THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.32981 OF 2017

O R D E R
(Per Sri Justice Sanjay Kumar)

Assessment Order dated 08.08.2017 passed by the Assistant Commissioner (CT), (LTU), Kurnool, the second respondent, for the tax periods 2014-2015 and 2015-2016 is subjected to challenge. The claim of the petitioner firm is that it has to be taxed under Section 4(7)(b) of the Andhra Pradesh Value Added Tax Act, 2005 (*for brevity*, the APVAT Act') and not Section 4(7)(a) of the said Act, as was done *vide* the Assessment Order.

The petitioner firm executes works contracts and was assessed to tax under TIN 28580255382 in the erstwhile combined State of Andhra Pradesh. After re-organization of the said State, the petitioner firm became an assessee on the file of the Commercial Tax Officer, Nandyal, with TIN 37580255382. The petitioner firm had been awarded four works contracts by the combined State of Andhra Pradesh, which were ongoing at the time of re-organization of the State. After the formation of the new States in the process of such re-organization, the situs of the said works falls in the present State of Andhra Pradesh. However, at the time of commencement of these works, the State of Andhra Pradesh was composite. At that stage, the petitioner firm opted for composition of tax in terms of Section 4(7)(b) of the APVAT Act and filed Form VAT 250 for all the contracts. It claims to have discharged its tax liability on the total receipts in relation to these contracts by remitting tax at the relevant rate.

While so, the second respondent conducted an audit of the petitioner firm's accounts on 04.05.2017 and issued show-cause notice dated 16.06.2017 calling upon it to submit its written objections and documents in support of its claim of having opted for composition. Objections were filed by the petitioner firm on 29.06.2017 leading to the passing of the impugned Assessment Order dated 08.08.2017. Thereby, the second respondent rejected the claim of the petitioner firm that it had opted for composition and subjected its net turn over to tax at the rate of 14.5% on the ground that the petitioner firm had not filed separate Forms VAT 250 after obtaining registration afresh in the present State of Andhra Pradesh.

Sri C.Umakantha Sarma, learned counsel for the petitioner firm, would contend that in terms of Section 4(7)(b) of the APVAT Act read with Rule 17(2)(c) of the Andhra Pradesh Value Added Tax Rules, 2005 (*for brevity*, the Rules of 2005'), a VAT dealer is required to submit Form VAT 250 if it is opting for composition before commencing execution of the work and therefore, the question of the petitioner firm submitting fresh declarations in Form VAT 250 after obtaining registration in the new State of Andhra Pradesh would not arise. He would further submit that the action of the second respondent in taking into account the reimbursements made by the Government in relation to the charges for bank guarantees and the project insurance secured by the petitioner firm, while computing the total turnover was incorrect as they did not form part of the value of the contract.

Relying upon the counter-affidavit filed by the second respondent, Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would contend that as the petitioner firm obtained a fresh registration with effect from 02.06.2014, being the date of formation of the present State of Andhra Pradesh, it ought to have filed fresh Forms VAT 250 if it wanted to opt for composition under Section 4(7)(b) of the APVAT Act.

As regards the additions made to the total turnover for the relevant tax periods, learned Special Standing Counsel, would state that comparison of the turnover as reported to the Commercial Taxes Department through Form VAT 200 and the turnover disclosed to the Income-tax Department in the profit and loss account reflected a difference of Rs.5,03,67,541/- which was treated as under declaration of the turnover. He however does not dispute the fact that this difference arose out of the reimbursements made to the petitioner firm as claimed by it.

The issue essentially boils down to whether the petitioner firm had to file a fresh Form VAT 250 in relation to each of the works contracts after it obtained registration upon formation of the new State of Andhra Pradesh.

Section 4(7)(a) and (b) are relevant and are extracted hereunder:

'4(7): Notwithstanding anything contained in the Act:-

> (a) Every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act:
>
> Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealers shall pay tax at the rate specified in Schedule-V on the total consideration received or receivable subject to such deductions as may be prescribed;
>
> (b) Every dealer executing works contract may in *lieu* of the amount of tax payable by him under clause (a) opt to pay by way of composition at the rate of 5% of the total amount received or receivable by himself towards execution of the works contract either by himself or through sub-contractor subject to such conditions as may be prescribed:
>
> Provided that the sub-contractor, executing works contract on behalf of the contractor, who opts to pay tax under this clause, shall be exempted from levy of tax.'

