THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.43411 of 2017

22.12.2017

Between:

M/s.IJM Lingamaneni Township Pvt. Ltd., Guntur

..Petitioner

and

The Additional Commissioner of Commercial Taxes (CT) Legal, Vijayawada and others

..Respondents

Counsel for the petitioner: Dr.S.R.R.Viswanath

Counsel for the respondents: Mr.Shaik Jeelani Basha, Special Standing Counsel for Commercial Taxes (A.P)

The Court made the following:

<u>ORDER</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *mandamus* to declare order, dated 29.11.2017, *vide* CTD order No.ACO 361, CCT's Ref. No. LII(1)/ 162-1/2017, of respondent No.1 rejecting stay application in Tax Appeal No.76 of 2017 as arbitrary and illegal. The petitioner also sought to set aside order, dated 09.10.2017, of respondent No.1 and to restrain the respondents from collecting the disputed tax of Rs.3,48,64,472/- till the disposal of Tax Appeal No.76 of 2017 pending before the Value Added Tax Appellate Tribunal, Visakhapatnam (for short 'the Tribunal').

2. We have heard the learned counsel for both the parties and perused the record.

3. The petitioner is a private limited company incorporated under the Companies Act, 1956. It entered into a development agreement with M/s.Lingamaneni Estates Projects Limited (LEPL). While the petitioner is the developer and main contractor, M/s.IJM (India) Infrastructure Ltd., is the sub-contractor. The petitioner opted to pay composition tax under Section 4(7)(d) of the Andhra Pradesh Value Added Tax Act, 2005 and Rule 17(4) of the Andhra Pradesh Value Added Tax Rules, 2005 by filing the composition application in *form* - VAT 250 as far back as 16.07.2008. Respondent No.3 passed assessment order on 10.07.2014. With reference to the said assessment order, respondent No.4 initiated revision proceedings and accordingly, issued pre-revision show cause notice, dated 02.07.2015. By revision order, dated 19.02.2016, respondent No.4 confirmed the proposal made in the pre-revision show cause notice. Respondent No.2 gave effect to the said revision order, *vide* his order, dated 23.02.2016.

The said order was questioned by the petitioner in W.P.No.10263 of 2016. A Division Bench of this Court dismissed the said writ petition and relegated the petitioner to the remedy of appeal. Thereafter, by proceedings, dated 17.06.2016, respondent No.2 passed a rectification order. Assailing the revision order, dated 19.02.2016, of respondent No.4 and rectification order, dated 17.06.2016, of respondent No.2, the petitioner filed an appeal *vide* Tax Appeal No.76 of 2017 before the Tribunal, by making a pre-deposit of 25% of the disputed tax, and the same is pending. Pending the said appeal, the petitioner moved respondent No.1 by filing an application for stay of recovery of the balance disputed tax. By impugned order, dated 29.11.2017, respondent No.1 has dismissed the said application.

4. Dr.S.R.R.Viswanath, learned counsel for the petitioner, has submitted that as per the Constitution Bench judgment of the Supreme Court in **Bhawani Cotton Mills Ltd., vs. State of Punjab**[1] and also the judgment of a three-Judge Bench of the Supreme Court in **Steel Authority of India Ltd. vs. State of Orissa**[2], the petitioner, who had already discharged its tax liability, is not liable to deduct tax at source in respect of payments made to its sub-contractor and that therefore, respondent No.4 has committed patent illegality in re-assessing the tax by exercising *suo motu* revisional power.

5. Opposing the above submissions, Mr.Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P.) appearing for the respondents, has submitted that the question as to the legality or otherwise

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1 1967(20) STC 290
2 AIR 2000 SC 946

of the order of respondent No.4 is pending before the Tribunal in Tax Appeal No.76 of 2017 and that the petitioner, having suffered revision order and also rectification order, is liable to pay tax pending the said appeal.

6. The liability of the petitioner to pay tax under the revised assessment order is in serious dispute. The petitioner claimed that it had already made pre-deposit of 25% of the disputed tax before the Tribunal in Tax Appeal No.76 of 2017. If during the pendency of the said appeal, the balance disputed tax is recovered in its entirety, the petitioner may suffer serious prejudice.

7. Therefore, in order to balance the interests of both the parties, the respondents are restrained from recovering the balance disputed tax subject to the petitioner paying 50% of the disputed tax within a period of four weeks from today, pending Tax Appeal No.76 of 2017. While calculating 50% of the disputed tax, the pre-deposit, if any, made by the petitioner shall be given credit to.

8. Subject to the above directions, the Writ Petition is disposed of.

9. As a sequel to disposal of the Writ Petition, W.P.M.P.No.53831 of 2017filed by the petitioner for interim relief stands disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

22nd December, 2017
GHN