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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.41095 of 2017

Date: 11.12.2017

Between:

M/s.Dhana Lakshmi Offset Printers Pvt.Ltd.,
Plot No.20, Road No.4, IDA, Mallapur,
R.R.District, rep. by its Proprietor
Mr.K.Murugappan … Petitioner

And

The Commercial Tax Officer,
Nacharam Circle, Saroornagar division,
Hyderabad and four others … Respondents

Counsel for the Petitioner : Mr. Bhaskar Reddy Vemireddy

Counsel for the Respondents : Mr. J.Anil Kumar,
Special Standing Counsel for
Commercial Tax (TS)

The Court made the following:

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of mandamus to declare the action of respondents No.2 and 3 in classifying the activity of printing and supply of wall posters as works contract, ignoring the statutory Entry 47 of Schedule IV of A.P. Value Added Tax/TVAT Act, 2005 (for short 'the Act') and ruling of the Advance Ruling Authority, as illegal, arbitrary and without jurisdiction.

2. We have heard Mr.Vemireddy Bhaskar Reddy, learned counsel for the petitioner and Mr.J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes (TS).

3. The petitioner is on the rolls of Commercial Tax Officer, Nacharam Circle. The petitioner who is running an offset printer for manufacturing cine wall posters, made a self assessment of the tax as per Entry 47 of Schedule IV of the Act and paid the tax accordingly, for the assessment years from April, 2013 to March, 2017. Following the audit, the Assessing Officer (for short 'AO') passed an assessment order dated 22.07.2017, classifying the turn-over under works contract and levied differential tax. Feeling aggrieved by the said order, the petitioner filed an appeal before respondent No.3 and by his order dated 10.11.2017, respondent No.3 has dismissed the appeal, affirming the order of the A.O. Assailing these orders, the petitioner filed this writ petition.

4. The learned counsel for the petitioner submitted that in response to notice issued by respondent No.1-AO, the petitioner has submitted its objections, wherein it has specifically raised the plea that the cine posters published by it, clearly fall under Entry 47 of Schedule IV of the Act, and that, in case of M/s.Pragathi Offset Private Limited, Red Hills, Hyderabad, the Authority for Clarification and Advance Ruling, in its proceedings A.R.Com/47/2012 dated 16.08.2012, has clearly ruled that various works, such as printing of diaries, posters, etc., fall within the ambit of item No.47 of Schedule IV of the Act. He has further submitted that a similar plea was raised before the respondents No.3 in appeal and that, both, respondent No.1 as well as respondent No.3, have completely ignored the plea raised by the petitioner in that regard.

5. From the additional grounds of appeal raised by the petitioner before the respondent No.3, we find that it has specifically raised the plea, based on the order of the Advance Ruling Authority in M/s.Pragathi Offset Private Limited.

6. The learned Special Standing Counsel on carefully going through the record, could not dispute the fact that though the petitioner has raised the aforementioned plea, neither of the aforementioned two respondents, have adverted to this plea. He has also not disputed the fact that in case of M/s.Pragathi Offset Private Limited, the Advance Ruling Authority has held that the diaries and

posters, etc., printed for various customers, would fall under Entry 47 of Schedule IV of the Act. However, he has made a feeble attempt to draw a distinction between an ordinary poster and a cine poster and urged the Court to remand the matter back to the respondent No.3 for consideration, as to whether the order of the Advance Ruling Authority, covers the case of the petitioner also.

7. A perusal of the order of respondent No.3 would show that it has mainly placed reliance upon the decision of the Sales Tax Appellate Tribunal, Andhra Pradesh in M/s. NATIONAL LITHO PRINTERS VS. STATE OF ANDHRA PRADESH[1], in coming to a conclusion that the turn-over of the petitioner must be treated as falling under works contract. The learned counsel for the petitioner submitted that the said decision was rendered, based on the interpretation of the provisions of APGST Act, which did not contain an entry similar to Entry No.47 under the Act, and that, respondent No.3 instead of considering the Advance Ruling Authority's order referred to above, relied upon an irrelevant decision. That, the judgment in NATIONAL LITHO PRINTERS (supra), was rendered on the interpretation of the provisions of APGST Act, is not disputed by the learned Special Standing Counsel. Respondent No.3 obviously did not keep in mind, this vital aspect and it has not even adverted to the plea raised by the petitioner that it's case is covered by the order of the Advance Ruling Authority in

[1] 28 APSTJ 28

M/s.Pragathi Offset Private Limited. Being an appellate body, a duty and obligation are cast upon respondent No.3 to fairly consider the case of the assessee, instead of treating it as an adversary. Unless a fair and transparent approach is displayed while disposing of the appeals by the departmental functionaries, the very purpose of providing remedy of appeals, would be rendered nugatory.

8. Though, we propose to dispose of the writ petition on merits, the learned Special Standing Counsel has earnestly requested us to remand the matter to respondent No.3, for an objective consideration of the petitioner's plea that it's case is covered by the order of the Advance Ruling Authority in M/s.Pragathi Offset Private Limited.

9. Hoping that respondent No.3 would fairly and objectively consider the case of the petitioner, we dispose of the writ petition by setting aside the order of the respondent No.3 and remanding the matter to him for a fresh consideration of the case of the petitioner, in the light of the order dated 16.08.2012 in A.R.Com/47/2012 of the Authority for Clarification and Advance Ruling of the Commercial Tax Department of Government of A.P. Needless to observe, that till the appeal is disposed of, the respondents are restrained from collecting disputed tax from the petitioner.

10. As a sequel to disposal of the writ petition, W.P.M.P.No.51013 of 2017 filed by the petitioner for interim relief, is disposed of.

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(C.V.Nagarjuna Reddy, J)

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(T.Amarnath Goud, J)

Date: 11th December, 2017

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