Rule 17(2) of the Rules of 2005 deals with composition of tax and, to the extent relevant, it reads as under:

'Rule 17(2) Treatment of works contracts under composition,-

> (a) Any VAT dealer who executes a contract and opts to pay tax as specified in clause (b) of sub-section (7) of section 4 must register himself as a VAT dealer;
>
> (b) The VAT dealer mentioned in clause (a) above shall pay tax at the rate of five percent (5%) of the total consideration received or receivable whichever is earlier.

(c) In the case where the VAT dealer opts for composition he shall, before commencing the execution of the work notify the prescribed authority on Form VAT 250 of the details including the value of the contract on which the option has been exercised.

Provided that a consolidated Form VAT 250 can also be filed by the contractor who undertakes multiple works contracts of similar nature.

Provided further that single Form VAT 250 can also be filed by the contractor for the full or part of financial year, which will cover all the contracts on which work is commenced during the full or part financial year as the case may be.

… … … …'

It is not in dispute that the petitioner firm duly submitted declarations in Form VAT 250 for each of the works contracts that it was awarded in the combined State of Andhra Pradesh, prior to its re-organization. Rule 17(2)(c) makes it clear that a VAT dealer who opts for composition necessarily has to notify the prescribed authority by submitting a declaration in Form VAT 250 before commencing execution of the work. The petitioner firm admittedly complied with this requirement. The second respondent however claims that the same is insufficient owing to the formation of the new State and the fresh registration obtained by the petitioner firm thereafter.

This argument is devoid of merit for two reasons.

Firstly, the Rule does not require the petitioner firm to file a fresh Form VAT 250 once it did so before commencement of execution of the work. Without amending the Rule, the authorities cannot expect the petitioner firm to abide by a procedure that is not contemplated by law. Secondly, if the authorities were of the opinion that fresh forms must be submitted by the dealers consequent upon the formation of the new State, it was for them to make known such requirement to all concerned. Sri Shaik Jeelani Basha, learned Special Standing Counsel, fairly concedes that no

Circular was issued by the Commercial Taxes Department of the present State of Andhra Pradesh notifying all VAT dealers, who had submitted declarations in Form VAT 250 in the combined State of Andhra Pradesh as per Rule 17(2)(c), to once again submit fresh declarations consequent upon formation of the new State in terms of their new registrations. Further, merely because the petitioner firm obtained a new registration in the present State of Andhra Pradesh, it did not preclude the authorities in the said State from securing the assessment record of the petitioner firm obtaining in the combined State of Andhra Pradesh. Having failed to do either, it is not open to the authorities to lay the blame at the door of the petitioner firm. It was for the authorities to adapt to the change in the system upon formation of the new State and take steps as they thought fit to allow smooth transition of assessment of erstwhile VAT dealers in the combined State of Andhra Pradesh who would be subject to such assessment in the present State of Andhra Pradesh. Such measures had to be taken by the authorities themselves and having failed to take such steps, it is not open to them to think up a new process now and blame the VAT dealers for not abiding thereby, even though the same was never made known to them.

The failure on the part of the petitioner firm to file fresh Forms VAT 250 is therefore of no consequence as such filing was not required by the APVAT Act or the Rules of 2005 nor by the State authorities by way of an executive fiat. The petitioner firm is therefore entitled to the benefit of the composition claimed by it under the Form VAT 250 declarations notified to the authorities in the combined State of Andhra Pradesh.

As regards the additions to the total turnover, it is not in dispute that such additions are attributable to the reimbursements made to the petitioner firm by the Government of Andhra Pradesh on account of bank guarantee charges and project insurance.

It may be noted that Section 4(7)(b) of the APVAT Act permits the dealer the option of paying tax by way of composition on the total amount received or receivable by him towards execution of the works contract. Rule 17(2)(c) also reiterates this and states that the Form VAT 250 filed by the dealer must furnish the details including the value of the contract on which the option has been exercised. It is therefore only the total amount which is received or receivable by the dealer towards execution of the works contract that is liable to be taxed. Reimbursement of expenditure incurred by him towards bank guarantee charges and project insurance cannot be brought within the ambit of the 'total amount received or receivable' by him towards execution of the works contract. It is merely reimbursement for the expenses incurred by the dealer and does not form part of his income from the project execution. Therefore, these additions to the total turnover of the petitioner firm are also unsustainable. The impugned Assessment Order suffers on counts more than one and is therefore unsustainable on facts and in law.

The writ petition is accordingly allowed setting aside the Assessment Order dated 08.08.2017 passed by the Assistant Commissioner (CT), (LTU), Kurnool, for the tax periods 2014-2015 and 2015-2016. Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD,J

28th AUGUST, 2018

PGS