HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

Writ Petition No.23336 of 2008

JUDGMENT: *(per V. Ramasubramanian, J)*

Aggrieved by the direction issued by the Commercial Tax Officer, Narsampet, Warangal District, to the A.P.Power Generation Corporation Limited, for deduction of tax at source to the tune of Rs.7,49,18,249/-, the petitioner has come up with the above Writ Petition.

2. Heard Mr.M.V.J.K.Kumar, learned Counsel for the petitioner, Mr.J.Anil Kumar, learned Special Standing Counsel for the 1st respondent and Smt.Deepti, learned Counsel appearing for the 2nd respondent/Corporation.

3. It appears that the petitioner bagged a EPC Contract for the erection of a plant at Bhoopalpally Thermal Power Station belonging to the 2nd respondent/Corporation. The 1st respondent issued a direction to the A.P.Power Generation Corporation Limited to deduct the tax at source to the tune of Rs.7,49,18,249/-.

4. Contending that TDS cannot be deducted, in view of the provisions of the Central Sales Tax Act, 1956, and A.P.Value Added Tax Act, 2005, the petitioner came up with the above Writ Petition.

5. On 24.10.2008, notice was ordered in the Writ Petition and an interim stay was granted on condition that the petitioner deposited Rs.2 Crores with the 1st respondent viz., Commercial Tax

Officer, Narsampet, within four weeks. Accordingly, the petitioner deposited Rs.2 crores with the 1st respondent.

6. With effect from 02.06.2014, the State got bifurcated and the area where the project was carried out, has now come under the jurisdiction of the Assessing Officer at Gudur, in the State of Andhra Pradesh.

7. Insofar as the claim of the 1st respondent for deduction of tax at source is concerned, the same has now fallen within the purview of the Assessing Officer at Gudur to take a call. It appears that assessments have been completed. In such circumstances, the demand raised by the 1st respondent should go.

8. As to what should happen to the amount of Rs.2 Crores deposited with the 1st respondent, it is contended by the 1st respondent that it is for the petitioner to claim adjustment from the Assessing Officer at Gudur. It is also his contention that the amount deposited has gone into the coffer of the combined State, which would have automatically been appropriated between the two States.

9. The net result of the stand taken by the 1st respondent is that he will not be in a position to repay the amount deposited and that the petitioner should take up the issue with the Assessing Officer at Gudur.

10. The 1st respondent has also obtained a communication from the Commercial Tax Officer, Gudur, dated 23.04.2019. The Commercial Tax Officer, Gudur, in his communication, dated 23.04.2019, has furnished the details of the A.P.Value Added Tax,

2005 paid for the period from 01.04.2006 to 30.09.2008. He has also certified that the amount of Rs.2 Crores paid pursuant to the interim order of the Court, is not reflected in any 501 Certificates.

11. In essence, the Commercial Tax Officer, Gudur, has made it clear that if a claim is made, he will not make repayment.

12. The fact remains that TDS is not to be deducted and the demand originally made by the 1st respondent is without authority of law. If that is so, the amount paid by the petitioner pursuant to the interim order passed by the Court should be refunded. In the normal course, the person to whom it is paid is liable to refund it. The subsequent events cannot enable the person to whom the payment was made to deny the payment. Since the counter-part of the 1st respondent at Gudur has now denied the availability of funds, it is up to the 1st respondent to take up the matter with his superiors so that they could get the entire or portion of the money from the Government of Andhra Pradesh but the primary responsibility for repayment rests with the 1st respondent.

13. It is contended by Mr.J.Anil Kumar, learned Special Standing Counsel, that as per Rule 59 of the Telangana Value Added Tax Rules, 2005, it is the Assessing Officer at Gudur who has jurisdiction to exercise the powers indicated in the 4th column of the Table contained under the Rule. But the said contention will not go to the rescue of the 1st respondent in view of the fact that the 1st respondent got money not in exercise of any power under the Act, but by virtue of an interim order passed by this Court. It is fundamental that no party can be prejudiced by an act of Court. Any person who received money pursuant to an Order of the Court

is required to refund it. Therefore, the Writ Petition is allowed, the impugned demand is set aside and the 1st respondent is directed to refund the amount of Rs.2 crores deposited with him pursuant to the interim Order of this Court, within a period of eight (8) weeks from the date of receipt of a copy of this order. The Bank Guarantee issued by the petitioner shall be cancelled.

Consequently, miscellaneous petitions if any pending in the Writ Petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 24, 2019
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