(2015) 07 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11409 of 2015

Felguera Gruas India Private Limited APPELLANT

Vs

Assistant Commissioner (CT)-IV, Enforcement Wing RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 85 VST 537

Hon'ble Judges : G. Chandraiah and Challa Kodanda Ram, JJ.

Bench : Division Bench

Advocate : S. Ravi, Senior Counsel and C.H. Pushyam Kiran, for the Appellant; S. Suribabu, Standing Counsel and Government Pleader, for the Respondent

Judgement

Challa Kodanda Ram, J.—The writ petition is filed challenging the assessment order dated March 20, 2015, passed by the respondent-Assistant Commissioner (CT), to the extent of inclusion of turnover of Rs. 60,35,17,897 with respect to the supply and service agreements entered into with M/s. Tuticorin Coal Terminal Private Limited, in the taxable turnover. The brief facts of the case are that the petitioner is a private limited company registered under the Companies Act and it is engaged in the erection and procurement contract of Turnkey Engineering Company that specializes in design and supply of bulk material handling systems along with installation and commissioning of such systems at site. The petitioner challenges the assessment order dated March 20, 2015 under the Andhra Pradesh Value Added Tax Act, 2005 (for short, "the Act") in relation to a portion of the assessment order by seeking leave to file appeal with respect to other matters not covered by this writ petition. In the present writ petition, the transaction in relation to the execution of the works with M/s. Tuticorin Coal Terminal Private Limited alone is in issue. The principal ground of challenge is that the petitioner though a registered dealer of Visakhapatnam had entered into a contract of supply of goods as well as execution of works on August 23, 2012 with M/s. Tuticorin Coal Terminal Private Limited, a company registered in the State of Tamil Nadu in relation to their establishment of North Cargo Berth-II for handling bulk cargo at V.O. Chidambaranar Port Trust on design, build, finance, operate and transfer (DBFOT) basis. As evidenced from the contract which was entered into in Mumbai, the work is to be executed and was in fact executed at Tuticorin, outside the State of Andhra Pradesh. In terms and scope of the contract, the petitioner had executed the project work from his branch office in the State of Tamil Nadu. Petitioner is a registered ''dealer in the State of Tamil Nadu. With respect to his branch and in relation to the transactions of the contract with M/s. Tuticorin Coal terminal Private Limited VAT returns are being filed in Tamil Nadu and paying the tax on the said transactions.''

2. In response to the notice issued to the petitioner, the petitioner had categorically set out that the petitioner has entered into several contracts with M/s. Tuticorin Coal Terminal Private Limited for supply of goods and provision of services to be provided in the State of Tamil Nadu and the said contracts are being executed from the petitioner''s branch, office situated at Chennai and returns are being filed in accordance with Tamil Nadu VAT laws and taxes are also being paid. Petitioner also claims to have submitted the copies of the contract, copies of tax invoices raised from his Chennai branch office along with monthly VAT returns filed by him under Tamil Nadu VAT laws disclosing the sales made to M/s. Tuticorin Goal Terminal, Private Limited. Petitioner is also said to have enclosed a summary of contracts along with the billing schedules of all the contracts entered into by them and copies of contracts were also made available once again. In spite of the same, the assessing officer without considering the objections filed by the petitioner in a laconic manner had passed the assessment order. The crucial objection as to how the petitioner is liable to be assessed under the A.P. VAT Act was not advocated to and dealt with. Challenging the assessment, the petitioner filed the present writ petition.

3. When the matter came up for admission on May 1, 2015, this court had granted an interim order directing the respondents not to take any coercive steps to realize the tax of Rs. 8,75,10,108. A counter-affidavit has already been filed and the matter is now listed for filing of reply to the counter-affidavit. A reply affidavit refuting the allegations made in the counter-affidavit is filed by the petitioner. Counsels desired that the writ petition itself to be heard and disposed of.

4. The counter-affidavit filed by the respondent-Assistant Commissioner admitting about the entering of three agreements on November 28, 2012. The first agreement dated November 28, 2012 relates to design and erection, commissioning, handing over conveyer system for development of North Cargo Berth-II for a contractual consideration of Rs. 8.50 crores. The second agreement dated November 28, 2012 relates to supply of local components for conveyer system for development of North Cargo Berth II for a contractual consideration of Rs. 107 crores. The third agreement dated November 28, 2012 relates to supply of imported components for conveyer system for development of North Cargo Berth II for a contractual consideration of Rs. 26.50 crores. It is stated

that the three agreements were placed before the respondent. However, it is alleged that the petitioner had not furnished any other agreements copies or relevant enclosures and accordingly, the respondent-Assistant Commissioner passed the assessment orders in relation to these contracts. The reason for making an assessment and imposing the tax on the petitioner is that the contracts awarded to M/s. Tuticorin Coal Terminal Private Limited, were entered into at Visa-khapatnam where the petitioner''s company was registered under the Andhra Pradesh VAT Act. Further it was contended that the branch office in the State of Tamil Nadu came into existence after entering into the contract. Reliance was placed on certain case laws.

