



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

[3525]

**MONDAY, THE TWENTY FIRST 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 NOS: 5303/2022 & 5350 of 2022

W.P.No.5303 of 2022

Between:

Shirdi Saibaba Constructions

...PETITIONER

AND

The Assistant Commissioner St and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G NARENDRA CHETTY

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

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M/s. Shirdi Saibaba Constructions

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Counsel for the Petitioner:

1.G NARENDRA CHETTY

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

The Court made the following common order:

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

Heard Sri G. Narendra Chetti learned counsel, appearing for the petitioner and the learned Government Pleader for Commercial Taxes.

2. As the questions of fact and law raised in both these writ Petitions are one and the same, they are being disposed of, by way of the common order.

3. The petitioner was registered under the A.P VAT Act, 2005 and was carrying on the business of execution of Works Contracts. The petitioner executed Works Contracts, only for government departments, and no private works contracts were executed by the petitioner. The petitioner opted for payment of VAT under the Composition scheme as per Section 4(7)(b)&(d) of the A.P VAT Act, 2005 by submitting such option in Form VAT 250 before the Assistant Commissioner (Sales Tax), Anantapuramu, Circle-I, who is arrayed as 1st respondent, online, and the 1st respondent issued endorsements relating to all these forms.

4. The government departments were deducting tax at source, from the bills of the petitioner, @ 5% of the entire bills, and were paying the same to the Commercial tax Department, the petitioner had filed his returns, without paying any further tax as TDS of 5% was sufficient to meet the liability of the petitioner.

5. On 23.10.2020, the 1st respondent issued a revised show cause notice stating that there were discrepancies between the Income Tax Returns of the petitioner, for the tax period 2014-15, and the monthly VAT returns filed by the petitioner for the same period and called upon the petitioner to show cause why the difference in turnover should not be treated as suppressed turnover and taxed accordingly. Apart from this, there was also a proposal to impose tax under Section 4(7)(b) & (d) of the A.P VAT Act, instead of under the composition scheme, on the ground that the petitioner had not produced the books of accounts and other VAT records. This would mean that the petitioner would have to pay tax @ 14.5% on the turnover of the petitioner, after a standard deduction of 30% instead of 5% under the composition scheme.

6. The 1st respondent, on 31.03.2021, had passed the assessment order levying tax @ 14.5% for the year 2014-15 and the year 2015-16 on a turnover of Rs.4,82,88,208/-. The petitioner was directed to pay a sum of Rs.50,14,541/- as tax after deducting the tax which had already been paid for this period.

7. Aggrieved by this order of assessment, the petitioner moved W.P.No.5303 of 2022 before this Court. The 1st respondent, had thereafter, passed an ex parte penalty order, dated 21.05.2021, imposing penalty under Section 53(3) of the A.P VAT Act for a sum of 100% tax

imposed. Aggrieved by this order of penalty, the petitioner moved W.P.No.5350 of 2022.

8. The case of the petitioner is that the impugned order has been passed without considering the facts and the composition forms filed by the petitioners. Apart from this, the petitioner would also contend that the order of assessment and penalty are beyond limitation.

9. Sri G. Narendra Chetti, learned counsel appearing for the petitioner would contend that the 1st respondent had passed the assessment order by invoking the extended period of limitation, of six years, under Section 21(5) of the A.P VT Act, 2005. He would submit that such extended period of limitation, which can be invoked, only on willful evasion of tax, could not have been invoked in the present case as there is no willful evasion of tax. Learned counsel for the petitioner would submit that even if such extended period of limitation is permissible, a large part of the period, considered under the assessment order, would be barred by limitation.

10. Learned counsel for the petitioner would contend that the tax period in question is 2014-15 and 2015-16. Section 21(5) of the A.P VAT Act reads as follows:

“Where any willful evasion of tax has been committed by a dealer, an assessment shall be made to the best of his judgment by the authority prescribed within a period of six years of date of filing of the return or the first return relating to such offence.”

