

(2021) 02 TEL CK 0010
In the Telangana High Court
Case No : Writ Petition No. 13288 Of 2020

Ch. Chandraiah

APPELLANT

Vs

Secretary And Others

RESPONDENT

Date of Decision : 16-02-2021

Acts Referred:

Telangana Value Added Tax Act, 2005 — Section 38(9)
Constitution Of India, 1950 — Article 226, 265

Citation : (2021) 02 TEL CK 0010

Hon'ble Judges : M.S. Ramachandra Rao, J; T. Vinod Kumar, J

Bench : Division Bench

Advocate : S. Dwarakanath, G. Neeraja Reddy, J. Anil kumar, Namavarapu Rajeswara Rao

Final Decision : Allowed

Judgement

T. Vinod Kumar, J

1. This Writ Petition is filed by the petitioner, seeking a direction to the 1st to 6th respondents, to reimburse GST at 12% on the value of construction work done

under the agreement dated 05.08.2017 entered into with the 5th respondent; and also direct the respondents not to deduct VAT amount of Rs.11,93,172/- and 1%

of CGST and SGST while releasing the final bill in relation to the agreement dated 05.08.2017; and to direct refund of the VAT amount deducted to the petitioner

along with 18% interest from the due date till the date of payment along with exemplary costs.

2. It is the case of the petitioner that the 5th respondent had floated a tender for civil construction work viz., (a) construction of office building over Rythu rest

house; (b) construction of shops; (c) raising of compound wall; (d) maintenance

of structure; (e) construction of covered shed and (f) laying of CC road and yard at market yard for the Agriculture Market Committee, Cherial, Siddipet District.

3. It is contended that, though the said tenders were called for in April, 2017 and the petitioner having participated therein and was declared as L1, the agreement awarding the contract to the petitioner was entered into on 05.08.2017. The value of the contract awarded under the agreement entered into with the petitioner for

the above said work was for a sum of Rs.2,75,45,328.54 ps.

One of the terms of the agreement specifies that the special conditions mentioned in Appendix - I shall be read and construed as forming part of the agreement

and the parties shall abide by the same.

One such condition specified in Appendix - I states that the Value Added Tax (VAT) payable for the work under the agreement shall be in addition to the

amount specified in the agreement and the same shall be added and deducted by the contractee and remitted to the concerned VAT authorities, and the rate of

VAT/TOT is specified as 5%.

It is contended that, though the agreement entered into between the parties provided for payment of VAT for the construction work over and above the

amount specified in the agreement, by the time the 5th respondent entered into agreement with the petitioner, the Telangana VAT Act, 2005 was repealed and in

its place the GST Act, 2017 was brought into force; and consequently the work undertaken by the petitioner would be liable to tax under the GST Act and no

VAT / TOT is payable.

It is the case of the petitioner that despite the repeal of TSVAT Act, the 5th respondent, instead of applying the applicable rate of GST to the running bills

submitted based on the progress of the work, had added VAT at the rate of 5% to the said bills and deducted such VAT added to the bills, and remitted the same

to the 8th respondent, who also continued to receive such payment, despite the work having been performed post-introduction of GST and the VAT Act having

been repealed.

8. Thus, it is claimed that, as the tender floated by the 5th respondent and the agreement excluded the VAT payable, and the said VAT Act being replaced by

GST, the 5th respondent is liable to pay GST at the rate of 12% on the agreement value.

9. It is also contended that the petitioner, with the introduction of GST, had obtained registration and had discharged its GST liability at the rate of 12% on the

value of work executed, notwithstanding the fact that the 5th respondent did not reimburse the GST; and that the 5th respondent, on the contrary, added 5%

VAT/TOT to the running bills raised by the petitioner, and deducted and remitted the same to the 8th respondent, who continued to receive the said payment

which is without authority of law.

10. On the basis of the above submission, it is contended that the 1st to 6th respondents are liable to reimburse the petitioner at the rate of 12% on the contract

value and the action of the respondents, in particular, the 5th respondent in seeking to deduct an amount of Rs.11,93,172/- being VAT paid to the 8th respondent

from and out of the GST reimbursable to the petitioner is illegal and arbitrary. Apart from deduction at TDS at the rate of 1% of GST (1% CGST and 1% SGST) in a

sum of Rs.22,266/- is contrary to the provisions of GST and since the provision relating to TDS under GST has been made applicable for the period from October, 2018 onwards while, the petitioner completed the construction work under the agreement by 30.06.2018.

