

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION No.8108 OF 2023

Between:

M/s. Lakshmi Ganesh Mega Modern Rice Mill,
represented by its Proprietor, Surisetty Madhavi
Latha, 43 years, W/o. Surisetty Siva Venkata Prasad
Guptha, R/o. Door No.9/220, Nandyala Road,
Mydukuru, Cuddapah, Andhra Pradesh – 516172.

... Petitioner

A n d

1. The State of Andhra Pradesh, represented by its
Principal Secretary, Revenue CT-II Department,
Secretariat Buildings, Velagapudi, Amaravati,
Guntur District, Andhra Pradesh.
2. The Appellate Deputy Commissioner (CT),
Tirupati Division, Tirupati, Chittoor District,
Andhra Pradesh.
3. The Deputy Commercial Tax Officer-1,
Proddutur-1 Circle, YSR Kadapa District,
Andhra Pradesh.

... Respondents

Counsel for the Petitioner : Sri N.Ashwani Kumar

Counsel for the R1 to R3 : Sri Shreyas Reddy
Government Pleader for
Commercial Tax

This Court made the following:

ORDER

(Per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri N.Ashwani Kumar, learned counsel for the petitioner and Sri Shreyas Reddy, learned Government Pleader for respondent Nos.1 to 3, and perused the material on record.

2. The present writ petition is filed challenging the impugned Notice under Section 29 of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity 'the APVAT Act, 2005'), dated 23.02.2023 to the petitioner, for payment of tax due, issued by the Deputy Commercial Tax Officer-1, Proddatur-1 Circle.

3. The challenge was made with respect to item at serial No.4 of the Notice, which is CST.

4. The respondents filed I.A.No.2 of 2023 for vacation of the interim order dated 27.04.2023 passed in the present writ petition.

5. On 07.03.2024, we passed the following Order in I.A.No.2 of 2023:

"Heard Sri N.Aswani Kumar, learned counsel for the petitioner and Sri Shreyas Reddy, learned Government Pleader for Commercial Tax for the 3rd respondent.

2. This application is filed by the 3rd respondent for vacation of the interim order dated 27.04.2023.

3. The interim order dated 27.04.2023 reads as under:

“W.P.No.8108 of 2023

List the matter after eight (8) weeks for counters.

I.A.No.1 of 2023

As can be seen, the bone of contention in respect of impugned notice dated 23.02.2023 is mainly about the CST of Rs.7,49,112/- mentioned in serial No.4. The appellate Order dated 16.09.2017 shows that the appeal was dismissed to an extent of Rs.2,10,905/- and the appeal was remanded to an extent of Rs.5,77,139/-.

In that view, we deem it apposite to direct the petitioner to deposit an amount of Rs.2,10,905/- out of Rs.7,49,112/- as mentioned in serial No.4 of the impugned notice dated 23.02.2023 within two weeks from the date of receipt of copy of this order.

So far as, the balance amount is concerned, the respondent authorities shall not take any coercive action for recovery of the balance amount until further orders.

We make it clear that, this order is confined to the demand made in respect of item No.4 and not concerning to the taxes demanded under other items mentioned in the said notice.”

4. As is seen from the interim order, the bone of contention was in respect of the impugned notice dated

23.02.2023 for an amount of Rs.7,49,112/- (Serial No.4 of the notice), which is shown under the column 'CST'.

5. As is evident the interim order dated 27.04.2023 was confined to the demand in respect of item No.4 and did not concern to the taxes demanded under other items mentioned in the notice.

6. The prayer in the writ petition is with respect to the impugned notice dated 23.02.2023 demanding in total Rs.62,56,918/-. However, before us also Sri N.Aswani Kumar, learned counsel for the petitioner submits that the petitioner confined challenge to the amount demanded at Sl.No.4 of the impugned notice, only.