11. This would mean that the period of six years would be available from the date of filing of the returns. Under the scheme of the A.P VAT Act, the returns are filed within 20 days after the expiry of every month. That would mean returns for the month of April, 2014 would have to be filed by 20th May, 2014. The six year period of limitation for assessment of this tax period, even under Section 21(5) of the A.P VAT Act, would be 20.05.2020. However, the assessment was carried out on 31.03.2021. Learned counsel for the petitioner would contend that in such circumstances, the assessment of tax up to February, 2015 is barred by limitation.

12. Learned counsel for the petitioner would also contend that where a part of the period, under an assessment order, is beyond limitation, it would be necessary to set aside the entire order and remand the matter back to the Assessing Officer, for passing a fresh assessment order in relation to the period which is within limitation. For this purpose, he relies upon the judgment of a Division Bench of this Court, dated 16.08.2023, in W.P.No.4805 of 2021.

13. Section 20(1) of the A.P VAT Act stipulates that every registered dealer shall submit a return or returns along with the proof of payment of tax in the manner and time, to such authority as may be prescribed. This return is subject to scrutiny, by the assessing authority. Under Section 21(4) such scrutiny can be carried out and an assessment

order can be passed by the authority within a period of four years from the end of the period for which the assessment is to be made. Section 21(5) states that this period would be six years from the date of filing of the return or the first return relating to such an offence, where there is willful evasion of tax.

14. The period for which a return is to be filed, is not set out in the main Act. However, Section 20(1) of the A.P VAT Act states that the period may be prescribed. That is, the period was left open to be prescribed under the rules made under this Act. The period for which returns would have to be filed, under the A.P. VAT Act, would be the calendar month. There is also no dispute that the petitioner had been filing returns for each calendar month. Rule 23(1) also stipulates that returns for each month would have to be filed on or before 20th day of succeeding month.

15. A conjoint reading of all the aforesaid provisions would mean that a best judgment order, of assessment, in the case of willful evasion of tax, by the dealer, would mean that the period of assessment, of six years, for every month would commence from the 20th day of the succeeding month, where returns have been filed in time. As there is no dispute that the returns have been filed, by the petitioner, within the prescribed time, the limitation of every month would have to be taken into account. In such circumstances, the order of assessment, dated

31.03.2021, is beyond the period of limitation set out for the months of April to February of the financial year 2014-15. Since the assessment order is beyond the period of limitation, the order of assessment, dated 31.03.2021, passed by the 1st respondent is to be set aside for the period April, 2014 to February, 2015.

16. Learned counsel for the petitioner contends that a Division Bench of this Court, by its order dated 16.08.2023, in W.P.No.4805 of 2021, had held that in such circumstances, the entire order would have to be set aside and remanded to the extent of the period of which limitation would still be available. We have gone through the said order, and do not find any such ratio. However, the fact remains that the period beyond limitation would have to be excluded and a fresh computation of the tax that would have paid would have to be undertaken. For this purpose, it would be more appropriate that the entire order is set aside and the matter is remanded for a fresh assessment, by the Assessing Officer, for the period which is within limitation. Apart from this, the petitioner has also raised a ground that the levy of tax @ 14.5%, without giving the benefit of the composition scheme, is impermissible as the Assessing Authority had not verified the forms of composition given by the petitioner and endorsed by the 1st respondent.

17. The order of Penalty, dated 21.05.2021, is based upon the order, dated 31.03.2021. Once the order of assessment itself has been set side, the order of penalty would not survive.

18. For all the aforesaid reasons, both the Writ Petitions are allowed set-aside the order of assessment, passed by the 1st respondent on 31.03.2021 as well as the order of penalty, passed by the 1st respondent on 21.05.2021. However, it would be open to the 1st respondent to pass a fresh order of assessment against the petitioner, for the tax period March, 2015 to March, 2016, after giving due opportunity of hearing to the petitioner and after considering all the objections being raised by the petitioner. It would also be open to the 1st respondent-Assessing Officer to take up penalty proceedings, if the same is warranted, after an order of assessment had been passed. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO,J

DR. K. MANMADHA RAO,J

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE DR JUSTICE K. MANMADHA RAO

WRIT PETITION NOs.5303 & 5350 of 2022
(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 21.04.2025

RJS