

(2022) 11 TEL CK 0073
In the Telangana High Court
Case No : Writ Petition No. 21798 Of 2006

M/S.Vision Ventures P Limited

APPELLANT

Vs

State Of AP.

RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Value Added Tax Rules, 2005 — Section 25(1), 25(5), 59(1), 59(1)(4), 59(1)(4)(ii)(b),
59(1)(4)(ii)(d), 59(7)
Value Added Tax Act, 2005 — Section 4(7), 4(7)(c), 21(4), 43

Citation : (2022) 11 TEL CK 0073

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : S Krishna Murthy

Final Decision : Allowed

Judgement

1. Heard Mr. S.Suribabu, learned counsel for the petitioner and Mr. K.Raji Reddy, learned Senior Standing Counsel, Commercial Tax for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of the order of assessment of Value Added Tax (VAT) dated 16.11.2006 passed by respondent No.3 for the tax period from September, 2005 to August, 2006 in proposing to levy differential tax @ 8.5% amounting to Rs.14,07,065.00, penalty of Rs.3,30,605.00 and interest of Rs.59,691.00.

3. Petitioner before us is a private limited company engaged in the business of executing works contract. It was registered with respondent No.3 under the Telangana Value Added Tax Act, 2005 (briefly 'the VAT Act' hereinafter).

4. Petitioner had entered into a contract with M/s.Visakha Urban Development Authority, Visakhapatnam for construction of residential houses at Visakhapatnam. In the course of executing the said work, petitioner had purchased goods both within the then composite State of Andhra Pradesh as well

as outside the State of Andhra Pradesh. Such goods were thereafter used in the execution of the work.

5. For the assessment periods 2005-06 and 2006-07, petitioner had opted for composition under Section 4(7)(c) of the VAT Act in respect of works contract executed by it by filing the requisite form and accordingly paid tax @ 4% on the total contractual consideration received for the aforesaid assessment period. Respondent No.3 had issued notice of assessment dated 15.09.2006 for the period from September, 2005 to August, 2006 and called upon the petitioner to pay further tax of Rs.14,07,065.00. The aforesaid tax was levied on the interstate purchase of goods based on the amendment brought in to sub-section (7) of Section 4 of the VAT Act with effect from 29.08.2005. On various grounds, the same came to be challenged before this Court in this writ petition. When order of assessment dated 16.11.2006 came to be passed, the same also came to be challenged.

6. By the order dated 27.10.2006, the writ petition was admitted for hearing. Thereafter, respondents have filed counter-affidavit. When the matter was listed on 02.11.2022, learned counsel for the petitioner submitted that after filing of the writ petition, two judgments have been rendered by the then combined High Court of Andhra Pradesh which squarely cover the present case. The two decisions are Delta Lubricants, Vijayawada v. Deputy Commercial Tax Officer (2006) 43 APSTJ 27 and Sri Balaji Flour Mills v. Commercial Tax Officer 2010 SCC Online AP 1187.

7. Pursuant to the order of this Court, petitioner has filed a memo bringing on record the above two decisions. In Delta Lubricants, Vijayawada v. Deputy Commercial Tax Officer ((2006) 43 APSTJ 27 supra), a Division Bench of this Court while not interfering with the order of assessment, however set aside the penalty imposed on the ground that in the same order of assessment, penalty could not have been imposed.

8. However, it is Sri Balaji Flour Mills v. Commercial Tax Officer (2 supra) which is directly on the issue before us. Paragraph 47 of the said decision is relevant and the same is extracted hereunder:

Of all these, the assessment of the category in the above paragraph (d), may be considered as one pursuant to an audit. As audit cannot be taken up without prior authorization of the Deputy Commissioner concerned as per Rule 59(1)(7), necessarily there ought to be a further authorization to undertake assessment. Although under Section 21(4) the authority prescribed can take up assessment, reading Section 43 of the VAT Act and Rule 59(1)(4)(ii)(b) and (d) and 59(7) of the VAT Rules, the only conclusion would be that, unless and until there is a separate authorization to undertake assessment, an officer authorized to audit the accounts of a VAT dealer cannot undertake assessment. If the rule making authority had intended that the same officer, who is authorized to audit, can also undertake assessment either under Rule 25(1) or Rule 25(5), there would not

have been any necessity to separately mention about 'authority prescribed' for the purpose of assessment and for the purpose of audit, as seen from Rule 59(1) (4) for the purpose of assessment and Rule 59(1)(7) for the purpose of audit. Therefore, assessment without authorization of the higher official as specified in Rule 59(1)(4)(ii)(b) and (d) would be certainly one without authority or jurisdiction and would contravene not only Section 21(4) but also Rule 59(1).

9. In the aforesaid decision, Division Bench of this Court held that authorization to audit under Section 43 read with Rule 59(1), Serial No.7 of the VAT Rules by itself would not enable the audit officer to undertake assessment. Therefore, the assessment orders passed by the audit officers were set aside. The matters stood remitted to the respective audit officers for submitting audit report as contemplated under Chapter VII of the VAT Audit Manual for appropriate post audit action.

10. Following the decision of this Court in *Sri Balaji Flour Mills v. Commercial Tax Officer* (2 supra), we set aside the notice of assessment dated 15.09.2006 as well as the order of assessment dated 16.11.2006 and remand the matter back to the concerned audit officer for taking necessary consequential steps in accordance with law.

11. Writ Petition is accordingly allowed. No costs.

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