THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition No.13011 of 2019

ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard Sri S. Ravi, Senior Counsel appearing for Sri K. Raji Reddy, counsel for petitioner; and Sri J. Anil Kumar, Special Counsel for Commercial Taxes, for respondent nos.1 to 3.

2. The petitioner has assailed in this Writ Petition Order No.10929, dt.16.03.2018, passed by 2nd respondent levying tax on works contract receipts invoking provisions of Rule 17(1)(g) of the Telangana State VAT Act, 2005 for the tax periods 2014-15 and 2015-16.

3. Before the Assessment Officer, the petitioner produced balance-sheet for the years 2014-15 and 2015-16, VAT 200 returns and Form 501 from 2014-15 and 2015-16, and contract works collection statements in relation to works contracts being executed by petitioner. But the petitioner has not produced the Books of Accounts though through a letter dt.22.03.2017 he had sought time to produce the Books of Accounts, and even thereafter an opportunity was given to petitioner to produce the Books of Accounts.

4. But, according to petitioner, though the principal assessment show-cause notice dt.29.04.2017 indicated a proposed levy of tax of

Rs.7,63,53,971/- for the tax periods 2014-15 and 2015-16, thereafter, a revised show-cause notice was issued on 26.07.2017 reducing the proposed levy to Rs.5,26,02,532/-, and later again a further revised show-cause notice dt.22.12.2017 was issued proposing to levy tax of Rs.1,87,49,714/-; and ultimately, the assessment order was passed on 16.03.2018 by 2nd respondent.

5. The petitioner contends that he is an income-tax assessee and had the requisite Books of Accounts which was subject to audit even by the Income Tax Department, and there was an oversight on the part of petitioner in not producing Books of Accounts. Though the petitioner had stated that he would produce them in his letter dt.22.03.2017, he has however taken a plea that Assessment Order itself was not served on him and therefore he was disabled from taking steps to file an appeal before the competent authority under the T.S. VAT Act, 2005.

6. According to petitioner, he had filed VAT 250 to pay tax under the composition for certain works contracts receipts during 2015-16 which was accepted in respect of the some works contracts but which was not accepted in regard to some other works contracts.

7. The counsel for petitioner contended that if the petitioner is given one opportunity to produce the audited Books of Accounts for the relevant periods before the 2nd respondent, the petitioner would be able to satisfy the 2nd respondent, i.e., tax liability sent by 14.5% even in respect of the other works contracts for which the composition was not given.

8. The learned Special Counsel, appearing for respondents, disputes the contentions of petitioner and states that petitioner, having stated in letter dt.22.03.2017 that he would produce the Books of Accounts, did not do so, and the material produced by petitioner was considered by 2nd respondent on the basis of which the impugned assessment order was passed. He also contended that the assessment order was communicated to petitioner, and produced the India Post Track Record which suggested that the impugned assessment order was also delivered, which fact is disputed by the counsel for petitioner.

9. Having regard to the fact that there is a dispute as to whether the impugned assessment order has been served on petitioner or not, and who received it on behalf of petitioner, since an acknowledgment card in respect of the postal cover sent by the 2nd respondent's Office to the petitioner is not available, and since the petitioner would not have gained any advantage by suppressing the Books of Accounts which were any way subject to tax audit under the Income Tax Act, 1961, we deem it appropriate to set aside the impugned assessment order in order to give an opportunity to petitioner to place the Books of Accounts for the relevant period before 2nd respondent subject of course to the following terms :

(a) the petitioner shall deposit 20% of the VAT demanded in the impugned assessment order by way of a Demand Draft before 2nd respondent within (1) week from the date of receipt of copy of the order;

(b) on such deposit the impugned order would stand set aside, and the matter would stand remitted back to 2nd respondent;

(c) the petitioner shall also produce the Books of Accounts relating to the relevant period within the period of one (01) week from the date of receipt of copy of the order; and

(d) on the petitioner furnishing those Books of Accounts, the 2nd respondent shall pass a fresh order of assessment and communicate it to the petitioner;

10. In default of petitioner complying with the condition of deposit mentioned above or in producing Books of Accounts as permitted above, the Writ Petition shall stand dismissed.

11. Any deposit of tax made by the petitioner pursuant to this order shall be subject to fresh order which is to be passed by the 2nd respondent.

12. Accordingly, the Writ Petition is allowed as above. No order as to costs.

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 07.11.2019
Note : Issue C.C. by 12.11.2019
B/o.

Ndr/*