HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

W.P.Nos.25494, 25501, 25986, 26002, 26005, 26008, 26058, 26083, 26089 and 26093 of 2011

COMMON ORDER:

The proceedings under challenge, in all these Writ Petitions, are the letters dated 03.04.2010 and 09.04.2010 issued by the Food Corporation of India (F.C.I).

By proceedings dated 03.04.2010, the petitioners were informed that, as per the audit note, the VAT reimbursed by the F.C.I was to be remitted to the local Commercial Tax Officer since the paddy which was being purchased in East Godavari District was as per the minimum support price; and the Government audit had directed that authenticated documentary evidence, of remittance of VAT to the Commercial Tax Officer, be produced for the period from 01.04.2007 to 31.03.2010, since this element was also being paid by the F.C.I. The petitioners were requested to submit the above information immediately, and were informed that, if there was no response from their end, the VAT element paid earlier would have to be recovered, as per the Government audit contention, without notice in this regard.

Thereafter, by proceedings dated 09.04.2010, the petitioners were informed that the F.C.I had paid certain amounts towards VAT for the period from 01.04.2007 to 31.03.2010 which was included in the cost of levy rice. The petitioners were requested to submit proof of payment of the tax element to the concerned tax authorities, as they had to submit the same to the Auditors. They were informed that, if no communication was received from them in the matter, the amount mentioned therein would be recovered from the bills of levy rice supplied to F.C.I without further notice. Both these proceedings required the petitioners to furnish proof of payment of VAT to the Commercial Tax Department, Government of Andhra Pradesh, since F.C.I had paid VAT to the petitioners along with the minimum support price of paddy.

Questioning their liability to be subjected to tax, under the AP VAT Act, the petitioners filed W.P.No.27335 and batch; and a Division Bench of this Court by its common order dated 30.10.2014, while holding that the petitioners were not liable to tax under the AP VAT Act, observed that they were liable to pay tax only under the C.S.T. Act; and the excess payment made by F.C.I to the petitioners (Yanam Rice Millers) as the VAT component of 4% notwithstanding, inter-state sale of levy rice could not be subjected to tax under the AP VAT Act. The Division Bench, however, made it clear that the said order would not preclude F.C.I from instituting appropriate proceedings, in accordance with law, to recover the excess payment made by them, to the Yanam Rice Millers, as the VAT component of the procurement price.

In terms of the said judgment, the petitioners were no longer obligated to pay VAT since sale of rice by them to the F.C.I was held to be an inter-state sale liable to tax only under the C.S.T. Act. Consequently, both the impugned proceedings dated 03.04.2010 and 09.04.2010, to the extent the petitioners were called upon to submit proof of payment of VAT to the Commercial Tax Department, is set aside.

Sri Dantu Srinivas, Learned Standing Counsel for F.C.I, would submit that, in terms of the common order of the Division Bench in W.P.No.27335 of 2012 dated 30.10.2014, F.C.I has filed Civil Suits against the petitioners seeking recovery of these amounts from them. Suffice it, therefore, to make it clear that the order now passed by this Court, setting aside the impugned proceedings, would not disable F.C.I from agitating its claims, in the Civil Suits filed by them, for recovery of the amounts paid by them to the petitioners as the VAT component of 4%. The said Suits shall be adjudicated by the competent Civil Court on its merits uninfluenced by any observations made in this order.

All the Writ Petitions are, accordingly, disposed of. The Miscellaneous Petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ.

Date:06th July, 2018.
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