assessment order dated 18.08.2015 levying tax on the works contract executed by the petitioner, other than the works executed by them for Andhra Loyola Institute of Engineering and Technology and Polineni Chinmai Memorial Trust for the year 2011-12, and for Andhra Loyola Institute of Engineering and Technology for the year 2012-13.

Sri P.Balaji Varma, learned counsel for the petitioner, would submit that the dealer had furnished a letter dated 15.06.2015 that the work done for Andhra Loyola Institute of Engineering and Technology, and the sub-contract work done for Vyshnavi Infrastructure and Concrete Products, were purely labour contracts; he had submitted photostat copies of the work orders of the said works and had requested ten days' time to file their reply; and even without giving them a reasonable opportunity of being heard, the impugned order was passed.

A perusal of the assessment order would show that the assessing authority had merely verified Form-250, the work order agreement between the petitioner on the one hand and Andhra Loyola Institute of Engineering and Technology, Vyshnavi Infrastructure and Concrete Products and Polineni Chinmai Memorial Trust on the other, and the Form-26-AS statements issued under the Income Tax Act, 1961. He had, thereafter, excluded from the gross bills received, the works executed by the petitioner for both Andhra Loyola Institute of Engineering and Technology and Polineni Chinmai Memorial Trust for the year 2011-12 holding that these works were purely labour contracts and there was no material involved in the execution of the work. The assessing authority, however, subjected to tax the works executed by the petitioner in favour of Vyshnavi Infrastructure and Concrete Products for the year 2011-12; and also subjected all the works contracts executed by the petitioner, other than the work relating to Andhra Loyola Institute of Engineering and Technology, to tax for the year 2012-13 holding that the petitioner had neither produced details of the works along with the books of accounts, nor had he produced Form-250 for the said taxable turnover; and the dealer was liable to pay tax, on the said turnover, as per Rule 17 (1) (g) of the Vat Rules. Sri P.Balaji Varma, learned counsel for the petitioner, would fairly state that, in so far as these works are concerned, the petitioner had not produced Form-250 before the assessing authority and the petitioner was, therefore, not entitled for the benefit of composition.

The only question, which would necessitate examination, is whether, in case where the assessee does not claim the benefit of composition, the assessing authority can rely only on the work orders and the Form-26-AS statements in assessing the petitioner to tax, without verifying the books of accounts. Section 4 (7) (a) of the VAT Act stipulates that, notwithstanding anything contained in the Act, every dealer executing works contract shall pay tax on the value of the goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act. Under the proviso thereto, where accounts are not maintained to determine the correct value of the goods at the time of incorporation, such dealer shall pay tax at the rate specified in Schedule-V on the total consideration received or receivable subject to such deductions as may be prescribed. Section 4 (7) (b) and (d) of the Act is attracted only in cases of composition and, as the said provisions are not applicable to the facts of the present case, it is only under Section 4 (7) (a) of the Act, and the corresponding rules, that the petitioner can be subjected to tax for the works contracts executed by him under the Act.

Rule 17 (1) (a) of the Rules stipulates that, in the case of contracts not covered by sub-Rules (2) and (4), the VAT dealer shall pay tax on the value of the goods at the time the goods are incorporated in the works at the rates applicable to the goods. Rule 17 (1) (d) & (e) of the Rules provide for the manner in which the value of the goods is to be determined, and the deductions which the dealer is entitled to claim on the works contracts executed by him. It is only if the assessee produces books of accounts to show that the works executed by them are purely labour contracts, and not works contracts which involve both material and labour, would they be entitled to seek exemption of the turnover, involved in purely labour contracts, from being subjected to tax under the Act.

It does appear from the assessment order that, even in respect of the works executed by the petitioner for the Andhra Loyola Institute of Engineering and Technology and Polineni Chinmai Memorial Trust in the year 2011-12, the assessing authority was swayed only by the Form-26-AS statement filed by the dealer before the Income Tax Department. The requirement, both under the Act and the Rules, is that the assessee should produce books of accounts, failing which Rule 17 (1) (g) of the Rules should be applied, and the dealer would be liable to pay tax at 14 ½ % on the total consideration received or receivable subject to the percentage of deductions specified in the table thereunder.

Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner is seeking to take advantage of the fact that the assessing authority had granted them exemption for the turnover relating to the works executed by them in favour of both Andhra Loyola Institute of Engineering and Technology and Polineni Chinmai Memorial Trust for the year 2011-12, though such an exemption could not have been granted as no books of accounts were produced even for these works contracts.

It is unnecessary for us to examine this aspect as, on the assessment order being set aside, the assessing authority would be required to pass an order of assessment afresh without being influenced by any observations made by him in the earlier assessment order. The impugned assessment order is set aside. The assessing authority shall, after giving the petitioner an opportunity of being heard and a personal hearing, pass an assessment order afresh in accordance with law within four weeks from the date of receipt of a copy of this order. It is made clear that if, on the date fixed for personal hearing, the petitioner fails to produce the books of accounts, it is open to the assessing authority to proceed and pass an assessment order in accordance with law. Consequent upon the assessment order being set aside, the order of penalty must be and is, accordingly, set aside. Needless to state that this order shall not preclude the assessing authority, if they so choose, from initiating penalty proceedings after a fresh assessment order is passed.

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

10th February, 2016.
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