7. The interim order dated 27.04.2023 was granted considering the submissions advanced in view of the appellate order dated 16.09.2017, that the said appeal was dismissed to an extent of Rs.2,10,905/- and was remanded to an extent of Rs.5,77,139/-. Consequently, it was provided that on deposit of Rs.2,10,905/- by the petitioner against the amount in Sl.No.4 of the notice, the balance amount in Sl.No.4 shall not be recovered.

8. Learned Government Pleader for Commercial Tax submits that against the order of assessment of VAT dated 14.02.2017 for an amount of net total tax due Rs.10,95,844/-, the petitioner filed an appeal which was partly allowed by the Deputy Commissioner (CT), Tirupathi, by order dated 16.09.2017, to the extent of Rs.3,07,800/- and was dismissed to the extent of Rs.2,10,905/- and was remanded to the extent of Rs.5,77,139/-.

9. Learned Government Pleader further submits that the order of assessment dated 14.02.2017 was only with

respect to the VAT amount. The said order clearly mentioned that 'CST' assessment for the same years would be separately done by the Commercial Tax Officer, Proddutur. He submits that the appeal order dated 16.09.2017, related only to the VAT amount, and the amount at Sl.No.4 in the impugned notice, is not the VAT amount under the assessment order dated 14.02.2017 or the order in appeal dated 16.09.2017, but is 'CST' amount which has nothing to do with appellate order upon which petitioners relied and based upon which the interim order was passed. In this respect, specific averments have been made in Paragraph No.8 of the affidavit in support of I.A.No.2 of 2023.

10. Mr. Shreyas Reddy further submits that pursuant to the appellate order of remand, after issuing show cause notices and affording opportunity of personal hearing and final hearing notices, a fresh assessment order for VAT has been passed by the Assessing Officer.

11. I.A.No.2 of 2023 was filed on 21.12.2023. There is no reply to the contrary from the petitioner.

12. The submissions advanced by the learned Government Pleader could not be controverted by the learned counsel for the petitioner, who however submits that pursuant to the interim order dated 27.04.2023, the petitioner has deposited an amount of Rs.2,10,905/- which deserves adjustment.

13. We find force in the submissions of the learned Government Pleader, which is supported by the documents on records. The appellate order dated 16.09.2017 related to 'VAT' and not to 'CST'. In the impugned notice at Sl.No.4, the amount demanded is 'CST' and not 'VAT'.

While granting interim orders, this material aspect was not brought to the notice of the Co-ordinate Bench and as is evident, it was argued and also pleaded in the writ petition that in spite of the appellate order dated 16.09.2017, the amount in Sl.No.4 was being demanded even including the amount for which the petitioner's appeal was allowed.

14. In view of the above, the interim order dated 27.04.2023 deserves to be vacated.

15. We pass the following order:

- i. The interim order dated 27.04.2023 is vacated.***
- ii. The amount of Rs.2,10,905/- if already deposited by the petitioner as submitted, pursuant to the interim order dated 27.04.2023 will be adjusted as under:***
 - a. If the same has been deposited under 'CST' against Sl.No.4 in the impugned notice, the same shall be adjusted against demand of 'CST' in Sl.No.4. But,***
 - b. If the same has been deposited as 'VAT' no such adjustment to the petitioner against the amount of 'CST' in Sl.No.4 of the notice dated 23.02.2023.***

16. The I.A.No.2 of 2023 stands allowed in the aforesaid terms."

6. The stay was thus vacated by the Order dated 07.03.2024 for the reasons stated in the order.

7. Indisputably, the very basis of the writ petition to the extent of challenge to the impugned notice was the Appellate Order,

dated 16.09.2017 which related to 'VAT' whereas the impugned notice (Sl.No.4) related to 'CST' and not 'VAT'.

8. Even pursuant to the appellate order of remand, the Assessing Officer had passed fresh order.

9. Consequently, the writ petition filed based on the aforesaid appellate order was misconceived and the ground of challenge unsustainable having no merit.

10. This Writ Petition is therefore, dismissed at the stage of admission.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

JUSTICE RAVI NATH TILHARI

JUSTICE HARINATH. N

18th March, 2024.
DNB