* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE SRI JUSTICE P. KESHAVA RAO

+ W.P.Nos.29587 & 29588 of 2018

%Date: 14-12-2018

#Between:

M/s. Tata Projects Limited,
Mithona Towers – 1, 1-7-80 to 87,
Prenderghast Road, Secunderabad
Rep. by its Assistant Vice President – F & A,
Sri Santanu Chakraborti,
S/o. Sri Nares Chandra Chakraborti,
R/o. P-12, Laxmi Narayan Apartment,
P.O. S.D. Road, P.S: Ram Gopalpet,
Secunderabad, Telangana

…Petitioner
(in both W.Ps)

Vs.

1. State of Telangana rep. by its Principal Secretary (CT), Revenue Department, Secretariat, Hyderabad.
2. The Deputy Commissioner (CT), Begumpet Division, Pavani Prestige, 6th Floor, Ameerpet, Hyderabad.
3. The Additional Commissioner (ST), Office of the Commissioner of State Tax, Nampally, Hyderabad, Telangana.
4. The Commercial Tax Officer, Begumpet circle, Pavani Prestige, 5th Floor, Ameerpet, Hyderabad.

…Respondents
(in both W.Ps)

! Counsel for Petitioner : Mr. S. Ravi Sr. Counsel

^ Counsel for Respondents : Mr. J. Anil Kumar Spl. S.C.

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? Cases referred

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ORDER: (per VRS,J)

Challenging the revision of assessments for the tax periods 2012-13 and 2013-14, passed under Section 32(2) of the Telangana Value Added Tax Act, 2005, the dealer has come up with the above writ petitions.

2. Heard Mr. S. Ravi, learned Senior Counsel for the petitioner and Mr. J. Anil Kumar, learned Special Standing Counsel appearing for the department.

3. The petitioner is a registered dealer under the Telangana Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956. The petitioner was assessed for the tax period 2012-13 by an order dated 30.03.2017 and for the tax period 2013-14 by an order dated 29.03.2018. As per the original orders of assessment passed in relation to these two tax periods, the petitioner had net excess to his credit. Therefore, the petitioner made representations for refund of the excess amount. Notices of claim for refund in Form VAT-351 and Form VAT-352 were also issued to the petitioner, respectively on 13.04.2018 and 16.04.2018.

4. However, the Deputy Commissioner (Commercial Taxes) invoked the *suo motu* power of revision and issued show cause notices. The show cause notices proceeded on the basis that the petitioner had sub-contracted certain works and that the contractee had made tax deduction on the entire value and issued Form 501, but the dealer had not passed on TDS in Form 501-B to the sub-contractor. Therefore, Revisional Authority claimed that there was an excess credit, which was prejudicial to the interest of the revenue.

5. The dealer filed replies to the show cause notices contending *inter alia* – (1) that in view of G.O.Ms.No.588, dated 13.05.2011, they are obliged to pay only 5% on the goods incorporated in the works contract, but they had paid tax at the rate of 14.5% on the corresponding purchase value on the same goods resulting in excess payment of tax by 9.5%; (2) that by ignoring the above fact, the contractee made tax deduction from their bill and issued TDS certificates in Form 501-A; (3) that they entrusted some works to sub-contractor from whom they made tax deduction and deposited the same to the treasury and also issued Form 501-A to the sub-contractor; and (4) that tax was thus paid twice on the same work, as TDS was effected both by the contractee on the amounts paid to them and also by the dealer on the amounts paid to the sub-contractors.

6. However overruling the objections of the petitioner, the Revisional Authority passed two separate orders dated 13.07.2018 confirming the proposal for revision. Therefore, the petitioner is before us.

7. The Revisional Authority overruled the objections of the petitioner and revised the original order of assessment on the following grounds, viz., –

(a) that the assessment was made under Rule 17(1) (e) of the Telangana VAT Rules, 2005, under sub-clause (viii) of which the amounts paid to the sub-contractor as consideration, were allowed as deduction from the amount received by the dealer; and

(b) that under Rule 18(1)(e), the main contractor, who receives TDS credit in Form 501-A should not retain it, but pass it on to the sub-contractor in Form 501-B. Therefore, the Revisional Authority came to the conclusion that the petitioner failed to effect transfer of TDS to his sub-contractor which resulted in retention of excess credit by him.

