THE HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.41948 OF 2018

Date:12.03.2019

Between:

M/s. Bekem Infra Projects Private Limited,
Amrutha Hills, Panjagutta, Hyderabad
Rep. by its Chairman Sri B. Sarat Babu.

… Petitioner

v.

The Assistant Commissioner, State Tax,
Khairatabad Circle, Punjagutta, Hyderabad
and others.

... Respondents

For Petitioner	:	Mr. Bhaskar Reddy Vemireddy
For Respondents	:	G.P. for Commercial Tax and Mr. T. Vinod Kumar
Gist	:	
Head Note	:	
Cases Referred	:	Nil

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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ORDER: ***(Per V. Ramasubramanian, J)***

Challenging the action of the 1st respondent in ordering the forfeiture of an amount of Rs.1,44,03,978/-, being the excess tax credit available to the petitioner through an assessment order dated 25.08.2018, the Dealer under the Telangana Value Added Tax Act, 2005 has come up with the above writ petition.

2. Heard Mr. V. Bhaskar Reddy, learned counsel, appearing for the petitioner and Mr.T. Vinod Kumar, learned Special Standing Counsel, appearing for the respondents.

3. It is the claim of the petitioner that they had a net excess carry forward input tax credit to the tune of Rs.2,09,21,437/-, after assessment orders were passed for the years 2015-16 and 2016-17. According to the petitioner, the excess tax payment was as a result of the excess deduction of tax at source by the main contractors and also on account of the excess input on purchases.

4. But, the 1st respondent issued a show-cause notice in Form VAT 305A dated 23.07.2018 proposing to forfeit the excess tax credit of Rs.1,36,58,183/- by invoking the power under Rule 18 (3)(b) of the Telangana VAT Rules, 2005. The show cause notice proceeded on the basis that the excess amount belonged to the Government, since

the tax had already been loaded in the estimates in terms of G.O.Ms.No.11 Finance (Works and Projects F8) dated 29.06.2005.

5. The petitioner filed objections, pointing out that they had executed works only as Sub-Contractor and that there was no question of the petitioner receiving money from the Government that included 4% tax. It was also pointed out by the petitioner that the tenders were on EPC-Turnkey system basis.

6. But, overruling the objections of the petitioner, the 1st respondent passed an order dated 25.08.2018 confirming the proposed forfeiture. Interestingly, the amount of excess tax credit ordered to be forfeited by the impugned order, was also in excess of the figure mentioned in the show-cause notice. Therefore, the petitioner has come up with the above writ petition.

7. A careful perusal of the impugned order would show that the same suffers from the vice of non-application of mind. At the outset, the proposal in the show cause notice was for forfeiture of the excess tax credit of Rs.1,36,2.058,183/-, but the credit ordered to be forfeited is for a sum of Rs.1,44,03,978/-. An order under the Act cannot exceed the proposal made in the show-cause notice.

8. Moreover, the 1st respondent does not appear to have applied his mind to the very applicability of G.O.Ms.No.11, to a Sub-Contractor. The fact that the petitioner was a Sub-Contractor and the fact that the contract was EPC Turnkey contract, was also not gone into by the respondents. Therefore, we are of the considered view that

the impugned order is liable to be set aside and the matter remanded back.

9. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter remanded back to the 1st respondent for a fresh consideration. The 1st respondent shall fix a fresh date for personal hearing. On the said date, the petitioner may produce additional documents, if any, and make submissions with respect to all the points. Thereafter, the 1st respondent may pass orders afresh in accordance with law.

10. The miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI

March 12, 2019

KTL

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