THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.60 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. B.Srinivas, learned counsel for the petitioner and Mr. K.Raji Reddy, learned Senior Standing Counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the order dated 05.11.2022 passed by respondent No.1.

3. Before adverting to the order impugned, it may be mentioned that petitioner is a private limited company and a registered dealer under the Telangana Value Added Tax Act, 2005 (briefly, 'the VAT Act'), assessing officer being respondent No.4. Petitioner is engaged in the business of preparation of ready mix concrete and execution of earth works. For the assessment period 2009-2010 to 2010-2011, respondent No.3 passed an order on 29.03.2014

holding that an amount of Rs.1,38,892.00 was excess tax paid by the petitioner.

4. However, respondent No.2 issued a show cause notice dated 03.08.2017 proposing to *suo motu* revise the order dated 29.03.2014. It was alleged that insurance claim received by the petitioner was a taxable item. Further, it was proposed to levy tax on the sale of old tyres and oil as well as scrap items sold by the petitioner. Besides, respondent No.2 also proposed to levy tax on transportation charges etc.

5. Petitioner submitted reply dated 21.02.2018 to respondent No.2 objecting to the proposals made. It is stated that without considering the reply of the petitioner and without granting personal hearing, respondent No.2 passed the order dated 23.03.2020 revising the order dated 29.03.2014 for the aforesaid tax period raising a demand of Rs.14,73,133.00.

6. To give effect to the aforesaid order, respondent No.4 issued a consequential order dated 19.06.2020 revising the order dated 29.03.2014.

7. Being aggrieved, petitioner preferred appeal before the Telangana Value Added Tax Appellate Tribunal (Tribunal) constituted under Section 33 of the VAT Act. For maintaining the appeal before the Tribunal, petitioner paid 25% of the disputed tax which was a pre-condition.

8. Contention of the petitioner before the Tribunal is that revisional order dated 23.03.2020 is beyond limitation and therefore it is a nullity.

9. Petitioner also filed a stay petition before respondent No.1 for stay of the revisional order dated 23.03.2020 during pendency of the appeal. Respondent No.1 passed an order dated 05.11.2022 in the stay petition directing the petitioner to pay 50% of the disputed tax while giving credit to any amount already paid. Thus, in effect, petitioner has been directed to pay further 25% of the disputed tax.

10. It is the aforesaid order which has been challenged in the present proceeding.

11. Relevant portion of the order dated 05.11.2022 reads as follows:

> I have examined the impugned orders and the contentions of the appellant put forth in the grounds of

appeal. Without expressing any opinion on the merits of the case, I feel it just and proper to grant stay of collection of **50%** of the disputed tax out of the total disputed tax of **Rs.14,73,133/-** on a condition that the appellant petitioner shall pay **50%** of the disputed tax i.e., **Rs.7,36,567/-** within **four (4)** weeks from the date of receipt of this order with a direction that the assessee will be given credit of amounts, if any, already paid by them at the time of filing of appeal. The stay will be in force till disposal of the appeal by the Hon'ble Telangana VAT Appellate Tribunal.

12. As already mentioned above, deposit of 25% of the disputed tax by the petitioner is a condition precedent for maintaining the appeal before the Tribunal. Over and above the aforesaid amount, it is the discretion of the authority, in this case respondent No.1, to insist on levy of such further amount as may be deemed fit and proper.

13. However, learned counsel for the petitioner submits that many of the similarly situated dealers without approaching the Tribunal had directly approached this Court by filing writ petitions questioning the *suo motu* revisional orders on the ground that those were beyond limitation period and hence nullity. Merely because petitioner has availed the remedy provided by the statute, there should not be additional burden on the petitioner.

14. Having regard to the fact that petitioner has already deposited 25% of the disputed tax and considering the fact that the larger issue is pending consideration before this Court, we are of the view that insisting on further payment by the petitioner during the pendency of the appeal would not be just and proper.

15. Accordingly and in the light of the above, the order dated 05.11.2022 is set aside. Further demand on the basis of the revisional order dated 23.03.2020 shall remain stayed and would be subject to outcome of the appeal.

16. This disposes of the writ petition.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

06.01.2023
vs