HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION Nos.8540, 8555, 8572 AND 8587 OF 2019

COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging the rejection of the first appeals filed under Section 31 of the Telangana Value Added Tax Act, 2005 read with Section 6 of the Telangana Tax on Entry of Goods into Local Areas Act, 2001, the dealer has come up with the above writ petitions.

2. Heard Mr. Karthik Ramana, learned counsel for the petitioner, and Mr. J. Anil Kumar, learned special standing counsel for the respondents.

3. The petitioner suffered orders of assessment under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for short 'Entry Tax Act'). Challenging those orders of assessment, the petitioner filed four independent statutory appeals before the Appellate Deputy Commissioner. Along with the appeals, the petitioner remitted an amount purportedly representing 12.5% of the difference of tax. But, the first appellate authority took a stand that the amount arrived at was not correct. Disputing the calculation so made by the first appellate authority, the petitioner has come up with the above writ petitions.

4. The primary contention of the learned counsel for the petitioner is that out of the total tax liability determined by the Assessing Officer and disputed by the petitioner, the assessing officer himself has given credit to Central Sales Tax (CST) already paid.

This was by way of deduction under Section 3(1)(c) of the Entry Tax Act. Therefore, the contention of the learned counsel for the petitioner is that there is no logic in demanding from the petitioner 12.5% of the gross amount of tax, from which a deduction towards CST has been granted even by the Assessing Officer.

5. But, it is seen from the language of the second proviso to Section 31(1) of the Telangana Value Added Tax Act, 2005 (for short 'VAT Act'), that what is required to be paid is 12.5% of the difference of the tax, together with the tax admitted by the appellant. What is due to a person by way of deduction is not taken into account in the second proviso to Section 31(1) of the VAT Act. The second proviso to Section 31(1) of the VAT Act reads as follows:

> "Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces the proof of payment of tax, penalty, interest or any other amount admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax, penalty, interest or any other amount, assessed by the authority prescribed and the tax, penalty interest or any other amount admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred."

6. It may be that there is an incongruity in demanding deposit even on the amount of deduction. But, the deduction to which an assessee is eligible is something that is not under dispute. What is under dispute is actually the gross tax. The second proviso talks only about the tax in respect of which the petitioner has raised a dispute.

7. There may be cases where the deduction on various accounts may exceed the gross tax. If the argument of the petitioner is accepted, nothing will be payable by way of pre-deposit condition. It may be a different case, if the pre-deposit condition is sought to be adjusted towards the entitlement of an assessee for ITC under the same enactment. In this case, the deduction is under a different enactment. Therefore, the petitioner may not be entitled to the benefit of this rebate while arriving at the pre-deposit condition to be paid.

8. In view of the above, the writ petitions are liable to be dismissed. However, since the petitioner has raised a *bona fide* dispute, the petitioner should be granted time to make good the difference in the pre-deposit condition. Therefore, the Writ Petitions are disposed of granting time to the petitioner to pay the differential amount on or before 15.05.2019. If they do so, the appeals shall be entertained by the appellate authority and disposed of in accordance with law. Till 15.05.2019, the orders of assessment shall not be enforced. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, in these writ petitions stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 23, 2019.
PV