

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.33875 of 2018

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

Heard Sri K.Ramakanth Reddy, learned counsel for the petitioner, and Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes. The present writ petition is filed seeking a mandamus to declare the action of the respondents in freezing the petitioner's bank account with the HDFC bank in Amritsar and in not granting incentives as per the Electronic Policy, 2016, as promised by the 1st respondent in G.O.Ms.No.70 dated 29.09.2015 and by the Memorandum of Understanding dated 04.02.2016, as arbitrary and illegal.

It is the petitioner's case that, in terms of G.O.Ms.No.70 dated 29.09.2015, they are entitled to 100% reimbursement/retention of VAT/CST for a period of 10 years from the commencement of operations; pursuant to the said G.O, a Memorandum of Understanding was entered into, between them and the Government of Telangana on 04.02.2016, whereby the State Government agreed to extend all incentives to the petitioner as per the Electronic Hardware Policy and Policy for Mobile Manufacturers; a letter of intent was issued by the Government of Telangana in favour of the petitioner on 04.02.2016 despite which the petitioner's bank account has been frozen for non-payment of the tax allegedly due from them under the Telangana Value Added Tax Act, 2005 (for short "the Act"), that too without putting them on notice, and without giving them an opportunity of being heard.

By proceedings in Form Vat 206 dated 11.07.2018, the Commercial Tax Officer, Bowenpally called upon the Manager, HDFC Bank, Amritsar to pay the outstanding amount of Rs.4,42,25,333/-, due and payable by the petitioner towards tax arrears under the Act. The demand notice in Form VAT 206 dated 11.07.2018 was issued by the Commercial Tax Officer in the exercise of his powers under Section 29 of the Act.

While Sri K.Ramakanth Reddy, learned counsel for the petitioner, would contend that the petitioner was not even put on notice of any tax liability, or of their bank account being frozen in terms of Section 29 of the Act and Rule 64 of the Telangana Value Added Tax Rules, 2005 (for short "the Rules"), Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that the tax due and payable by the petitioner is in terms of their monthly returns; and it is only for the amounts admittedly payable by the petitioner, and which they failed to pay, was action taken under Section 29 of the Act for recovery of the said amount.

In order to examine the contention, urged on behalf of the petitioner, that liability to pay tax under the Telangana VAT Act would only arise if an assessment order is passed, it is necessary to refer to certain provisions of the Act. Section 20 of the Act relates to returns and self-assessments and, under Sub-Section (1) thereof, every dealer, registered under Section 17 of the Act, shall submit such return or returns along with proof of payment of tax in such manner, within such time, and to such authority as may be prescribed. Section 20(2) stipulates that if a return has been filed within the prescribed time and the return, so filed, is found to be in order, it shall be accepted as self-assessment subject to adjustment of any arithmetical error apparent on the face of the said return.

Section 20(4) of the Act stipulates that every dealer shall be deemed to have been assessed to tax based on the return filed by him, if no assessment is made within a period of four years from the date of filing of the return. The assessment under Section 21(1) of the Act is only if the dealer fails to file a return in respect of a tax period. Section 21(4) enables the prescribed authority, based on any information available or on any other basis, to conduct a detailed scrutiny of the accounts of any dealer and, where any assessment as a result of such scrutiny becomes necessary, to make an assessment.

In the present case, the tax which the petitioner has been called upon to pay is only in terms of the monthly returns filed by them, and is not pursuant to an assessment made under Section 21(4) of the Act. As Section 20 prescribes a self-assessment procedure, the petitioner dealer is deemed to have been assessed under Section 20(4) of the Act to tax on the basis of the return filed by them.

It is evident from the table furnished both by Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, and Sri K.Ramakanth Reddy, learned counsel for the petitioner, that, from the month of June, 2016 till August, 2017, the petitioner has not paid VAT even in terms of the VAT declared as payable in their monthly returns. In terms of Rule 23(1) of the Rules, the return to be filed by a VAT dealer under Section 20 shall be in form VAT 200, and shall be filed within 20 days after the end of the tax period. Rule 24(1) stipulates that the tax declared to be due in Form VAT 200 shall be paid not later than 20 days after the end of the tax period by way of remittance into the Treasury, or by way of online payment, through internet website of the Commercial Tax Department. Since Section 2(36) of the Act defines “tax period” to mean a calendar

month, both the tax return, and the tax due for that particular month, is required to be filed and paid by the 20th of the succeeding month. Admittedly, the petitioner has not paid VAT from June, 2016 onwards. Section 29 of the Act relates to recovery of tax from third parties and reads as under:

“29. Recovery of tax from third parties: (1) The Commissioner or any other authority prescribed may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to such authority) require any person from whom money is due or may become due to the defaulter, or any person who holds or may subsequently hold money for, or on account of the defaulter, to pay to such authority, either forthwith if the money has become due or is so held, within the time specified in the notice but not before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the defaulter in respect of arrears of tax, interest, penalty or the whole of the money when it is equal to or less than that amount.

Provided that in case of banks, the amount due to the defaulting dealer includes the amounts payable to the dealers by virtue of the overdraft facility.

