

APHC010644182023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3525]

WEDNESDAY, THE SIXTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 33255/2023

Between:

Ganapathy Engineering Works

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.C SANJEEVA RAO

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX (AP)

The Court made the following Judgment:

(Per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri Sanjeeva Rao, learned counsel appearing for the petitioner and learned Government Pleader for Commercial Tax, appearing for the respondents.

2. The petitioner, who was a registered dealer under the A.P. Value Added Tax Act, 2005 (for short 'the VAT Act'), was involved in the business of supplying services of works contract to the South Central Railway.

3. The 3rd respondent herein had passed an order of assessment, dated 09.08.2017, in relation to the tax period from June 2014 to September 2016. The 3rd respondent had held that the petitioner had a total excess tax credit of Rs.20,19,710/- after payment of all taxes due from the petitioner.

4. The petitioner had applied for refund of the aforesaid excess tax credit of Rs.20,19,710/-. This application came to be dismissed by the 3rd respondent by endorsement, dated 30.10.2023. Aggrieved by the said order of rejection, the petitioner has approached this Court.

5. The 3rd respondent has filed a counter affidavit in which it is admitted that the petitioner was carrying out only works contracts with the Indian Railways.

6. Sri C. Sanjeeva Rao, learned counsel appearing for the petitioner would contend that the order of rejection is incorrect and impermissible. He would submit that the 3rd respondent has invoked the provisions of Rule 18(3)(b) of the VAT Rules read with Section 22 of the VAT Act. He would submit that these provisions would be applicable only to the contractors, who had executed works or sold goods to the State Government or to a local body and the same would not be applicable to the petitioner, as he had only executed works contract for Indian Railways, i.e., Central Government.

7. The learned Assistant Government Pleader appearing for the Revenue would contend that Section 22 (3-A) provided for payment of tax, where works were being executed for the Government under Rule 18 (3)(b) had specifically mandated that wherever the dealer had received tax payments in excess of his liabilities, the same would be subject to forfeiture and as such the petitioner is not entitled to any refund.

8. Section 22 (3) and (3-A) read as follows:

(3) The Central Government or the State Government or an industrial, commercial or trading undertaking of the Central Government or of the State Government or a local authority or a statutory body or a company registered under the Companies Act, 1956 or any other person notified by the Commissioner, shall deduct from out of the amounts payable by them to a dealer in respect of works contract executed for them, an amount calculated at such rate as may be prescribed and such contractee deducting tax at source shall remit such amount in the manner prescribed.”

Provided further that no deduction shall be made from any amounts paid as consideration to any subcontractor if tax was already deducted by the contractee.

(3-A) Notwithstanding anything contained in subsection (3), in the case of a dealer, executing works contract for Government or Local Authority, wherever tax at the rate of 4% is added separately to the estimated value of the contract, such tax shall be collected by the

contractee and remitted in the manner as may be prescribed.

9. Rule 18(3) of the VAT Rules, 2005 reads as follows:

3. (a) Where tax is collectable at source as per sub-section (3A) of section 22 of the Act, tax @4% on the total value of the contract shall be collected and remitted by the contractee within fifteen days from the date of each payment made to the contractor.

(b) Where tax, collected at source as above, is in excess of the liability of the contractor, who have not opted for payment of tax by way of composition, such amount of tax, collected in excess of the liability shall be deemed to have been payable by the contractor and shall be liable to be forfeited.

10. Section 22 (3) states that the Central Government or the State Government or any undertaking of either Government or other bodies mentioned therein have to deduct amounts being paid to any dealer in respect of works contract and remit the same to the Commercial Tax Department. Section 22(3-A) stipulates that where tax is added separately to the estimated value of the contract, such tax would be collected by the dealer and remitted in the manner set out under the Rules.

11. Section 22(3) speaks of the Central Government, State Government and various other organizations. However Section 22(3-A) speaks of Government or local authority. The term "Government" was defined

under Section 2(18) of the VAT Act, to mean – the State Government of Andhra Pradesh.

12. This would mean that while Section 22(3) would be applicable to the Central Government, the State Government and the organizations mentioned in Section 22(3), the provisions of Section 22(3-A) would be applicable only to the Government of A.P., or any local authority. It would not be applicable to the Central Government.

13. The State is relying upon the provisions of Rule 18(3)(b) to contend that any payments made in excess of tax liability of the dealer, by a Government authority, can be forfeited under Rule 18(3)(b).

14. A closer look at Rule 18 would show that the said Rule specifically stipulates that it would be applicable for payments made under Section 22 (3-A). As the Central Government is not covered under Section 22(3-A), the provisions of Rule 18(3) would not be applicable. Consequently, the State cannot refuse refund of amounts to the credit of the petitioner on the ground of Rule 18(3) of the VAT Rules.

15. In the circumstances, this writ petition is allowed setting aside the assessment order, dated 30.10.2023, passed by the 3rd respondent with a consequential direction to the 3rd respondent to refund the amount of Rs.20,19,710/- along with interest under the provisions of the APVAT Act and the Rules made thereunder. The said exercise should be completed within a

period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

Dr. K. MANMADHA RAO, J

Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

And

HON'BLE Dr. JUSTICE K. MANMADHA RAO

W.P.No.33255 of 2023

16th April, 2025

Js.