5. Heard Sri S. Ravi, learned senior counsel appearing for the petitioner and Sri S. Suribabu, learned standing counsel for the Department.

6. The main contention raised in the writ petition is in a narrow compass and the issue which is required to be considered is that in the admitted and undisputed facts situation, whether the entire works contract which is to be executed in the State of Tamil Nadu where an assessment could be made to bring the said transaction within the purview of the A.P. VAT Act and the assessment could be made. The assessing officer had dealt with the objections raised by the petitioner as under:

"E. Tuticorin Coal Terminal Pvt. Ltd.

The dealer submitted three agreements with M/s. Tuticorin Coal Terminal Pvt. Ltd. for verification. As per the statement filed by the dealer, there are three more agreements mentioned but not submitted copies of agreements. The details of agreements submitted are as follows:

The dealer was awarded a similar kind of work as discussed above for the ''on-shore supply of equipment and other components for the development of North Cargo Berth-II in the Tuticorin Port. The contractee and the contractor signed two (2) agreements for the ''supply of equipment'' and other components and the other one for ''service contract''. But the contractor has not furnished all agreement copies along with their enclosures. On perusal of the records before the assessing authority, the assessing authority has come to conclusion that the contracts are ''indivisible'' in nature even though break up of prices is given for each performance."

7. A perusal of the above extracted para does not indicate any of the objections raised by the petitioner specifically in paras 1.7 and 1.8 at page No. 5 of the reply notice dated January 12, 2015. In the said reply notice, it is stated that there was no reference to any of the contentions raised in the impugned order. However, the learned counsel for the respondent submits that there is no other material particularly in relation to the material with respect to the transportation of the goods from Visakhapatnam to M/s. Tuticorin Coal Terminal Private Limited which came to be noticed by the assessing officer based on the search report. However, the learned counsel for the respondent fairly submits that the material

which came to light to the assessing officer does not appear to have been put to the petitioner and at any rate the same was not made part of the imputation in the show-cause notice.

8. In other words, the assessment order read in the light of the reply affidavit filed leaves no manner of doubt that the assessing officer did not apply his mind with regard to the crucial aspect that the very transaction could not be brought under the purview of A.P. VAT Act, which objection was specifically taken, was dealt with by a simple statement that the agreement was entered into with M/s. Tuticorin Coal Terminal Private Limited at Visakhapatnam where the dealer is registered with the Department and further the petitioner was not registered in the State of Tamil Nadu as on the date of entering into the contract. By placing reliance on the judgment of the Supreme Court reported in 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, , the assessing officer concluded that "the situs of sale would be where the property in goods passes, viz., where the contract is entered into". While the assessing officer passed the assessment order justified bringing of the transaction into the fold of A.P. VAT Act and the assessment order does not indicate what are the goods which have been transported from Visakhapatnam and at what point of time and whether they relate to the execution of contract or supply of local goods or supply of imported goods. Further, the assessing officer also erred in stating that the contract was entered into in Visakhapatnam as the very documents indicate that the said three contracts were entered into at Mumbai. We are also in agreement with the contention of the learned counsel for the petitioner that the 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, was misquoted and the statement of the assessing officer would be right with respect to the situs of the contract only when the goods were available at the time of the contract and the same does not hold good when the goods are to be supplied in later point of time. This legal proposition is also not being disputed by the learned counsel for the respondent.

9. In the given set of facts, the assessment so far as the bringing transaction relating to M/s. Tuticorin Coal Terminal Private Limited is concerned, is liable to be set aside. However, considering the submission made on behalf of the Department that the authorities possess in their custody a large number of documents and material evidencing the fact that the transaction in relation to M/s. Tuticorin Coal Terminal Private Limited is liable for assessment under the Act, the matter may be remanded back to the assessing officer to consider afresh. We are inclined to accept the said submission for which the learned counsel for the petitioner also readily agrees.

10. In the circumstances, the writ petition is allowed setting aside the assessment order dated March 20, 2015 passed by the respondent-Assistant Commissioner (CT), so far as the transaction relates to M/s. Tuticorin Coal Terminal Private Limited, giving liberty to the assessing officer to initiate appropriate proceedings, in accordance with law, and it is needless to mention

that the petitioner-assessee would be entitled to raise all the objections both on facts and law before the assessing authority. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall also stand closed.

