

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF DECEMBER 2015

BEFORE

THE HON'BLE MR.JUSTICE ANAND BYRAREDDY

WRIT PETITION NOS.56515-56526/2015 (T-RES)

Between:

M/s.Yamuna Eagle Coastal (JV),
First Floor, Indian Overseas Bank,
Landlinks Township,
Konchady,
Mangalore – 575 008,

Represented by its Partner,
Sri Krishnaraja Mayya,
S/o Late Keshava Mayya,
Aged about 44 years

...Petitioner

(By Smt.Vani.H, Advocate)

And :

1. Deputy Commissioner of Commercial Taxes,
Office of the Deputy Commissioner
of Commercial Taxes, (Audit-4), DVO,
Vanijya Therige Bhavana,
Maidan Road,
Mangalore – 575 001.
2. State of Karnataka,
Department of Finance,

Represented by its Secretary,
Vidhana Soudha,
Bengaluru – 560 001.

... Respondents

(By Sri S.V.Girikumar, Additional Government Advocate)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the reassessment order dated 13.11.2015 for the year 2012-13 passed by the 1st respondent vide Annexure-A and etc.

These Writ Petitions coming on for preliminary hearing this day, the Court made the following:

ORDER

These petitions coming on for preliminary hearing, the Government Advocate is directed to take notice for the respondents and the petitions are heard and disposed of having regard to the facts and circumstances.

2. It is the case of the petitioner that the petitioner is shown as a Firm. However, it has been dissolved. The present petitions are filed by one of the erstwhile partners as the orders passed are against the Firm. The petitioner claims that there were regular returns filed of turnover declaring total and taxable

turnovers and also seeking refund of taxes for the year 2012-13.

In support of the tax credit claimed in the returns of turnover on the basis of Tax Deducted at Source (TDS), petitioner has produced TDS certificates issued by Mangalore SEZ Limited.

These certificates were filed before the jurisdictional local VAT office as on 11.09.2012 and 22.11.2012. The returns of

turnover filed were deemed as assessed but no refund was issued to the petitioner in terms of the return of turnover. The

first respondent is said to have issued a notice on 14.08.2015 for production of books of accounts and served it on the office

of Coral Housing, of which one Sri Krishnaraja Mayya was the Proprietor. It transpires that the books of accounts of the

petitioner – Firm pertaining to the year 2012-13 were verified by the 1st respondent. After such verification, a pre-assessment

notice dated 08.10.2015 came to be issued proposing to treat the exempted turnover relating to execution of earth excavation

work as taxable turnover and to disallow input tax credit upon

purchase of goods made from the registered dealers. The first respondent had also proposed levy of interest and penalty, apart from denying the tax credited at source. The first respondent, however, has passed the impugned order imposing tax on exempted turnover and denying input tax credit as well as tax credit on account of TDS on the alleged ground that the petitioner had failed to furnish the supporting documents. The levy of Value Added Tax (VAT) by the first respondent on the turnover relating to labour services i.e., execution of earth excavation works, which is beyond the jurisdiction of the first respondent and that the impugned order was passed within 30 days from the date of the show cause notice and therefore, it is alleged that there was no reasonable opportunity afforded to the petitioner. It is this, which is the ground urged in seeking that the assessment order followed by demand notice demanding Rs.60,14,368/- being exorbitant and arbitrary and the same

being an *ex parte* pre-assessment order in gross violation of the principles of natural justice, the petitioner is before this Court.

3. The learned Government Advocate would point out that the petitioner's remedy by way of appeal has not been exhausted. Even otherwise, the claim of the petitioner that there was no reasonable opportunity to produce the books of accounts and has suffered the reassessment order is incorrect. As seen from the record, the petitioner was given at least six opportunities before the very assessment order came to be passed. The same is conveniently suppressed by the petitioner. Therefore, there is no warrant for interference and the petition ought to be summarily dismissed. In any event, if the petitioner is capable of producing books of accounts, which would substantially reduce the tax burden, the petitioner should not be shut out from seeking such remedy. Insofar as the plea of alternative remedy is concerned, since the object would ultimately be to afford opportunity of hearing to the petitioner,

there is no injustice caused if this Court allows these petitions on terms.

4. Accordingly, the petitioner having caused some inconvenience to the respondents and if the matter is now remanded with a direction to make a reassessment after giving an opportunity to the petitioner to produce the necessary material, which would involve some hardship and inconvenience to the concerned officer, which ought to be adequately compensated and the petitioner ought to be mulcted with costs for having neglected the earlier proceedings on the excuse that the petitioner was ill and unable to appear, which is not readily acceptable. Therefore, the petitioner shall pay Rs.10,000/- (Rupees Ten Thousand) in favour of the Commercial Taxes Department as a precondition for the matter to be taken up and after affording an opportunity to the petitioner, the Assessing Officer shall make an order of reassessment, if he is so inclined.

The petitioner shall appear before the 1st respondent - authority without any further notice on **30.12.2015**.

Accordingly, the petitions are allowed in the terms as above.

Sd/-
JUDGE

sma