11. Separate Counter-affidavits for 1st respondent and 2nd to 6th respondents are filed by the learned Standing Counsel and the learned Government Pleader respectively.

12. In the counter-affidavits filed on behalf of 1st and 2nd to 6th respondents, the factum of issuing tender in April, 2017 and the agreement being entered into with the petitioner on 05.08.2017 after the introduction of GST from 01.07.2017 is not disputed.

13. It is stated that as there was no clarity with regard to applicable rate of GST in the initial stages, and the finalization of percentage of rate of applicable GST has got cleared at the end of 2018 only, and there being any number of amendments like embodied taxes, percentage of GST at the rate of 18%, 12% and 5% etc.,

the authorities added VAT/TOT to the part bills submitted by the petitioner in the meantime and remitted a sum of Rs.11,93,172/- to the 8th respondent while settling the same.

14. Thus, it is claimed that the respondent authorities have not acted unfairly and arbitrarily in seeking to adjust or not releasing the above said payment made to

the 8th respondent for the work executed by the petitioner, while settling the final bill. The petitioner would be entitled to credit the said amounts deposited with

the 8th respondent.

15. On behalf of the 7th and 8th respondents, learned Standing Counsel has placed before this Court the written instructions dated 28.11.2020. In the said written

instructions, it is stated that the petitioner was registered as a works contractor on the rolls of the 8th respondent under the VAT Act, which was in force till

30.06.2017; the 5th respondent in respect of work executed under agreement dated 05.08.2017, added and deducted VAT at the rate of 5% while settling the RA

bills and remitted to the 8th respondent as tax liability in the hands of the 1st respondent instead of TDS. It is also stated that the credit of the said amount

remitted by the 5th respondent was not given to the petitioner; the VAT component remitted by the 5th respondent with the 8th respondent can be refunded

under Section 38(9) of the Telangana VAT Act, 2005 to the 5th respondent, since the said remittance relates to the work executed during GST regime and not the

amount remitted as tax liability under VAT Act; though the 5th respondent filed an application seeking refund of the amount of Rs.11,93,172/- since, the same has

been preferred beyond the time prescribed under the provisions of the Telangana VAT Act, 2005, the refund could not be processed within the period prescribed

under the Act. However, it is stated that if this Court is to direct the respondent to process the refund application filed by the 5th respondent, the 7th and 8th

respondents will abide by the directions of this Court and the application of the 5th respondent seeking refund could be processed.

16. We have given due consideration to the submissions made on behalf of the parties as noted above.

17. It is an admitted fact that the work executed by the petitioner under the agreement dated 05.08.2017 is after the introduction of GST and after the repeal of

Telangana VAT Act, 2005. Therefore, there existed no liability on petitioner to pay

TOT/VAT at the rate of 5% on the contract executed under the above said agreement.

18. From the counter-affidavit filed by the respondents Nos.2 to 6, it is clear that the respondents are only trying to take shelter of the initial hiccups faced in the implementation of GST to justify their actions. The said stand of the respondent would have been appreciated, if only the respondents had not paid GST on the work executed, since it is claimed that the same lacked clarity. However, that is not so.

(19) Admittedly, the 5th respondent had added TOT/VAT at 5% to the bills submitted by the petitioner for the work done and deducted and remitted the same to

the 8th respondent, despite the TVAT Act, 2005 having stood repealed.

(20) If the statement made by the respondents in the counter affidavits are correct, the respondents could not have been adding and deducting TOT/VAT to the

running bills submitted by the petitioner, but they should have processed the bills without applicable GST either at 18%, 12% or 5% on account of lack of clarity

as to the applicable rate as claimed in the counter.

(21) As no such action is taken, it is but natural to presume that the respondents were either ignorant of the implementation of GST and the repealing the VAT

Act or turned a blind eye to the contractual obligations, probably under the impression that the contractor would not invite their wrath by questioning their

actions risking his future business with the respondents.

