HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.10334 of 2017

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

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

The petitioner herein, a dealer carrying on business in the sale and service of vehicles, has invoked the jurisdiction of this Court questioning the revised assessment order passed by the assessing authority on 11.02.2017 whereunder the assessing authority, relying on G.O.Ms.No.144 dated 11.02.2008, restricted the input tax credit, on the purchase of spare parts and lubricants, to 75%; and revised the assessment order calling upon the petitioner to pay Rs.1,82,005/- as tax within one month.

Against the assessment order, passed by the assessing authority on 25.09.2014, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner who, in his order dated 09.02.2015, followed his earlier order in Appeal No.66/2011-12 dated 12.07.2011; and held that the judgment of the VAT Tribunal, in *Durga Auto Services Case,* was inapplicable; the case of the dealer was that they had purchased spare parts and lubricants from VAT registered dealers of A.P. State who had charged VAT on the cost of these goods; the petitioner had sold these goods to their customers at their counter, including to the persons who brought their vehicles for repairs to their garage, at the MRP rates fixed by the company; it was upto the customers to have the parts, so purchased by them at the sales counter, replaced or fitted to their vehicles in the workshop, or they could take them outside, and get them replaced at the work shops of their choice; for replacing or fitting the parts, or refilling the oil, the petitioner collected labour charges which were, in turn, paid to the workers of their workshop; and they were also paying service tax on labour charges.

The appellate authority further held that, even without any proof, the assessing authority had illegally applied the decision in *Durga Auto Services Case;* the petitioner was, therefore, entitled to 100% ITC as per Rule 20(3) of the A.P. Value Added Tax Rules; and the transactions were not works contracts falling under Sub-Section (7), but were sale of goods falling under Sub-Section (1) of Section 4 of the A.P. Value Added Tax Act, 2005.

On the matter being remanded for his consideration, the assessing authority applied G.O.Ms.No.144 dated 11.02.2008 (which the appellate authority had held to be inapplicable) and restricted the input tax credit to 75% as if the transaction was a works contract; and thereafter called upon the petitioner to pay tax of Rs.1,82,005/-.

Sri G.Narendra Chetty, learned counsel for the petitioner, would submit, placing reliance on the judgment of this Court in **Suchir India Developers (P) Limited, Hyderabad vs. Commercial Tax Officer, Jubilee Hills Circle, Hyderabad[1]**, that, since the appellate authority had categorically held that the subject transaction did not constitute a works contract, the assessing authority was only required, on remand, to give effect to the order of the Appellate Deputy Commissioner; and he could not re-assess the petitioner to tax contrary to the appellate order passed by the Appellate Deputy Commissioner.

[1] (2014) 59 APSTJ 87 (HC-Telangana & A.P)

On the other hand, Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that, since the Appellate Deputy Commissioner had himself observed that the assessing authority should re-examine all aspects discussed in the order, the assessing authority had considered the matter afresh, and had recorded his independent conclusions, in assessing the petitioner to tax.

While the ambiguous expressions used by the appellate authority, in his appellate order, gave scope for the assessing authority to pass an order contrary to the order of the appellate authority, the fact remains that, in the present case, the Appellate Deputy Commissioner has categorically held that the said transaction was not a works contract; and the petitioner is entitled to 100% input tax credit, and not 75% as was restricted earlier by the assessing authority. Since the direction to the assessing authority was to examine all aspects, as discussed in the order of the Appellate Deputy Commissioner, it was not open to the assessing authority to take a view different from that of the Appellate Deputy Commissioner.

A Division Bench of this Court in **Suchir India Developers (P) Limited**[1] observed:

> "…Sri M.Govinda Reddy, learned Special Standing Counsel for Commercial Taxes, would contend that the order of the appellate authority is contrary to law. **If that be so, it was for a higher authority to revise the order of the Appellate Deputy Commissioner. As long as the order of the appellate authority remained in force, it was not open to the first respondent, on the matter being remanded to him by the appellate authority, to take a view contrary thereto.** The impugned order of the first respondent dated 26.05.2014 is set aside. **It is made clear that this order shall not preclude the first respondent to pass an order afresh in accordance with the directions of the Appellate Deputy Commissioner; or for any officer, higher in rank than the third respondent, to revise the order of the**

> **appellate authority in accordance with law**…" (emphasis supplied)

As the assessing authority could only have passed a revised assessment order strictly in accordance with the order passed by the Appellate Deputy Commissioner, the order, impugned in the writ petition, is set aside. The assessing authority shall, in terms of the order passed by the appellate authority, pass an order afresh in accordance with law. It is made clear that the order now passed by us shall not disable the revisional authority from revising the order passed by the Appellate Deputy Commissioner.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

14th August, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.10334 of 2017

Date: 14.08.2018

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