THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P. SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NANDIKONDA NARSING RAO

<u>Writ Petition No.20503 of 2009</u>

Date :: 13.07.2026

Between:

M/s. Chaitanya Enterprises

…Petitioner

and

The Commercial Tax Officer and 3 others

…Respondents

<u>ORDER</u>: *(per Hon'ble Sri Justice P. Sam Koshy)*

The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking for issuance of a writ order or direction more particularly one in the nature of *writ of mandamus* declaring the action of respondent No.2 in passing the impugned order dated 06.07.2009 in Form 305 levying tax on the basis of best judgment assessment for the tax period September 2005 to

February 2008 in spite of the fact that petitioner had already discharged its liability of tax in terms of the composition exercised by it, as illegal, arbitrary, high-handed, without authority of law and jurisdiction, and the same amounts to acting in violation of the provisions of the Act as well as principles of natural justice; consequently, to set aside the same and restrain the respondents from taking any coercive steps for recovery of the disputed demands pursuant to the order passed by respondent No.2 dated 06.07.2009.

2. Heard Mr. S. Srikanth Goud, learned counsel representing Mr. V. Bhaskar Reddy, learned counsel for the petitioner; and Mr. T. Chaitanya Kiran, learned Assistant Government Pleader representing learned Special Government Pleader for State-Tax, for the respondents.

3. The Writ Petition is one which has been filed by the petitioner in the year 2009 and petitioner enjoys an interim protection since then so far as the impugned order is concerned.

4. The brief facts which led to filing of instant Writ Petition are that the petitioner being a proprietary concern is carrying on the business of undertaking electrical contracts. The nature of contracts is erection of high tension electrical lines, establishment of sub-stations, etc. The petitioner is an assessee under the rolls of respondent No.1-Commercial Tax Officer.

5. Learned counsel for the petitioner contended that for the tax period 2007-2008, the petitioner had executed certain works of erection of a new 33KV inter-linking lines from 132/33 SS Jangaon and also similar erection of 33KV inter-linking lines from 132/SS/33 Peddanagar, Warangal District; the petitioner had opted to pay tax in respect of works contract that he had received under the composition under Section 4(7)(b) of the Andhra Pradesh Value Added Tax (VAT) Act, 2005 (for short, 'Act of 2005'); in terms of option exercised by petitioner, respondent No.1 had accordingly instructed respondent No.4 to recover tax dues @ 4% from the bills payable to petitioner; respondent No.4, in terms of the said instruction, is said to have deducted tax @ 4% and remitted the same to the Commercial Tax Department and accordingly the respondents have also issued certificates of tax collection at source as per Form-501; in terms of the said arrangement, the assessment of petitioner stood completed by respondent No.1 through proceedings dated 03.02.2009 for the period 01.04.2008 to 31.01.2009; however, respondent No.2 meanwhile, initiated proceedings against the petitioner vide notice dated 19.09.2008 in Form – 305A proposing to levy tax to the tune of Rs.28,09,081/- for the tax period between September, 2005 to February, 2008; respondent No.2 contended that petitioner had failed to produce the Books of Accounts in response to the show-cause notice issued; thereafter, petitioner submitted his reply to the show-cause notice on 05.11.2008 duly intimating respondent No.2 in respect of the option exercised by the petitioner under Section 4(7)(b) of Act of 2005 and against which the monthly return had been regularly filed along with the tax collection, and the tax collection issued by respondent No.4 in Form-501; accordingly, the petitioner had sought for dropping of the proceedings; in the reply given by the petitioner to the show-cause notice, petitioner had specifically contended that pursuant to the option exercised by the petitioner under Section 4(7)(b) of Act of 2005, it is not necessary for the dealer to maintain Books of Accounts; petitioner also intimated to the respondent-Department that he had also not claimed input tax in the returns filed for the period in question, while requesting for dropping of the proceedings.

6. Learned counsel for the petitioner further contended that, respondent No.2 however issued again a second notice on 14.11.2008 proposing to confirm the levy of tax in terms of earlier notice issued on the ground that petitioner had not raised any objection for the proposed levy even though petitioner had opted to pay tax under Section 4(7)(b) of Act of 2005; thereafter, petitioner again submitted a reply / representation to respondent No.2 on 05.11.2008 reiterating the earlier contention in respect of the provision to Section 4(7)(b) of Act of 2005 that was exercised by the petitioner under the said section and the collection of tax at source in Form-501 by respondent No.4; petitioner also submitted entire available records in respect of certificate of tax collection along with copies of monthly returns filed in Form-200; and petitioner had also submitted its consolidated yearly statement for the respective assessment years.