(2) The authority prescribed may, at any time, or from time to time, amend or revoke any such notice or extend the time of making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the defaulter and the receipt of the authority prescribed shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the defaulter after receipt of the notice referred to in this section, shall be personally liable to the authority prescribed to the extent of the liability discharged or to the extent of the liability of the defaulter for the amount due under the Act, whichever is less.

(5) Where any person to whom a notice under this section is sent proves to the satisfaction of the authority prescribed that the sum demanded or any part thereof is not due by him to the defaulter or that he does not hold any money for or on account of the dealer, then nothing contained in this Section shall be deemed to require such person to pay the sum demanded or any part thereof, to the authority prescribed.

(6) Where any person to whom a notice under sub-section (1) is sent, fails to pay to the authority prescribed the sum demanded or any

part thereof as required in the said notice, such sum shall be recoverable from the such person as if it were an arrear of land revenue due from him.

(7) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the money due from the dealer.”

The notice required to be given under Section 29(1) is only to the person from whom money is due, or may become due, to the defaulter. As the petitioner is the defaulter under Section 29(1), a notice is required to be given to the person from whom money is due to the petitioner which, in the present case, is the HDFC bank. The notice dated 11.07.2018 is given to the HDFC Bank and, therefore, the requirement of Section 29(1) has been complied with.

Section 29(5) of the Act is applicable only where any person, to whom a notice is sent, proves to the satisfaction of the prescribed authority that the sum demanded, or any part thereof, is not due by him to the defaulter, or that he does not hold any money for or on account of the dealer. Section 29(5) of the Act would apply only to cases where there is no balance in the petitioner’s account with the HDFC Bank, in which event it would have been open to the HDFC bank to inform the Commercial Tax Officer that they are not in a position to make the payment, as referred to in the demand notice, on account of insufficient funds in the petitioner’s account with their bank. Neither Section 29(1) nor Section 29(5) require any notice to be given to the petitioner-defaulter dealer in this regard.

Rule 64 of the Rules deals with the mode of service of orders and notices. It is only in case a notice is required to be given to the petitioner would Rule 64 be attracted. As noted hereinabove, since Section 20 of the Act contemplates a self-assessment procedure, the requirement of Rule 64, for a notice to be given to the dealer, has no application where the tax sought to be recovered is in terms of the

monthly returns filed by the petitioner-dealer. Likewise, a notice under Section 29 of the Act is required to be served only on the bank, and not on the petitioner herein. Rule 64 of the Rules has, therefore, no application.

While the action of the respondents in calling upon the bank to make payment of the tax arrears due from the petitioner cannot be faulted, we cannot also lose sight of the fact that the petitioner had, by its letter dated 27.01.2017, sought reimbursement of tax, in terms of G.O.Ms.No.70 dated 29.09.2015, from the Commissioner of Commercial Taxes. Section 40(1) of the Act confers power on the Commissioner to adjust any amount due to be refunded against any tax, penalty and interest outstanding against a VAT dealer. The petitioner claims that it is entitled to reimbursement in terms of G.O.Ms.No.70 dated 29.09.2015, the Memorandum of Understanding entered into thereafter, and the letter of intent issued in their favour. While G.O.Ms.No.70 dated 29.09.2015 refers only to reimbursement of VAT/CST for a period of 10 years, Clause (VI) of the conditions stipulated therein refers to the obligation to reimburse VAT on a quarterly basis.

While Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, since the Memorandum of Understanding was entered into between the Department of Industries/Department of Information Technology and the petitioner, the said Memorandum of Understanding and G.O.Ms.No.70 dated 29.09.2015 would not disable the assessing authority from levying and collecting tax in accordance with law, the fact remains that the incentives, in terms of G.O.Ms.No.70 dated 29.09.2015, were granted to the petitioner by the Government of Telangana; and the tax now sought to be recovered is also by the Government of Telangana *albeit*

by two different Departments. The distinction sought to be made between one Department and the other does not merit acceptance in the context of the present case.

If, as is contended before us by Sri K.Ramakanth Reddy, learned counsel for the petitioner, the petitioner is entitled for reimbursement of VAT/CST on a quarterly basis, this question, whether the said amount payable to the petitioner in terms of G.O.Ms.No.70 dated 29.09.2015 should be adjusted against the tax arrears due and payable by the petitioner, necessitates examination by the Commissioner under Section 40 of the Act.

As the petitioner's bank account has already been attached under Section 29 of the Act, suffice it to dispose of the Writ Petition permitting the petitioner to submit a detailed representation to the Commissioner under Section 40 of the Act within two weeks from today. The Commissioner shall consider the said representation, and pass orders thereupon within two weeks thereafter. While the attachment of the petitioner's bank account shall continue till orders are passed by the Commissioner under Section 40 of the Act, the respondents shall also not take any coercive steps, for transfer of the proceeds from the petitioner's bank account to them, in the meanwhile.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

08th October, 2018
JSU

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



Writ Petition No.33875 of 2018

Date: 08.10.2018

JSU