

(2011) 01 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25221 of 2010

Unity Infra Projects Ltd.

APPELLANT

Vs

Commercial Tax Officer, Jubilee Hills Circle and Commercial
Tax Officer, Punjagutta Circle

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 20(3), 31, 31(1), 33, 4(7)
Andhra Pradesh Value Added Tax Rules, 2005 — Rule 17(1), 25(5)
Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2011) 41 VST 202

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; P. Balaji Varma S.C.
Respondents 1 and 2 Commercial Tax, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The Petitioner company is a registered VAT dealer, as well as a CST dealer, under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (the VAT Act, for brevity), on the rolls of the first Respondent. It is a civil contractor undertaking works contracts in different States of the country. It undertook construction of permanent shelters under Tsunami Reconstruction Project in Andaman & Nicobar Islands. It also undertook construction of the Tadipudi Lift Irrigation Scheme (2nd lift) and the construction of 4 numbers of Lift Irrigation Schemes at KM 500, 15.90 KM 33.50 and KM 80.80 of Main canal of Tadipudi L Scheme in West Godavari District (Package 60). This was stately sub-contracted to M/s. Indu Projects (a registered VAT dealer) on back to back basis retaining only 4% margin. It appears the sub-contractor filed returns disclosing the turnover relating to the sub-contracted works. For the assessment year 2007-08, the Petitioner, in its returns in Form VAT 200, claimed exemption on the sub-contractor's turnover u/s 4(7)(h) of the VAT Act and Rule 17(1)(c) of the Andhra Pradesh Value Added Tax Rules, 2005 (the VAT Rules, for brevity).

2. The second Respondent audited the Petitioner's premises and, thereafter, initiated assessment proceedings by issuing notice in Form VAT 305-A, dated 16.04.2010 proposing to assess the Petitioner company, on the works contract receipts, to a tax of Rs. 22,54,392/- u/s 4(7)(a) of the VAT Act read with Rule 17(1)(g) of the Rules. The Petitioner submitted its explanation on 13.05.2010. The Petitioner also asked for an opportunity of personal hearing. The second Respondent, thereafter, undertook assessment and passed orders in Form VAT 305, dated 28.07.2010 proposing to levy tax at 4% on the turnover towards iron and steel for the period from April, 2007 to March, 2008 for the assessment year 2007-08. Assailing the same, the Petitioner filed the instant writ petition for a writ of Certiorari.

3. The preliminary submissions were made on 07.10.2010. Having regard to the submissions noticed infra, this Court directed the Special Counsel for CT to get instructions/file counter. In obedience thereto, the second Respondent filed a counter affidavit denying various contentions. The allegations that the Petitioners were not given personal hearing is also denied. The Petitioners filed a reply affidavit denying the averments in the counter averments.

4. The counsel for Petitioner Dr S.R.R. Vishwanath made four submissions. First, though the Petitioner specifically requested for a personal hearing the same was denied and, therefore the impugned assessment order is void as it is in violation of principles of natural justice. Secondly, the impugned assessment also denies adequate opportunity in that tax is levied on a taxable event which was not informed in the show cause notice. Thirdly, the Petitioner's purchase of iron and steel from M/s. Mohsin Brothers, Bhushan Steels Limited, Kirit Trading Company and Sai Plastic Industries is covered under declarations in Form "C" issued by the Petitioner, that iron and steel was transported by sea to Andaman & Nicobar for the Tsunami Reconstruction Project and, therefore the taxable event is not established and, lastly, the impugned assessment order is violative of fundamental rights under Article 19(1)(g) of Constitution of India. All these averments are refuted by the Respondents' Special Counsel.

5. We have thoroughly perused the assessment order. We have also thoroughly perused the record. For the reasons below, we are not at all impressed with any of the submissions made by the Petitioner's counsel.

6. As rightly contended by the Respondents, the order of the second Respondent, presumably u/s 20(3) of the VAT Act read with Rule 25(5) of the VAT Rules, is an appealable order. Section 31(1) of the VAT Act provides for an appeal against any order passed by the assessing authority to the Appellate Deputy Commissioner. The Petitioner has not availed the remedy.

