THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.2829 OF 2020

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

Heard Sri M.Naga Deepak, counsel for petitioner and Sri J.Anil Kumar, Special Counsel for Commercial Tax, for respondents.

2. In this Writ Petition, the petitioner assails JC Order No.295, dated 23.07.2019 passed by the second respondent confirming tax of Rs.16,39,182/- proposed under a pre-revision show case notice dated 21.05.2019 issued to the petitioner for the period from 2009-2010 to 2012-2013 under the VAT Act, 2005 on the ground that incorrect allowance of input tax credit had resulted in short levy of tax to the above extent.

3. It is the contention of the petitioner that as a dealer under the VAT Act it had performed certain works contracts with HMWS&SB during the relevant period; that an assessment order was passed by the third respondent on 29.07.2015 for the tax period from 01.04.2009 to 31.03.2013 by levying of additional tax of Rs.15,50,047/-; that later the third respondent also issued a penalty notice dated 29.07.2015 to the petitioner proposing to levy penalty of 10% on the under-declared tax amount; and that the HMWS&SB did not file appropriate VAT 501 forms before the assessment was done by the third respondent, due to which, substantial amount of the petitioner's claim for TDS was disallowed.

4. The petitioner contends that it pursued with the Board and got all the VAT 501 forms uploaded and the Board had also reported to the fourth respondent on 17.01.2017 informing about the same. The petitioner had also submitted a representation on 10.06.2018 to the third respondent requesting to reconsider the tax levied in the assessment order.

5. The petitioner contends that thereafter, the second respondent issued a pre-revision show cause notice dated 21.05.2019 proposing to enhance the tax already levied in the assessment order dated 29.07.2015. Though the petitioner submitted a reply on 04.06.2019 to consider all the VAT 501 forms and allow TDS credit, the second respondent did not do so and confirmed the enhancement proposed in the pre-revision show cause notice.

6. The petitioner contends that the action of the respondents in not considering all the VAT 501 forms available in the record which have been filed by the Board and pressuring the petitioner for default in not filing the VAT 501 forms by the Board within time, is arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India.

7. According to the petitioner, if the VAT 501 forms uploaded by the Board and which are available with the respondents are taken into account, and if the consequential benefit of TDS credit is given to the petitioner, the petitioner would not be liable to any tax at all.

8. Counsel for the petitioner also contends that Section 13(5)(a) of the VAT Act relied upon by the second respondent deals with input tax credit and what the petitioner is claiming is not input tax credit, but credit of TDS which was deducted from the petitioner's bills by the Board which was not remitted by the Board and that the second respondent wrongly applied Section 13(5)(a) to deny the benefit to the petitioner of the tax deduction at source done by the Board.

9. Copies of the VAT 501 forms relating to the contract of the works done by the petitioner to the Board have also been filed with the material papers.

10. In these circumstances, we are of the opinion that the second respondent had erred in not giving credit to the petitioner of the TDS done by the Board in relation to the works contract executed by the petitioner for the benefit of the Board during the relevant tax period and that the impugned order, therefore, cannot be sustained.

11. Accordingly, the Writ Petition is allowed; JC Order No.295 dated 23.07.2019 of the second respondent is set aside; and the Deputy Commissioner, VAT, Hyderabad Rural Division, Hyderabad, is directed to take into account the VAT 501 forms filed by the Board in relation to the works contract executed by the petitioner with the said Board for the relevant period by giving a personal hearing to the petitioner and pass a fresh reasoned order in accordance with law in regard to the pre-revision show cause notice

dated 21.05.2019 issued to the petitioner. No costs. Miscellaneous petitions, if any, pending shall stand dismissed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 11.02.2020
TJMR