7. Learned counsel for the petitioner further contended that in spite of categorical stand taken by the petitioner in both the replies submitted to the two show-cause notices, the respondent No.2, ignoring the same, passed the impugned order dated 06.07.2008 in Form-305 confirming levy of tax proposed in Form-305A to the tune of Rs.28,09,081/-; it is this order which is under challenge in the instant case; in the course of passing of the impugned order, respondent No.2 had not given any reasons, findings, in respect of the contentions that petitioner have raised in response to the two show-cause notices; that respondent No.2 had not properly appreciated the records, documents and materials submitted by the petitioner along with reply to the show-cause notices; and therefore, in the absence of scrutiny of the materials and the provisions of law as was submitted in the reply to the show-cause notices, the decision of respondent No.2 in the course of passing of the impugned order based upon the best judgment assessment is *per se* bad in law, arbitrary and liable to interdicted.

8. Learned counsel for the petitioner further contended that the only reason available for passing the impugned order confirming levy of tax was on the ground that petitioner had not produced the Books of Accounts in spite of repeated opportunities being given to the petitioner; this finding of respondent No.2 was bad for the reason that it was for the dealers who do not have the Books of Account that proviso to Section 4(7)(b) of Act of 2005 stood enacted and which the petitioner had religiously followed after having opted the levy of tax on the basis of Section 4(7)(b) of Act of 2005; and therefore contended that, for this reason also, the impugned order was bad in law.

9. Learned counsel for the petitioner further contended that in terms of Rule 38(2) of Act of 2005, the requirement of a dealer executing works contract and opting to pay tax under Section 4(7)(b) has to maintain records, viz., (a) payments received from the contractee; (b) records of entry in Form-VAT 200; and (c) records of tax collection at source or tax deduction at source made from the payments received on the works contract. Other than these records, no other records are required to be maintained by the contractor who opts under Section 4(7)(b). It is these facts and statutory provisions which have not been

properly appreciated and considered by the 2nd respondent in the course of passing of the impugned order on 06.07.2009.

10. Learned counsel for the petitioner lastly contended that since the petitioner had an agreement with respondent No.4 during the relevant period, the petitioner did not have any other works contract undertaken and that for the entire work executed with respondent No.4 and the payment received in turn from respondent No.4, the respondent No.4 had deducted tax @ 4% and issued certificate in Form 305 to certify the proof of tax collection at source and since the petitioner did not have any other works contract executed, the petitioner did not have any other payment received during the said period. Therefore, the stand of the respondents in passing an order based upon best judgment assessment was not sustainable and liable to be set aside.

11. *Per contra*, the learned Assistant Government Pleader submits that the instant writ petition at the first instance was not maintainable as there was a remedy of appeal available to the petitioner. Hence, filing of a writ petition under Article 226 of the Constitution of India is not maintainable when there was a statutory remedy available.

12. According to the learned Assistant Government Pleader the entire initiation of the proceedings by respondent No.2 was based upon an audit that was conduct at the premises of the petitioner on 23.08.2008. When the audit team visited the business premises, the proprietor was not available and the person in-charge of the establishment at the relevant point of time was not in a position to produce the books of accounts relating to business, however the person in-charge gave an undertaking of arranging the books of accounts on a date given by respondent No.2 to the petitioner.

13. It was the contention of the learned Assistant Government Pleader that from the available records it would reveal that the petitioner in fact had purchased certain electronic goods from outside the State by issuing two C Forms. It is in this context that the respondents thought it necessary to verify the books of accounts so as to ascertain whether the petitioner purchased entire electrical goods within the State of A.P. so as to ensure that the option exercised by the petitioner under the composition scheme was in accordance with law.

14. According to the learned Assistant Government Pleader in spite of repeated notices being issued, there was no response received from the petitioner. Thus, non-cooperation on the part of the petitioner left the respondents to decide the proceedings based upon the best judgment assessment. According to the learned Assistant Government Pleader it is a case where the reply to the show cause notice submitted by the petitioner was not convincing enough. Further, from the contents of the reply to the show cause notice what could be inferred was that the petitioner was not willing to produce the books of accounts. Furthermore, the Act of 2005 nowhere suggests that a VAT dealer who has opted for composition scheme under Section 4(7)(b) of the Act of 2005 need not maintain or furnish the books of accounts when summoned by the Assessing Authority and it was for this reason that the best judgment assessment was passed.

15. According to the learned Assistant Government Pleader no prejudice would had been caused if the petitioner would had shown the books of accounts to the respondents and, if there would had been no purchase made from outside the State of A.P., the respondents could have dropped the proceedings affirming the composition scheme availed by the petitioner.

