THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition No.22124 of 2018

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

The 1st petitioner herein is a registered dealer on the rolls of the 2nd respondent. The 2nd petitioner herein is a registered dealer on the rolls of the 8th respondent.

2. The petitioners herein are engaged in execution of works contracts.

3. The 1st petitioner was awarded a work for execution of work of 'Nagarjuna Sagar Tail Pond Project – Hydro-Mechanical Works for Dam and Power House of Nagarjuna Sagar Tail Pond Dam Project at 21.065 KM downstream of Nagarjuna Sagar Dam across River Krishna near Satrasala Village of Guntur District, Andhra Pradesh'.

4. The 1st petitioner sub-contracted the work to the 2nd petitioner.

5. Under the provisions of the Telangana VAT Act, 2005, the 1st petitioner would be eligible for exemption when the entire work had been sub-contracted on a back-to-back basis to a registered Sub-Contractor as per Section 4(7)(h) of the Act.

6. The 1st petitioner's assessment up to 01.06.2014 was completed. Thereafter, the assessment for the period 02.06.2014 to

30.06.2017 was taken up by the 1st respondent on the strength of an authorization issued by the territorial Deputy Commissioner (C.T.), Abids Division, Hyderabad.

7. The 1st respondent then passed an Assessment Order dt.20.03.2018 granting exemption on the turnover relating to the work since the entire work was sub-contracted to the 2nd petitioner, a registered VAT dealer. Under the provisions of the Act, the 5th respondent, as a *contractee*, is required to deduct tax at source and issue Form 501-A certificates in terms of Section 22(3) read with Rule 18 of the VAT Rules. The 1st petitioner in turn transferred the TDS credit to the 2nd petitioner by issuing Form 501-B which would enable the 2nd petitioner to claim credit against the tax liability.

8. During the period 20.09.2014 to 04.11.2015, the 5th respondent deducted tax towards payment due under the contract and remitted the amount partly to the 7th respondent falling in the State of Telangana and partly to the 6th respondent falling with the State of Andhra Pradesh.

9. The 1st petitioner claimed credit for Rs.47,33,444/- based on Form 501-A certificates issued by the 5th respondent and generated from the Telangana VAT Department Website.

10. It is the contention of petitioner that since work executed by petitioners falls both in the State of Telangana and in the State of Andhra Pradesh, the 5th respondent was obliged to deduct the tax and remit it to the respective States depending on the question where the work was executed.

11. The 5th respondent also deposited certain tax with the 6th respondent.

12. It is contended by petitioner that while reconciling the TDS credit, the 1st respondent found that two cheques for Rs.15,98,118/- and 7,72,281/- were not deposited by the 5th respondent to the credit of the State of Telangana Treasury; and on that ground, the petitioner was also denied credit at Rs.23,70,399/- since the 5th respondent did not issue valid Form 501-A certificates.

13. It is the contention of petitioners that these two amounts were deposited by the 5th respondent with the 6th respondent instead of 7th respondent.

14. According to petitioners, the certificates are valid and genuine as they were taken from the website of the Telangana VAT Department and they are final and conclusive, and the petitioner cannot be blamed for the actions of the 5th respondent.

15. According to petitioner, once the transfer is credited to the 5th respondent by issuing Form 501-B certificates, it cannot be found fault with since these forms were generated from the website of the Telangana VAT Department.

16. However, the 1st respondent in the impugned order denied credit under the two certificates issued by the 5th respondent for the reason that the amount was not deposited with the Telangana State Treasury.

17. The 1st petitioner contends that he does not have any liability under the Act; the credit of tax in these two certificates was denied while making the assessment of 2nd petitioner for the same period; and the 1st respondent informed the assessing authority of the 2nd petitioner and requested him to take appropriate action.

18. The 1st respondent issued a show-cause notice dt.24.05.2018 to the 2nd petitioner proposing to deny tax credit to the extent of Rs.23,70,399/-.

19. The petitioners have therefore approached this Court though there is a remedy of appeal since all the respondents who are impleaded as parties cannot be impleaded as parties to any such appeal because some parties relate to the State of Telangana and some relate to the State of Andhra Pradesh.

20. The petitioner sought a direction to declare that the order dt.20.03.2018 passed by the 1st respondent denying credit of Rs.23,70,399/- on the strength of Form 501-A certificates dt.19.12.2014 and 11.02.2015 is illegal, arbitrary, unjustified and without lawful authority; to set aside the show-cause notice dt.24.05.2018 issued by the 8th respondent to the 2nd petitioner; and also seeks a direction to the respondents to give credit for the amount of Rs.23,70,399/- for the tax period 2014-15 to petitioners.

21. On 29.06.2018, this Court directed the Commercial Tax Department of the State of Telangana not to proceed further pursuant to the show-cause notice issued to petitioners till the next date of hearing.

22. However, on 13.07.2018, in Interlocutory Application No.2 of 2018 in Writ Petition No.22124 of 2018, this Court directed that '*any order passed by the Commercial Tax authorities shall be subject to further orders in the Writ Petition*'.

23. In view of the said direction, the 8th respondent proceeded with the revised Assessment pursuant to the show-cause notice dt.24.05.2018 and passed the revised Assessment Order on 27.08.2018.

24. Thereafter, the matter underwent several adjournments and ultimately on 14.11.2019, this Court passed the following order in Writ Petition No.22124 of 2018 :

> *"After hearing both sides, it is clear that an amount of Rs.23,70,399/- pertaining to the 1st petitioner in respect of the work bills relating to Telangana State (Dam Works) was deducted by the 5th respondent erroneously and credited to the accounts of the commercial Tax Department of the State of Andhra Pradesh. It is not in dispute that the said amount in fact is required to be paid by the 5th respondent to the TSGENCO and from TSGENCO it needs to be transmitted to*

the 7th respondent. Therefore, within four (04) weeks from to-day, the 4th respondent shall obtain a demand draft for a sum of Rs.23,70,399/- in the name of the 7th respondent which shall be sent to the 7th respondent after furnishing a copy thereof to the 1st petitioner and the 7th respondent on receipt thereof, shall credit the said amount towards VAT dues of the 1st petitioner in respect of TIN No.36487418706."

25. This Court also on the same day suspended the impugned order dt.20.03.2018 passed by the 1st respondent for the tax period 2014-15 in Interlocutory Application No.1 of 2018 in Writ Petition No.22124 of 2018.

26. The petitioners then filed Interlocutory Application No.3 of 2018 in Writ Petition No.22124 of 2018 to amend the prayer in the Writ Petition challenging the revised assessment order dt.27.08.2018.

27. The said I.A. was ordered on 19.12.2019.

28. It is now brought to the notice of this Court by all the counsel appearing for respondents that the amount of Rs.23,70,399/- was transferred to the Bank Account of 7th respondent by the 6th respondent, and that the further proceedings to give credit of the said amount towards VAT dues of the 1st petitioner would be taken up shortly.

29. In this view of the matter, the very basis for the order dt.20.03.2018 passed by the 1st respondent with regard to the 1st petitioner, and the order dt.27.08.2018 passed by the 8th respondent with regard to the 2nd petitioner, are taken away. They are therefore set aside.

30. The Writ Petition is allowed and reliefs (a) to (c) are granted as prayed for. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 07.01.2020
Ndr/*