8. The main contention of Mr. S. Ravi, learned Senior Counsel for the petitioner is that there was no dispute about the fact that for the goods taxable at the rate of 5%, the petitioner paid tax at the rate of 14.5% and that therefore, the Assessing Officer allowed the difference as excess credit. There was no dispute about the classification of the goods and the rate of tax applicable as per Entry-116 of Schedule-IV of the Act. According to the learned Senior Counsel, the petitioner entrusted some portion of the works to sub-contractors and TDS was deducted by them and paid to the Government. Consequently, Form 501-A was issued to the sub-contractors. However, the contractee also deducted TDS from 100% value of the bills and issued Form 501-A to the petitioner leading to double payment. Therefore, it is contended by the learned Senior Counsel that the respondents are not entitled to unjust enrichment of something paid twice over.

9. The 2nd respondent, who is the Revisional Authority, has filed a counter affidavit contending *inter alia* that the petitioner, who deducted tax for the portion of the work entrusted to the sub-contractor, should have actually issued Form 501-B to the sub-contractor, but wrongly issued Form 501-A to the sub-contractor; that the moment Form 501-A is issued, the contractual relationship between the petitioner and their sub-contractor gets altered to that of a contractee and contractor; that under Section 22(3) of the Telangana VAT Act, 2005, no deduction should be made from any amounts paid as consideration to any sub-contractor, if tax was already deducted by the contractee; that under Rule 18(1)(e), of the Telangana VAT Rules, 2005, the main contractor is obliged to pass on

the TDS made from his receipts by the contractee to his sub-contractor by issuing Form 501-B; and that since there was a violation of the mandate of the proviso to Section 22(3) and Rule 18(1)(e), the orders passed in the revision were perfectly valid.

10. We have carefully considered the above submissions.

11. There are no disputes on the facts. The 2nd respondent has not denied, either in the two orders of revision or in the counter affidavit filed, that the petitioner deducted TDS for the portion of the work entrusted to the sub-contractors and issued Form 501-A instead of Form 501-B. To a repeated question posed by the Bench as to whether there were double payments or not, there was no categorical denial. The only mistake committed on a procedural aspect is that instead of issuing one particular Form, they issued another Form. But the genuineness of the claim is beyond any pale of doubt.

12. It is true that under the proviso to Section 22(3), no deduction shall be made from any amounts paid as consideration to any sub-contractor, if tax was already deducted by the contractee. But this proviso is to ensure that the contractor does not enrich himself unjustly. This is a case where the amount deducted was actually remitted to the department. Rule 18(1)(e) obliges the tax deducted by the contractee to be transferred to the sub-contractor by issuing Form 501-B. There are two limbs to Rule 18(1)(e). The first relates to the transfer to the sub-contractor of the tax deducted. The second relates to the issue of Form 501-B. There is no dispute about the satisfactory compliance of the first limb.

13. All the arguments of the learned Special Standing counsel for the Department and the entire counter affidavit, proceed on the

apprehension that the sub-contractor may at some point of time receive Form 501-B, after the refund is granted. But the fact remains that no sub-contractor has so far received Form 501-B from the petitioner. If after receiving refund through a writ petition filed in this Court, the petitioner issues Form 501-B to the sub-contractor, they will be guilty of committing fraud not only upon the department but also upon the Court. In any case, if a sub-contractor comes up with a claim for refund on the basis of Form 501-B, the department will be protected by the order passed in these writ petitions.

14. While it is the duty of the hierarchy of officers to ensure that there is no evasion of tax, they also have an equal but corresponding obligation to ensure that there is no unjust enrichment on either side, especially on account of a mistake committed in the type of Form that was used. As stated earlier, there is no dispute on facts that payments have been made in excess. Once there is no doubt about this, the refund ordered by the original authority was perfectly valid and the Revisional Authority ought not to have exercised jurisdiction under Section 32(2).

15. It is relevant to point out that the revisional jurisdiction under Section 32(2) has to be exercised only when the order of assessment was prejudicial to the interest of the revenue. A double payment to the department, leading to an order of refund, cannot be considered as prejudicial to the interest of the revenue, as every penny collected by the revenue should be by authority of law. What is collected in excess is something not authorized by law and hence liable to be refunded.

16. Therefore, both the writ petitions are allowed and the impugned orders are set aside. The respondents are directed to process the notice of claim for refund filed by the petitioner in respect of both the

tax periods and pass orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner should execute an indemnity bond to indemnify the respondents against all possible claims, in the event of any sub-contractor coming up with a claim later.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

P. KESHAVA RAO, J.

14th December, 2018
Js.

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