16. Having heard the contentions put forth on either side and on perusal of records, at the first instance, it would be very relevant to take note of the provisions of Section 4 of the Act of 2005. For ready reference, Section 4 of the Act of 2005 is reproduced hereunder:

> *"**4. Charge to tax** :*
>
> *………*
>
> *(7) Notwithstanding anything contained in the Act,-*
>
> *a) every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act:*
>
> *Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation such dealer shall pay tax at the rate 22[specified in Schedule-V] on the total consideration received or receivable subject to such deductions as may be prescribed;*

b) Every dealer executing works contract may in lieu of the amount of tax payable by him under clause (a) opt to pay by way of composition 24[at the rate of five percent (5%) of the total amount received or receivable by himself towards execution of the works contract either by himself or though sub-contractor subject to such conditions as may be prescribed:

Provided that the sub-contractor, executing works contract on behalf of the contractor, who opts to pay tax under this clause, shall be exempted from levy of tax.

c) Omitted by Act No.21 of 2011 w.e.f. 15.9.2011.

d) Every dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may, in lieu of the amount of tax payable by him under clause (a) opt to pay tax by way of composition at the rate of five percent 5% on 25% of the amount, received or receivable towards the composite value of both the land and building or the market value fixed therefor for the purpose of stamp duty, whichever is higher, subject to such conditions as may be prescribed:

Provided that, no tax shall be payable by the subcontractor of a works contractor, who opts to pay and paid tax under this clause on the turnover relating to the amount received as a sub-contractor from such main contractor towards the execution of works contract, whether wholly or partly, subject to the production of evidence to prove that such main contractor has exercised such option in respect of the specific work and subject to such other conditions as may be prescribed.

e) Omitted by Act No.21 of 2011 w.e.f. 15.9.2011.

f) Any dealer registered or is liable to be registered] for Turnover Tax and executing any works contracts shall pay tax at the rate of 1% on total value of the goods at the time of incorporation of the goods used: Provided that where accounts are not maintained to determine the correct value of the goods at the time of incorporation, such dealers shall pay tax at the rate of 1% the total consideration received or receivable subject to such deductions as may be prescribed.

g) notwithstanding anything contained in clauses (a) to (f) above, no tax shall be leviable on the turnover of transfer of property in goods whether as goods or in some other form involved in the execution of works contract, if such transfer from the contractor to the contractee constituted a sale in the course of inter-State trade or commerce under section 3 or a sale outside the State under section 4, or a sale in the course of import or export under section 5 of the Central Sales Tax Act, 1956;

h) no tax shall be payable under (a) of this sub-section on the turnover relating to amounts paid to a sub-contractor as consideration for the execution of works contract whether wholly or partly subject to the production of proof that such sub-contractor is registered as a Value Added Tax dealer under the Act and the turnover of such amount is included in the return prescribed filed by such sub-contractor].

i) [Omitted]"

A plain reading of the aforesaid provision, more particularly clause (b) what is reflected is that under the said clause any dealer who executes a work contract may instead of paying tax under clause (a), opt to pay by way of composition at the rate fixed on the total amount received or receivable by him towards execution of the works contract. The proviso clause of the said clause (b) further provides exemption from levy of tax for all those dealers who opt payment of tax under Section 4(7)(b) in the event if the dealer is availing the payment of tax in terms of clause (b) of Sub-Section (2) of Section 4.

17. Considering the factual matrix in its entirety and the legal position as it stands including the statutory provision under Section 4(7)(b), we have no hesitation in reaching to the conclusion that once when the petitioner having opted for composition scheme under Section 4(7)(b) and more particularly having complied the requirement under Rule 31(2) and also submitted the entire documents available with him those which are required to be maintained under Rule 31(2), none of which having been considered by respondent No.2 in the course of passing the impugned order dated 06.07.2009, it is therefore bad in law. Moreover, no reasons and discussion has been made by respondent No.2 on the point raised by the petitioner in reply to the show cause notice. Thus, the impugned order stands vitiated on account of it being a non-reasoned order and also becomes violative and in contravention to the provisions of Section 4 (7)(b).

18. For all the aforesaid reasons, we are of the considered opinion that the impugned order dated 06.07.2009, passed by respondent No.2, is not sustainable and the same deserves to be and is accordingly set aside / quashed. The writ petition to the aforesaid extent stands allowed.

19. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

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P. SAM KOSHY, J

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NARSING RAO NANDIKONDA, J

Date: .07.2026
Ndr / GSD