APHC010440592023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3488]**
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

<u>WRIT PETITION NO: 22663/2023</u>

Between:

Sri Venkateswara Constructions **...PETITIONER**

AND

The Assistant Commissioner Of State Tax and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. G NARENDRA CHETTY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX
2. Y V ANIL KUMAR (Central Government Counsel)
3. J UGRANARASIMHA (SC FOR APIIC)

The Court made the following order:

(per Hon’ble Sri Justice R Raghunandan Rao)

The petitioner had undertaken certain works for M/s. Andhra Pradesh Industrial Infrastructure Corporation (herein referred to as “M/s. APIIC”), which is arrayed as 4th respondent in the present Writ Petition. The works conducted in this regard during the period 01.04.2021 to 31.11.2022 became the subject matter of assessment which is disputed by the petitioner.

2. It is the case of the petitioner that the petitioner was liable to pay CGST @ 6% and SGST @ 6% for the works executed by the petitioner for the 4th respondent for the period 01.04.2021 to 01.01.2022 and @ 9% CGST and 9% SGST for the works executed from 01.01.2022 onwards. The petitioner contends that tax was collected @ 12% for the period 01.04.2021 to 01.01.2022 and paid to the GST department. For the period 01.01.2022 till 30.11.2022, the 4th respondent only remitted 12% as CGST and the same had been passed on to the petitioner by the department. However, the 4th respondent which should have paid 18%, had paid only 12% and the 4th respondent is liable to pay the remaining 6% tax. The petitioner relies upon a letter issued by the Zonal Manager, Kadapa of the 4th respondent, dated 22.05.2023, wherein the liability of the 4th respondent to pay GST @18% for work measured and recorded after 01.01.2022 is a clear admission of the liability of the 4th respondent.

3. As far as the tax liability of the petitioner for the period 01.04.2021 to 01.01.2022 is concerned, the petitioner contends that the petitioner is liable to pay CGST and SGST @ 6% respectively on account of notification No.24/2017– Central Tax (rate), dated 21.09.2017, (herein referred to as ‘notification No.24/2017’) which provided for concessional rate of tax. The

relevant entry providing for the concessional rate of taxation @ 6% is as follows:

Sl. No.	Chapter Section or Heading	Description of Service	Rate (Per Cent)	Condition
3	Heading 9954 (Construction Services)	(vi) Composite supply of Works Contract as defined in Clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a Local Authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) clinical, or	6	-

		(iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of Schedule III of the Central Goods and Services Tax Act, 2017.		

4. The 1st respondent, while assessing GST, for the period 01.01.2022 to 30.11.2022, had assessed tax payable between 01.04.2021 to 01.01.2022 @ 18%. The 1st respondent took this view on the ground that the concessional rate of 12% can be paid only in relation to works done on behalf of a government entity which also meets any one of the three requirements set out at a, b or c in the notification. The 1st respondent took the view that the 4th respondent is not a Government entity and that none of the three conditions have been fulfilled.

5. The petitioner contends that condition-a set out in the above notification, applies to the works executed by the petitioner and as such the 1st respondent could not have levied tax @ 18% by rejecting the concession available to the petitioner.

6. The counter affidavits filed by the respective respondents' dispute the above contentions.

7. The two issues that come up before this Court is whether M/s. APIIC is a government entity and whether any of the three conditions set out in the notification are applicable to the works executed by the petitioner.

8. The 4th respondent, in its counter specifically, states that 99.99% of the shares of the 4th respondent are held by the State Government. This contention has not been denied. Therefore, it must be held that the 4th respondent is a State entity.

9. The works which are now the subject matter of taxation under the impugned assessment orders are as follows:

Work-1: Construction of approach roads and drains to RBF 1, 2, 3 & 4 at YSR EMC, Kopparthy

Work-2: Formation of internal roads and CD works for IP, MSME, Tallapaka, Thallapaka village, Rajampet Mandal, YSR Kadapa District

Work-3: Construction of internal roads MR-U(part) and CR-7 (part) at YSRJMIH, Kopparthy, Kadapa District

Work-4: Construction of internal roads MR-9 at YSRJMIH, Kopparthy, YSR District.

10. Before any further consideration of these works, it is necessary to mention that the abbreviations ‘YSR EMC’ would mean YSR Electronic Manufacturing Cluster, the abbreviation ‘IP, MSME’ would be Industrial Park, MSME and the abbreviation ‘YSR JMIH’ would mean YSR Jagannana Mega Industrial Hub.

11. The works undertaken by the petitioner, as described above, are works taken up to create infrastructure in the Electronic Manufacturing Cluster and the Mega Industrial Hub at the locations mentioned above. The purpose of these constructions is to create infrastructure for assisting the entrepreneurs and others who would set up their manufacturing units or service units in these places which are created for such purposes.

12. Coming to the conditions stipulated in the notification 24/2017, the conditions in b and c are clearly not applicable to the present case. The only condition left is condition-a, which states that any civil structure or original work meant predominantly for use other than for commerce, industry or any other business or profession would be eligible for the concessional rate of tax. In the present case, the roads constructed by the petitioner are for use in the industrial areas developed by the 4th respondent. The roads would be used by the units which would function from these areas. However, the usage of these roads by the units may not be the criteria for deciding whether these structures are being used for commerce industry or business or profession.

13. The issue that is required to be considered is whether the 4th respondent would be using these works for commerce industry or any other business or profession. Though the 4th respondent is an entity of the Government and is involved in promotion of industry in the state, the fact remains that the 4th respondent is conducting the business of developing industrial parks and industrial areas and recovering the cost of development from the entrepreneurs who set up units in these areas by including the same in the price charged for selling the said developed lands to these entrepreneurs.

14. In the circumstances, it must be held that none of the three conditions would be applicable and the 1st respondent has not committed any error in assessing the tax payable by the petitioner @ 18% for the period 01.04.2021 to 01.01.2022.

15. Though the petitioner is primarily liable to pay the aforesaid tax, the arrangement between the petitioner and the 4th respondent is that the 4th respondent would pay the tax due to the petitioner who would then pass it on to the GST Department. The letter dated 22.05.2023 reflects this arrangement. Further, there is no contention in the counter affidavit of the 4th respondent that it is not liable to pay such tax. In any event, the fact that the 4th respondent had paid 12% tax for the period 01.04.2021 to 01.01.2022, on account of the understanding of both the petitioner and the 4th respondent that

the rate of tax is 12%, would also show that the arrangement between the two is that the 4th respondent would bear the burden of the payment of the GST through the petitioner. It is settled law that in a case of indirect taxation, the person who is primarily liable for payment of such tax is permitted to pass on the burden to the purchaser provided there is such an arrangement between the two of them. In the present case, such a situation does exist.

16. In the circumstances, this Writ Petition is disposed of, affirming the impugned order dated 04.08.2023 vide DIN: 3704082373842 passed by the 1st respondent for the tax period 01.04.2021 to 30.11.2022. However, there shall also be a direction to the 4th respondent to pay the tax of differential amount for the period 01.04.2021 to 30.11.2022 to the petitioner to enable the petitioner to pass on the said tax to the GST Department. The said payment shall be cleared within a period of two (02) months from the date of receipt of this order. Needless to say, if any interest is recoverable from the petitioner for late payment, the same would also have to be borne by the 4th respondent. There shall be no order as to costs.

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

R RAGHUNANDAN RAO, J

HARINATH.N, J

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

<u>WRIT PETITION NO: 22663 of 2023</u>

(per Hon'ble Sri Justice R Raghunandan Rao)

24.07.2024

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