* HON’BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON’BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.8127 of 2018

% Date: 26-11-2018

Kopparapu Venkata Swamy S/o Ramaiah,
D.No.3-550A, Aravinda Ashram Road,
Beside Aravind School, YMR Colony,
Proddatur, Kadapa District, Andhra Pradesh
… Petitioner

Vs.

$ 1. The Assistant Commissioner (CT)-IV,
Enforcement Wing, 4^{th} Floor,
O/o Commissioner (CT), D.No.5-59,
R.K. Spring Valley Apartments, Edupugallu,
Andhra Pradesh, Vijayawada-521 151

2. The State of Andhra Pradesh,
Rep. by the Prl. Secretary to Govt. of A.P.,
Revenue (CT) Dept., A.P. Secretariat Bldgs,
Velagapudi, Guntur District, A.P.
… Respondents

! Counsel for Petitioner : Mr. S.Ravi, Senior Counsel,
for Mr. G.Narendra Chetty

Counsel for Respondents : Mr. Suri Babu,
Special Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.8127 of 2018

Order: (per V.Ramasubramanian, J.)

Challenging a best of judgment assessment passed under the Andhra Pradesh Value Added Tax Act, 2005, the dealer has come up with the above writ petition.

2. Heard Mr. S.Ravi, learned Senior Counsel appearing on behalf of Mr. G.Narendra Chetty, learned counsel for the petitioner and Mr S.Suri Babu, learned Special Standing Counsel for the respondents.

3. Search operations were conducted at three different places, by the Assistant Commissioner of Commercial Taxes, Enforcement Wing and other officers, on 07-12-2015, in the premises of – (i) some Sales Tax Practitioners and a Transport Company, (ii) a flat owned by an employee of the petitioner and (iii)a flat owned by the daughter-in-law of the petitioner. What were recovered from the premises were certain books of accounts, cheque books, dealers' seals, stamps and log books of certain vehicles. There were also certain letter pads, empty bill books and agricultural producer's permit, lorry receipts, purchase bills etc. found, in addition to signed and unsigned blank cheque leaves.

4. On the basis of the materials so found, the Enforcement officials came to the conclusion that edible oil (palmolive oil) was purchased from certain manufacturing

units in Andhra Pradesh, by the dealers registered in the State of Maharashtra and the Union Territory of Dadra and Nagar Haveli. Therefore, a team of officers verified the true nature of the transactions, by contacting their counter-parts in the State of Maharashtra and the Union Territory of Dadra and Nagar Haveli. On the basis of the inputs received, the Enforcement Officer came to the conclusion that the units in Maharashtra were non-existent and that the edible oil said to have been purchased by these benamidars in other States were in fact received by the petitioner in Andhra Pradesh and sold in Andhra Pradesh.

5. Therefore, a pre-assessment show cause notice dated 13-02-2017 was issued to the petitioner on the ground that he is the real owner/resident/person in charge of all the three premises which were subjected to search. The show cause notice alleged that the petitioner purchased edible oil from manufacturing units in Andhra Pradesh in the names of dealers in other States who were non-existent and who were mere benamidars of the petitioner and that thereafter the petitioner resold the same in the State of Andhra Pradesh itself camouflaging the same as Inter-State sales against ‘C’ Forms. According to the show cause notice, the petitioner paid tax at 2% against ‘C’ Forms, thereby depriving the State of Andhra Pradesh, the difference of 3%.

6. The petitioner submitted his written objections on 10-5-2017 and attended the personal hearing through his

representative on 14-7-2017. The petitioner claimed that he was merely a commission agent and a middleman bringing sellers and buyers together and that he did not handle any goods physically. The petitioner is not even a registered dealer and hence he claimed that there was no tax liability in his hands.

7. Overruling the objections, the 1st respondent passed the impugned best of judgment assessment order confirming the proposal and demanding tax to the tune of Rs.8,82,83,713/-. Contending that the whole thing is obnoxious and without jurisdiction, the petitioner has come up with the above writ petition bypassing the alternative remedy of appeal available under law.

8. The 1st respondent has a filed a counter affidavit both on merits and on the question of maintainability of the writ petition, bypassing the alternative remedy of appeal.

