HONOURABLE SRI JUSTICE M. S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.2684 OF 2019

ORDER: ***(Per Hon'ble Sri Justice M.S. Ramachandra Rao)***

The petitioner has filed this writ petition challenging the action of the 1st respondent in not granting refund of Rs.46,17,291/- to the petitioner under the Telangana Value Added Tax Act, 2005, (for short 'VAT Act') which was deducted by the contractees by issuing certificates in Form 501A by the impugned order of assessment dated 25.02.2017 passed by the 2nd respondent.

2. The petitioner is a proprietary concern engaged in the business of Civil and Interior works. It is a registered dealer on the rolls of the 1st respondent both under the Goods and Services Act, 2017, and the VAT Act. The petitioner during the tax period 2015-16 executed works to M/s.Infosys Limited and M/s.CDK Global India Private Limited and the tax due under the VAT Act was paid by the petitioner other than that leviable for the SEZ work which was also done by the petitioner. According to the petitioner the total work done by it during the assessment year 2015-16 is Rs.29,88,01,132/-, out of which only Rs.12,26,613/- is other than SEZ work.

3. It is not in dispute that on an authorization issued by the Commissioner of Commercial Taxes, assessment of the petitioner's return was conducted not by the 1st respondent, but by the 2nd respondent by passing an order on 25.02.2017. In the said order, the 2nd respondent noted that the assessee has not claimed any input tax credit for the tax period from April, 2015 to March, 2016. However, it is not in dispute that prior to the date of passing of the said assessment order on 25.02.2017, the petitioner through its Chartered Accountant had submitted on 16.02.2017 to the 1st respondent the original TDS certificates in Form 501A for the years 2015-16 and 2016-17 amounting to Rs.47,96,405/-.

4. It is the contention of the petitioner that the 1st respondent did not forward the TDS certificates to the 2nd respondent and therefore, the 2nd respondent, in the assessment order did not take into account these TDS certificates, and that if these TDS certificates are taken into account, the petitioner would be entitled to a refund of Rs.46,17,291/-.

5. It is contended that when the petitioner made a request to the 1st respondent for refund stating that these documents were not taken into account by the 2nd respondent in spite of being submitted before passing of the assessment order by the 2nd respondent, the impugned endorsement dt.03.12.2018 is issued by the 1st respondent refusing to grant refund merely on the ground that an assessment order passed by the 2nd respondent on 25.02.2017 did not mention about it.

6. Assailing the same, this Writ Petition is filed.

7. Learned Government Pleader for Commercial Taxes appearing for the respondents contends that it was the duty of the petitioner to give it to the 2nd respondent who was doing the assessment pursuant to the authorization issued to him by the Commissioner of Commercial Taxes.

8. No doubt, the petitioner could have done it. But merely because the petitioner submitted the original TDS certificates to the 1st respondent on 16.02.2017, nothing prevented the 1st respondent also from forwarding it to the 2nd respondent, who would have considered the same before passing the assessment order. We are unable to understand the logic behind the 1st respondent in not reacting at all and doing nothing on the representation dated 16.02.2017 given by the petitioner enclosing the original TDS certificates to him. It was the duty of the 1st respondent, if the petitioner had submitted the original TDS certificates to him, to forward them to the 2nd respondent for consideration before the 2nd respondent passed the assessment order on 25.02.2017.

9. Accordingly, we set aside both the assessment order dt.25.02.2017 passed by the 2nd respondent as well as the endorsement dt.03.12.2018 passed by the 1st respondent and direct the 1st respondent to conduct an assessment of the income of the petitioner for the assessment year 2015-16 by taking into account the original

TDS certificates submitted by the petitioner to the 1st respondent and then pass a reasoned order and communicate the same to the petitioner. This exercise shall be completed within eight (8) weeks.

10. Accordingly, the Writ Petition is allowed. No order as to costs. The miscellaneous petitions, if any pending, shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

December 17, 2019
KTL