IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Delivered on: 10-04-2017

Coram:

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

<u>Writ Petition No.7259 of 2017</u>

Between:

M/s. Sri Laxmi Srinivasa Industries, represented by
Its Managing Partner, Shyamala Ravinder Reddy,
Sy.No.809/P2/2, Kaloor Road, Gundaram,
Nizamabad District.

… Petitioner

Vs.

The State of Telangana, represented by its Secretary
To Revenue Department, Secretariat Buildings,
Hyderabad and others

.. Respondents

For Petitioner : Mr. Dr. K. Satynarayana Rao,

For Respondents : Mr. J. Anil Kumar,
Learned standing counsel for the respondent

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.7259 of 2017

ORDER: (V. Ramasubramanian, J)

The petitioner has come up with the above writ petition challenging a final notice of demand made by the Commercial Tax Department.

2. Heard Dr. K. Satyanarayana Rao, learned counsel for the petitioner. Mr. J. Anil Kumar, learned special standing counsel takes notice for the respondents.

3. What is demanded under the impugned final notice, is only a tax already assessed, but claimed by the Department as not paid by the petitioner. So long as there is no dispute about the liability, the petitioner cannot avoid a demand.

4. But the demand is challenged by the petitioner on two grounds, namely, a) that they have already made payment of all the taxes due and b) that the final notice impugned in the writ petition is at variance with the amounts indicated in the previous notices.

5. In so far as first contention is concerned, the petitioner has produced a copy of the letter dated 23-02-2017, which contains a tabular column indicating the challan number, date, bank/treasury and the amount remitted. In other words, the claim of the petitioner is that periodically the tax was remitted every month either into the Sub-treasury or into the bank account.

6. However, the learned standing counsel for the Department produced the records to show that no such payment was ever received at the Sub-treasury or to the bank account of the Department. In other words, the Department claims that no payment was made.

7. In view of the dispute on a fundamental question of fact, we directed the petitioner to verify the records of the Department, if there was any possibility of reconciliation. But today the learned counsel for the petitioner submitted that there appears to be a collusion between the Consultant engaged by the petitioner and the officials of the Department. In other words, there is a tacit concedement of the fact that the amount may not have reached the Department. The learned counsel for the petitioner produced copies of news paper reports to show that there was a huge scam relating to the Commercial Taxes collection and that several officers were involved.

8. Let us assume for a minute that the news paper reports are correct, but even then the liability to pay tax, which arises out of a statute, will get discharged only upon payment to the Government. Any payment made by the petitioner to their consultant and any fraud played by the consultant in collusion with the officials of the Department, will not enable the petitioner to get a discharge of the liability to pay tax. Therefore, the petitioner may have to workout its remedies as against their own consultant and any body else involved either in the larger scam or in their own scam.

9. In so far as the second contention is concerned, it is for the petitioner to find out what according to their books of account, the actual liability is and make payment of the same, if such payment had not reached the coffers of the department, due to any collusion on the part of their own consultant and the officers. Therefore, the second contention also cannot be accepted.

10. In view of the above, the writ petition is dismissed. No costs.

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

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 10-04-2017

Ksn