

**In the High Court of Judicature at Hyderabad**  
**For the State of Telangana and the State of Andhra Pradesh**

WRIT PETITION NO.30903 OF 2016

Between:

M/s. Sri Lakshmi Constructions, rep.by its  
Sr. Manager, Accounts and Finance S.Vijaya Raja Kumar.

**...Petitioner**

And

The Appellate Deputy Commissioner (CT),  
Punjagutta Division, Hyderabad, Commercial  
Tax Complex, Opp. Gandhi Bhavan, Nampally,  
Hyderabad and five others.

**...Respondents**

Date of Judgment Pronounced : 29.08.2018

Submitted for Approval:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers  
may be allowed to see the judgments?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to  
see the fair copy of the Judgment?

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**(RAMESH RANGANATHAN, J)**

**\* THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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**! Counsel for the petitioner: Dr. T.Ramesh Babu**

**^ Counsel for respondent Nos.1 to 5: Sri J.Anil Kumar,  
Special Standing  
Counsel for  
Commercial Taxes (TG)**

**< GIST:**

**>HEAD NOTE:**

**? Cases Cited:**

1. (2012)48 VST 231(AP)
2. (2004)4 SCC 206

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

WRIT PETITION NO.30903 OF 2016

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

In this Writ Petition, the petitioner questions the order passed by the Appellate Deputy Commissioner dated 26.07.2016, dismissing the appeal preferred by the petitioner against the assessment order dated 29.03.2014, for the tax period 2010-11 to 2012-13 under the Andhra Pradesh Value Added Tax Act ("the Act" for brevity), as arbitrary and illegal.

Dr. T.Ramesh Babu, learned counsel for the petitioner, would question the validity of the order passed by the Appellate Deputy Commissioner on the following grounds i.e., (1) since the petitioner entered into a composition scheme long prior to 14.09.2011, from which date the amended Section 4(7)(b) of the Act came into force, they are liable to be subjected to tax only at 4% for the entire duration of the work; and the respondents were not justified in levying tax at 5% relying on an amendment made subsequent to the date on which the petitioner had exercised their option for composition under Section 4(7)(b) of the Act; (2) though the amendment of Section 4(7)(b), in so far as it related to an increase in the rate of tax from 4% to 5% was published in the A.P. Gazette only on 20.04.2012, the increase in the rate of tax from 4% to 5% was applied retrospectively from 14.09.2011, adversely affecting the petitioner's vested rights; and (3) since the assessing authority could only have levied tax on the value of the goods involved in the execution of the works

contract, the words “*total amount received or receivable*”, used in Section 4(7)(b), cannot be so construed as to enable the assessing authority to levy tax on the tax component of the sale consideration.

On the other hand Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that the rate of tax, specified in Section 4(7)(b) of the Act, was increased from 4% to 5% by Andhra Pradesh Ordinance No.9 of 2011 and Act 12 of 2012, subsequent to Ordinance No.7 of 2011 and Act 21 of 2011 whereby Section 4(7)(b) of the Act was substituted in its entirety; and, in the light of the later Ordinance and the amended Act, the amended Section 4(7)(b) of the Act must be read as prescribing the rate of tax of 5%, and not the earlier 4% as contended by the petitioner; the vires of Ordinance No.9 of 2011 and Act 12 of 2012, whereby the increase in the rate of tax was made applicable with retrospective effect from 14.09.2011, has not been subjected to challenge in this Writ Petition; it is, therefore, not open to the petitioner to request this Court not to give the provision retrospective effect; as Section 4(7)(b) of the Act uses the words “*total amount received or receivable*”, and since VAT collected by the petitioner from the contractee is included in the consideration received or receivable by them, the respondents were justified in levying tax on the total amount received or receivable, even if it includes the tax component also; and if the petitioner was not inclined to continue under the composition scheme, stipulated under Section 4(7)(b) of the Act, they could have resiled therefrom and could have chosen,

instead, to subject themselves to tax under Section 4(7)(a) of the Act.

On the contention, urged on behalf of the respondents, that it is open to the petitioner to resile from the composition scheme, it is useful to note that a Division Bench of this Court in **Ramky Infrastructure Ltd. v. State of Andhra Pradesh**<sup>1</sup>, following the law declared by the Supreme Court in **Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd.**<sup>2</sup>, held that, once a dealer opts for composition under the scheme, he cannot resile therefrom on the ground that it is more beneficial for him to revert back to the procedure of assessment under the general scheme; and he is bound by the scheme of composition for the one year assessment period.

While it is no doubt true that the law declared by the Division bench was under the provisions of the APGST Act, there is no provision, even under the A.P. VAT Act, which confers any right on a dealer to resile from the composition scheme, which he had opted during the tax period. It does appear from a reading of the provisions of the Act that, once a dealer opts for composition under Section 4(7)(b) of the Act, it is not open for him to resile therefrom during the period of assessment.

