THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.4113 OF 2018

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri G.Narendra Chetty, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is for issuance of a writ of mandamus to declare the action of the first respondent in passing the impugned order dated 20.03.2017 (served on the petitioner on 25.01.2018), for the tax period October, 2011 to March, 2012, as arbitrary and illegal on the ground that it is contrary to the directions contained in the appellate order of the Appellate Deputy Commissioner (CT), Kurnool dated 28.07.2014.

Facts, to the limited extent necessary, are that the petitioner, a registered dealer, executed works contracts for the Government of Andhra Pradesh. They were granted composition under Section 4(7)(b) of the Andhra Pradesh VAT Act ("the Act" for brevity) read with Rule 17(2) of the Andhra Pradesh VAT Rules ("the Rules" for brevity). The first respondent passed an assessment order, for the tax period October, 2011 to March, 2012, on 23.10.2013 holding that the rate of tax, under Section 4(7) of the Act, was enhanced from 4% to 5% by an amendment with effect from 15.09.2011; and, accordingly, demanded the differential tax of Rs.83,189/-. Aggrieved thereby, the petitioner preferred an appeal on

03.12.2013 before the Appellate Deputy Commissioner, Kurnool which was later disposed of by order dated 28.07.2014.

In his order dated 28.07.2014, the Appellate Deputy Commissioner held that the petitioner was not liable to pay the difference of 1% tax since they had neither charged nor collected the tax at 5% from 15.09.2011; the Government had added only 4% to the estimates, relating to the works executed by them so far; and these works were entrusted to them by the Government departments long before the date of amendment i.e. 15.09.2011, during which period the rate of tax, under the composition scheme, was only 4% as per Section 4(7)(b) of the Act. The Appellate Deputy Commissioner further held that the assessing authority was not justified in levying tax at 5%. After setting aside the assessment order dated 23.10.2013, holding that they were passed against the provisions of the Act and the Rules, the Appellate Deputy Commissioner remanded the matter to the assessing authority.

In the consequential order passed by him on 20.03.2017, the assessing authority records that a show cause notice was issued to the petitioner on 13.03.2017, informing him that it was his duty to approach the department and seek revision of the estimates of the contract value; and as the burden of proof lay on him, under Section 16(1) of the Act, there was no reason to uphold his objections. The earlier tax levied of Rs.83,189/- was confirmed. Aggrieved thereby, the present Writ Petition is filed.

Sri G.Narendra Chetty, learned counsel for the petitioner, would contend that, since the earlier assessment order passed by the Commercial Tax Officer was set aside in appeal by the

Appellate Deputy Commissioner, it was not open to him to reiterate his views which he had expressed in the earlier assessment order; on his order being set aside, and the matter remanded back to him, the Commercial Tax Officer was obligated to pass a consequential order strictly in terms of the order passed by the Appellate Deputy Commissioner; and the Commercial Tax Officer had exceeded his jurisdiction in passing an order on merits, contrary to the order passed by the Appellate Deputy Commissioner.

On the assessment order of the Commercial Tax Officer having been set aside in appeal by the Appellate Deputy Commissioner, and the matter being remanded back to him thereafter, the assessing authority was bound to pass a consequential order strictly in terms of the order passed by the Appellate Deputy Commissioner. While we may not be understood to have held that the Appellate Deputy Commissioner was justified in arriving at the conclusion as reflected in his order dated 28.07.2014, the error, if any, in the order passed by the Appellate Deputy Commissioner can only be subjected to revision in accordance with the provisions of Section 32 of the Act; and it is not open to the assessing authority to sit in judgment over the order of the Appellate Deputy Commissioner, and take a view contrary thereto, more so when the matter has been remanded to him to pass a consequential order strictly in accordance with the appellate order.

The impugned order of assessment is in excess of jurisdiction, as it falls foul of the order passed by the Appellate Deputy Commissioner. The impugned order is liable to be, and is accordingly, set aside. Suffice it to make it clear that this order shall not disable the Revisional authority, if he so chooses, from revising the appellate order passed by the Appellate Deputy Commissioner strictly in accordance with the provisions of Section 32 of the Act.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

28th February 2018
RRB