(22) The said impression can be gathered from the counter-affidavit filed on behalf of 2nd to 6th respondents, wherein, the respondents have sought to justify

their action by referring to the petitioner not commencing the work immediately and completing the same within the time specified in the agreement, non

submission by the petitioner of M books so far for finalization of final bills, based on which it is claimed that the respondents liberally extended the time period

for completion of work even though the work was delayed by 4 months.

(w) Thus, the submission made on behalf of the respondent that due to lack of clarity on GST till the end of 2018, the respondents continued to apply the rate

prescribed under the repealed State enactment, for nonpayment of GST for the construction work done under the agreement, does not appeal to this Court for

being accepted.

(x) Further, the fact of the 5th respondent making an application seeking refund of the VAT remitted shows that the respondents were ignorant of the statutory changes and had passed the running bills of the petitioner in a mechanical manner in ignorance of the repeal of the VAT Act and introduction of GST in its place.

But the petitioner had to discharge the GST liability on his own from and out of his resources, though the petitioner was entitled for being paid GST over and above the value of work executed, as the agreement contemplated for payment of VAT additionally and GST replaced the same.

(y) However, the petitioner has not placed any material before this court other than the letter dated 17.06.2020 to show that the petitioner had raised the issue of

non liability to pay VAT and reimbursement of GST during the currency of the agreement, when the 5th respondent settled part bill No. 1 to 4 submitted by the petitioner.

(z) Similarly, the submission on behalf of 7th and 8th respondents, that despite the repeal of the VAT Act, the authorities continued to

receive the VAT amount remitted by the 5th respondent and since, the same pertains to the work executed, post-introduction of GST, no credit was given to the

petitioner as contractor, would only go to show that the amounts received by the 7th and 8th respondents are without any authority of law.

(27) Further, the claim of the 7th and 8th respondents that, as the application seeking refund has been preferred beyond the period of (45) days prescribed under

the TVAT Act, 2005, the same could not be processed also does not appeal to this Court for being accepted for the reason that the amount remitted by the 5th respondent does not partake the character of tax, since, the TVAT Act, 2005 stood repealed. The amount received by the 7th and 8th respondents is without any

authority of law and is thus in contravention of Article 265. of Constitution of India. It is a settled position of law as held by the Hon'ble Supreme Court in

Salonah Tea company Ltd. v. Superintendent of Taxes, Nowgong (1988) 1 SCC 401 and Mafatlal Industries Ltd., v. Union of India (1997) 5 SCC 536 that if any

amount is collected as tax, without authority of law, refund of the same can be claimed by filing a suit. It is also settled proposition of law that such refund can

also be directed in a writ petition filed under Article 226 of Constitution of India.

(bb) Having regard to the above, the action of the 7th and 8th respondents in not granting refund to the 5th respondent on the pretext that application for refund was filed beyond the period specified under the TVAT Act cannot be countenanced, and the respondent ought to have granted refund of the amount being the amount collected without authority of law.

(xxix) In view of the above, this Court is of the considered view that there are no bonafides or justification on part of the 1st to 6th respondents in seeking to

adjust a sum of Rs.11,93,172/- from the GST payable to the petitioner at the rate of 12% in respect of the work executed under the agreement dated 05.08.2017 and

also seeking to deduct TDS at the rate of 1% under GST (1% CGST in a sum of Rs.22,266/- and 1% SGST in a sum of Rs.22,266/-). Similarly, the action of 7th and

8th respondents in not refunding the amount remitted by the 5th respondent as VAT liability for the work executed, post-introduction of GST, on the ground of

the refund application having been filed beyond the period specified under the Act, also cannot be held to be valid.

(xxx) Accordingly, the Writ Petition is allowed; the 1st to 6th respondents are directed to reimburse to the petitioner GST at 12% on the

value of the work executed under the agreement dated 05.08.2017 without adjusting/deducting the VAT amount of Rs.11,93,172/- and also the CGST and SGST of

1% from the final bill; the final bill shall be released to the petitioner within a period of two weeks from the date of receipt of copy of this order, failing which, the

respondent shall be liable to pay interest at the rate of 8% per annum from the date when the said payment has fallen due till the date of payment; and the 7th and

8th respondents are directed to process the refund application filed by the 5th respondent for the amount of the VAT paid mistakenly within a period of three

weeks from today without insisting any further application being made by the 5th respondent in this regard.

(xxxi) As a sequel thereto, the miscellaneous petitions pending, if any, shall stand closed.