We, however, find considerable force in the submission of Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, that, in the absence of a challenge to the retrospectivity of the provisions of the amended Act, it is not open to the petitioner to now contend that the amended

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<sup>1</sup> (2012)48 VST 231(AP)

<sup>2</sup> (2004)4 SCC 206



provisions should not be given retrospective application. By A.P. Ordinance No.9 of 2011, which was promulgated by the Governor of Andhra Pradesh on 16.11.2011 and was published in the A.P. Gazette on 16.11.2011, the amended Section 4(7)(b) of the Act, whereby the rate of tax was increased from 4% to 5%, came into force on and from 14.09.2011. Similarly by Act 12 of 2012, which replaced Ordinance 9 of 2011, to which the Governor of Andhra Pradesh had given his assent on 17.04.2012, and which was published in the A.P. Gazette on 20.04.2012, the amended Section 4(7)(b) of the Act, whereby the rate of tax was increased from 4% to 5%, was given retrospective effect from 14.09.2011. In the absence of any challenge to the constitutional validity of Section 1(2) of A.P. Act 12 of 2012, whereby Section 4(7)(b) of the Act was given retrospective operation, we see no reason to examine this contention. The challenge to the validity, of the order of the Appellate Deputy Commissioner, on this ground must fail.

Section 4(7)(b) of the Act, as it stood prior to its amendment by A.P. Ordinance No.7 of 2011, read as under:-

“Any dealer executing any works contract in the Government or local authority may opt to pay tax by way of composition at the rate of 4% of the total value of contract executed for the Government or the local authority”.

Section 4(7)(b) of the Act was substituted in its entirety by Ordinance No.7 of 2011 which was promulgated by the Governor of Andhra Pradesh on 14.09.2011, and was published in the A.P. Gazette on 15.09.2011. The amended Section 4(7)(b) of the Act, in terms of A.P. Ordinance No.7 of 2011, read as under:-

“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 4% 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 under this clause tax shall be exempted from levy of tax”.

The Governor of Andhra Pradesh gave his assent to A.P. Act 21 of 2011 on 27.12.2011 and his assent was published in the A.P. Gazette on 29.12.2011. Thereby the afore-extracted Section 4(7)(b), in A.P. Ordinance No.7 of 2011, was made part of the Act. Section 4(7)(b) of the Act, as substituted by A.P. Ordinance No.7 of 2011 and A.P. Act 21 of 2011 prescribed the rate of tax as 4%. After A.P. Ordinance No.7 of 2011 was promulgated by the Governor on 14.09.2011, and was published in the A.P. Gazette on 15.09.2011, the rate of tax in Section 4(7)(b) was increased from 4% to 5% by A.P. Ordinance No.9 of 2011 which was promulgated by the Governor and was published in the A.P. Gazette on 16.11.2011. A.P. Act 12 of 2012 received the assent of the Governor on 17.04.2012, and was published in the A.P. Gazette on 20.04.2012. Thereby A.P. Ordinance No.9 of 2011 was repealed, and the increased rate of tax of 5% was included in Section 4(7)(b) of the Act.

While Section 4(7)(b) of the Act, in its entirety, was substituted initially by Ordinance No.7 of 2011 and later by A.P. Act No.21 of 2011, the rate of tax, in Section 4(7)(b), was increased from 4% to 5% initially by A.P. Ordinance No.9 of

2011 and later by A.P. Act No.12 of 2012. While the earlier Ordinance No.7 of 2011 and Act 21 of 2011 substituted Section 4(7)(b) in its entirety except for continuing the rate of tax at 4%, the later Ordinance No.9 of 2011 and Act 12 of 2012 increased the rate of tax from 4% to 5%. We find no error, therefore, in the order of the assessing authority/appellate authority in levying tax at the increased rate of 5%, instead of the 4% claimed by the petitioner to be the applicable rate of tax. This contention, urged on behalf of the petitioner, also necessitates rejection.

The only other contention, which remains to be considered, is whether the assessing authority could have levied tax on the tax component of the works executed by the petitioner. It is no doubt true that the amended Section 4(7)(b) of the Act enables every dealer executing works contract, in lieu of the amount of tax payable by him under Section 4(7)(a) of the Act, to opt to pay by way of composition at the rate of 5% of the total amount received or receivable by him. If the legislature had stopped there, the revenue may have been justified in contending that, since the total amount received or receivable by a dealer would include the tax levied on the total consideration, they were justified in levying tax on the total amount received or receivable which includes the tax component also. The Section, however, also stipulates that the total amount, received or receivable by the dealer, shall be towards execution of the contract. Since the tax which can be levied under Section 4(7)(b) of the Act is on the total amount received or receivable by the dealer towards execution of the works contract, it is only on the total value of the works contract executed by the dealer, could



tax have been levied. While we agree with the submission of Dr. T.Ramesh Babu, learned counsel for the petitioner, that the respondents could not have levied tax on the tax component of the total amount received or receivable by the dealer, it would be wholly inappropriate for us to take upon ourselves the task of examining if, and to what extent, the assessing authority had levied tax on tax.

The impugned order passed by the appellate authority is set aside, to the limited extent mentioned hereinabove, and the matter is remanded to the assessing authority who shall, after giving the petitioner a reasonable opportunity of being heard, examine whether VAT was levied on the VAT component of the total amount received or receivable by the petitioner in the execution of the works contract.

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

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**(RAMESH RANGANATHAN, J)**

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**(KONGARA VIJAYA LAKSHMI, J)**

29<sup>th</sup> August 2018

Note: L.R. copy to be marked  
B/o  
RRB