7. More often than not - indeed with regular frequency - VAT assesses are filing writ petitions before this Court ignoring or intentionally by-passing the effective appeal/revision system provided under Sections 31 and 33 of the VAT Act. Such a practice has been deprecated by the Supreme Court. If writ petitions are

entertained under Article 226 of Constitution, ignoring the effective alternative remedies provided by the taxing statutes, the very purpose of creating an elaborate appeal/revision system under the statute would be rendered ineffective. The decisions of the Supreme Court on this point are galore. It is always better for the Assessee to approach the appellate authority and if so provided, the second appellate authority for redressal of their grievance.

8. Further, even if there is a blatant and ex facie contravention of law which itself would violate Article 14 of the Constitution of India, or there is a palpable arbitrary denial of opportunity and fairness, the aggrieved Assessee must approach the Constitutional Court immediately well in advance before the expiry of the period of limitation provided for filing an appeal to the departmental superior officer. For instance u/s 31 of the VAT Act, a period of thirty days is allowed for filing an appeal to the appellate Deputy Commissioner which can be extended by a further thirty days for sufficient reason. If an Assessee sleeps over the matter and the period of limitation expires, and he seeks the remedy under Article 226, the High Court may not, ordinarily, interfere in the matter. When the statute itself bars appeals filed beyond the period of limitation as prescribed u/s 31(1), it would not be proper for the High Court to ignore the same, and entertain the writ petitions filed by the aggrieved assesses at their sweet will although they are aware of the period of limitation, and the availability of remedy of appeal.

9. In this case the impugned assessment order was passed on 28.07.2010 and, if he was aggrieved, the Petitioner ought to have filed an appeal within a period of thirty days i.e., on or before 28.08.2010. They did not do so. They filed the instant writ petition on 05.10.2010. This is after expiry of the period of limitation contemplated u/s 31(1) of the VAT Act. On this ground alone, the writ petition is liable to be dismissed.

10. Was the Petitioner denied the opportunity of personal hearing? Based on the authorization dated 01.05.2009 given by the Deputy Commissioner, the second Respondent conducted audit at the business premises of the Petitioner. Even after the request made by the officers the Petitioner did not produce the account books. Be that as it is, the second Respondent issued a notice in Form VAT 305 dated 16.04.2010. After receiving the same, the Petitioner sent objections dated Nil. A copy of the objections addressed to the second Respondent was received by his office on 13.05.2010. In this, the Petitioner requested for an opportunity of personal hearing before concluding the proceedings, and also produced the books of accounts. During the hearing (presumably on 02.06.2010) the Petitioner's authorized representative was asked to explain the turnover relating to purchase of iron and steel firm dealers situated outside the State which was not referred in the returns. The authorized signatory then submitted a letter admitting that purchases of raw materials were not shown in the return, and requested to pass an order adding the incorporation value of 10% on the purchase value. The said letter reads as under.

To

The Commercial Tax Officer

Punjagutta Circle

Hyderabad

Sir

Sub: - Show cause notice is form VAT 305A under VAT received filed objection - further submitting - Reg.

Ref: 1) Your show cause notice dated 16.04.2010

2) Our objections filed on 13.05.2010.

In continuation to our reply vide reference 2nd cited, we have appeared before you and submitted the books of accounts maintained for the year 2007-08, you have verified the same on verification "C" declaration forms issuing by us you have noticed that we have purchased the raw material such as steel from outside the State and used in constructions works but we have not reported form 200 VAT Returns which are liable to tax under APVAT Act 2005.

Kindly pass the order after adding the incorporation value @10% purchases value for the year 2007-08.

11. The above letter belies the Petitioner's only contention (that is seriously pressed before us) that they were denied a personal hearing before the assessment order was passed. The counsel for the Petitioner, however, submits that the letter extracted hereinabove was obtained from the authorized signatory of the Petitioner by the second Respondent under duress, and he could not resist the pressure from the Department. Though such an averment is made in the reply affidavit we are convinced that it is an afterthought. Not even a whisper to that effect is found in the affidavit accompanying the writ petition. Obviously the Petitioner is trying to project a case to bring the case within the well accepted exemptions for not availing the alternative remedy and has resorted to misrepresentation before this Court. We are not, therefore, inclined to exercise our discretion. Further, we are convinced that the assessment order does not suffer from any error much less a grave error apparent on the face of the record warranting issue of a Writ of Certiorari to quash the assessment order. In a case of this nature, we would have imposed exemplary costs for making false allegations with a view to mislead the Court. But, as we are dismissing the writ petition even before ordering rule nisi, we desist from doing so.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. No costs.