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

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

WRIT PETITION No.34531 OF 2017

Between:

M/s.Premier Solar Powertech Private Limited,
Sy.No.54/Part, above G. Pulla Reddy Sweet House,
Karkhana Main Road, Secunderabad,
Rep. by its Executive Director Mr. Sudhir Moola.

...Petitioner

Vs.

The Commercial Tax Officer,
Maredpally circle, Secunderabad,
State of Telangana and others.

.. Respondents

For Petitioner	:	Sri Bhaskar Reddy Vemireddy
For Respondents	:	G.P. for Commercial Tax (TG) Sri T. Vinod Kumar

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.34531 OF 2017

ORDER: *(per V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition challenging an order of assessment passed by the 2nd respondent, namely, the Commercial Tax Officer (INT), pursuant to an authorization granted first for the conduct of an audit and then for the conduct of the assessment.

2. Heard Mr. Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Mr. T. Vinod Kumar, learned Special Standing Counsel for the respondents.

3. The main grievance of the petitioner is that they claimed to be Dealers of Solar Power Systems and Electrical Goods and that they paid tax @5% But, by the order impugned in the writ petition, the 2nd respondent treated the petitioner as a works contractor, on the basis that they had EPC contracts with the buyers. The contention of the petitioner is that assuming that the petitioner was a works contractor, even then, tax could not have been levied at more than what is stipulated under Section 4(7)(a) of the Telangana Value Added Tax Act, 2005 (for short 'the Act').

4. It is submitted by the learned Special Standing Counsel for the respondents that the petitioner repeatedly denied being a works contractor, but the department found him to be one. But, this contention addresses only the first issue. Assuming the worst case scenario for the petitioner, he would be treated as a works contractor in which case he will be entitled to invoke Section 4(7)(a) of the Act.

There has been no application of mind to this aspect by the 2^{nd} respondent and the 2^{nd} respondent has levied tax @14.5% uniformly. Therefore, the impugned order suffers from the vice of non-application of mind to the provisions of the Act.

5. Hence, the writ petition is allowed and the impugned order is set aside and the matter is specifically remanded back to the 2^{nd} respondent and the 2^{nd} respondent may initiate *de nova* proceedings and after giving sufficient opportunity to show cause and also an opportunity of personal hearing, pass orders afresh.

6. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 27, 2017

KTL