9. On the question of bypassing the alternative remedy of appeal, it is admitted by the 1st respondent himself that there are four exceptions to the rule viz., (i) violation of the principles of natural justice, (ii) the proceedings being without jurisdiction, (iii) the *vires* of the Act being under challenge and (iv) infringement of Fundamental Rights.

10. The petitioner pitches his claim on lack of jurisdiction. According to Mr. S.Ravi, learned Senior Counsel for the petitioner, the 1st respondent has assumed a jurisdiction which he did not possess and that therefore the

petitioner was entitled to bypass the alternative remedy. In the light of such a submission, let us first see whether the 1st respondent has assumed a jurisdiction that he did not possess, even on admitted facts.

11. Before proceeding further, it is necessary to have a caveat. ***Assumption of jurisdiction not available in law may take several forms. An authority different from the one on whom a power is conferred, may usurp jurisdiction at times and cases that fall under this category are capable of identification very easily.*** The case on hand does not fall under this category. ***But there are other forms of assumption of jurisdiction which are incapable of easy identification.*** Actually the case on hand is little tricky. That it is so can be best understood only if we look into that portion of the impugned order which records the alleged *modus operandi* and motive of the dealer. According to the impugned order, the petitioner camouflaged local sales of edible oils as Inter-State sales. The *modus operandi* of the petitioner, as stated in the impugned order is that he took registration certificates in the names of non-existent persons in the neighbouring States of Andhra Pradesh, but kept all records in Andhra Pradesh and operated the Bank Accounts, Way Bills etc. from Andhra Pradesh. As per the impugned order, the petitioner purchased edible oils from five different manufacturers in the State of Andhra Pradesh, raised tax invoices in the names of benami dealers

as consignees in the State of Maharashtra or the Union Territory of Dadra and Nagar Haveli. It is claimed in the impugned order that tax exemption is available to manufacturers in the Union Territory of Dadra and Nagar Haveli and that the edible oil did not move to the other States. It is the case of the respondents that they were sold in Andhra Pradesh itself.

12. The entire theme of the song as tuned in the impugned order is that transactions which are labelled as Inter-State sales, finally ended up as Intra-State sales in Andhra Pradesh. But it is admitted in the impugned order that "seller benamidars" paid tax at 2% on the strength of Form 'C" declarations.

13. Therefore, in essence the entire order proceeds on the basis that the State of Andhra Pradesh suffered a loss to the tune of 3%, which represents the difference between 5% payable as VAT and 2% paid against Form 'C' declarations. If the impugned order had stopped with assessing the petitioner to the extent of this 3% on the reported turnover, then the only remedy available to the petitioner would be to go to the Appellate Authority to contest the case on merits.

14. But what the 1st respondent did was to compute the so-called purchase turnovers of those five purchasers in other States, on the basis of the purchase tax invoices found in the premises which were subjected to search. This totalled to

a whopping purchase turnover of Rs.160,51,58,413/-. To this purchase turnover, the 1st respondent added a gross profit of 10% and arrived at the total estimated sales turnover at Rs.176,56,73,254/-. On this estimated sales turnover, the 1st respondent calculated VAT at 5% and arrived at the tax due as Rs.8,82,83,713/-.

15. The first illegality committed by the 1st respondent was in not giving credit to the tax already paid. A person who allegedly purchased the goods may be benami. But the tax paid by him is real. That taxes were paid at the concessional rates against Form 'C' declarations is admitted even in the impugned order. Keeping this in mind, let us move on to the next issue.

16. The purchase turnover of Rs.160,51,58,413/-, arrived at by the 1st respondent in his impugned order comprises of three parts viz., (i) direct Inter-State sales, made by manufacturers/importers in Andhra Pradesh to the dealers in other States without the involvement of the petitioner, to the tune of Rs.56 Crores, (ii) Inter-State sales made by sellers, who are registered dealers in the State of Telangana and who have reported the same to their Assessing Authorities in the State of Telangana, sought to be taxed as local sales in Andhra Pradesh in the hands of the petitioner, to the total turnover of Rs.38,69,10,220/- and (iii) goods sold by registered dealers in Andhra Pradesh through the petitioner as commission agent which were reported and tax

paid under CST, once again sought to be taxed as local sales in the hands of the petitioner to the total turnover of Rs.65,50,26,899/-.

