THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition Nos.8894, 8954 and 9196 of 2015

COMMON ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Sri S.Vivek Chandrasekhar, learned counsel for the petitioner, Sri T.Sudhakar Reddy, learned Standing Counsel for HMWSSB, and Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would agree that the subject matter of these writ petitioners are covered by the order passed by a Division Bench of this Court in W.P.No.10012 of 2010 and batch dated 02.07.2010. In its order in W.P.No.10012 of 2010 and batch dated 02.07.2010, the Division Bench followed its earlier order in W.P.No.14026 of 2009 dated 22.07.2009. Following the said order, and in terms thereof, these Writ Petitions are also disposed of.

Sri T.Sudhakar Reddy, learned Standing Counsel for HMWSSB, would submit that, since 2.8% from out the 4% tax deducted at source has already been remitted to the Commercial Tax Department, they are only required to remit the balance 1.2% either to the Commercial Tax Department or refund it to the petitioner; and it is necessary that this Court should clarify to whom HMWSSB should refund/remit the amount of 1.2% tax deducted at source from the petitioner's bills.

Sri S.Vivek Chandrasekhar, learned counsel for the petitioner, would submit that the petitioner is a joint venture which has already been subjected to assessment for the relevant years; they have already paid the tax due in this regard; it is necessary, therefore, that HMWSSB be directed to refund the balance tax of 1.2% to the petitioner, from whose bills the tax was deducted; and remitting the said amount to the Commercial Tax Department would disable the petitioner from claiming refund as the assessment has already been completed, and the assessing authority has become *functus officio*.

The primary obligation of the HMWSSB was to remit the tax deducted at source from the bills of the petitioner to the Commercial Tax Department. On the amount being so remitted, the petitioner was then entitled to claim adjustment of the tax due and payable by them with the tax deducted at source. If, as is now contended before us by Sri S.Vivek Chandrasekhar, learned counsel for the petitioner, the assessments of the joint venture has already been completed, and the petitioner has discharged its tax liability in full, permitting the HMWSSB to remit the tax deducted at source to the Commercial Tax Department would result in the petitioner not being able to recover the amounts legitimately due to them.

With a view to resolve this dispute, we direct HMWSSB to ascertain from the Commercial Tax Department whether VAT is still due and payable by the joint venture for the relevant tax period and, on receipt of intimation from the Commercial Tax Department that no tax is due for the relevant period from the joint venture, to then refund the balance 1.2% of the tax deducted at source to the petitioner herein, from whose bills tax is said to have been deducted at source.

The HMWSSB shall seek clarification in this regard from the 9th respondent within three weeks from today. The 9th respondent shall at the earliest, and in any event not later than four weeks from the date of receipt of intimation, inform HMWSSB whether VAT is due and payable by the joint venture for the relevant assessment years. In case tax has already been paid, and the 9th respondent so intimates, the HMWSSB shall then refund the balance 1.2% tax to the petitioner within four weeks from the date of receipt of intimation from the Commercial Tax Department. If, on the other hand, the 9th respondent informs them that taxes are still due and payable by the joint venture, the HMWSSB shall remit the balance 1.2% tax deducted at source to the Commercial Tax Department within four weeks from the date of receipt of intimation from the Commercial Tax Department, marking a copy of the said letter to the petitioner herein to enable them, if they so choose, to avail their legal remedies.

The Writ Petitions are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

04th January, 2017
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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Date: 04.01.2017

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