16. The first part of the total turnover, determined by the 1st respondent, relates to direct Inter-State sales made by manufacturers/importers in Andhra Pradesh to outside dealers. This is to the extent of Rs.56 Crores. This turnover is attributed to six sellers in Andhra Pradesh. Out of those six persons, who are named as sellers in Annexure-I, two are from the State of Telangana. The 1st respondent is an officer of the State of Andhra Pradesh. The impugned order was passed after the bifurcation of the State. Therefore, he had no jurisdiction to subject the turnovers of these two entities.

17. Coming to the second part of the total turnover, it relates to Inter-State sales made by persons who are dealers in the State of Telangana and who have reported the same to their Assessing Authorities in the State of Telangana. This amount totals to Rs.38,69,10,220/-. A part of it viz., Rs.23,71,35,160/- is a turnover of a company by name Manjunatha Impex India Private Limited, Hyderabad. Admittedly, this company is a registered dealer in the State of Telangana and they have suffered a final order of assessment under the Central Sales Tax Act, 1956 on 05-01-2015 in respect of the very same turnover of Rs.23,19,71,985/-.

18. Therefore, it is clear from the impugned order that the 1st respondent has exercised a jurisdiction not vested to

him in law, both in terms of territorial limits and also in terms of the failure to give credit to the tax paid. Hence, this is a fit case where the Court would exercise its power under Article 226 of the Constitution of India.

19. As a matter of fact, this Court had its own doubts about the necessity for the petitioner to be in possession of signed and unsigned cheque leaves, lorry receipts, way bills, rubber stamps of several companies etc. Therefore, in view of the large tax implication, this Court passed a conditional order on 01-5-2018 granting interim stay on condition that the petitioner paid Rs.50 lakhs on or before 31-5-2018. Such a condition was imposed to check the *bona fides* of the petitioner. The petitioner has complied with the conditional order. As a matter of fact, if the petitioner had been driven to the alternative remedy of appeal, he would have been called upon to pay 12.5% of the disputed tax. If the tax already paid is given credit, the amount of Rs.50 lakhs imposed by us by way of condition for the grant of stay, would far exceed the pre-deposit condition to be satisfied. Therefore, we are of the considered view that the objection to the maintainability of the writ petition on the ground of availability of alternative remedy has to be rejected.

20. Coming to the merits of the case, it is seen from the above discussion that two points remain unanswered. By an order dated 10-4-2018, we directed the learned Special Standing Counsel for Commercial Taxes to find out –

(i) whether some of the turnover included in the impugned order has actually suffered a Central Sales Tax and (ii) whether the orders of assessment in respect of those persons are actually genuine.

21. Though the respondents have not come on record in the form of an Affidavit, providing answers to these two questions, it is borne out by records that a part of the turnover included in the impugned order has actually suffered a Central Sales Tax. In addition, the orders of assessment in respect of those persons are also found to be genuine. The only argument repeated in several places in the impugned order as well as in the counter affidavit is that the registered dealers in other States were non-existent persons and that they were only benamies for the petitioner. But the orders of assessment in respect of those persons are not claimed by the 1st respondent to be bogus or fabricated. Therefore, we fail to understand as to why a person would suffer an order of assessment and also pay Central Sales Tax in fictitious names or in benami names without a corresponding benefit. What that corresponding benefit was, could not be articulated by the respondents. The fact that the 1st respondent has exercised extra territorial jurisdiction even in respect of the dealers in the State of Telangana, despite the bifurcation, is very clear from the impugned order. Therefore, the impugned order deserves to be set aside and the matter remanded back for a fresh consideration.

22. In view of the above, the writ petition is allowed, the impugned order is set aside and the matter remanded back to the 1st respondent for a fresh disposal in accordance with law. The 1st respondent should give a personal hearing to the petitioner and take note of the above observations and then pass fresh orders within 2 months from the date of receipt of a copy of this order. The amount of Rs.50 lakhs paid by the petitioner pursuant to the interim order, may be with the Government, till a fresh order of assessment is passed. If the fresh order of assessment results in nil liability, the amount shall be refunded to the petitioner within four weeks thereafter. If the fresh proceedings result in any liability, the amount paid pursuant to the conditional order passed by this Court shall be adjusted towards such liability, subject to the remedies available to the petitioner to challenge such a fresh order. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

26th November, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.8127 of 2018
(For Orders – per VRS, J.)

26th November, 2018.
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