

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY
PRESENT**

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

WRIT PETITION NO: 25424 OF 2019

Between:

M/s. KNND Associates Private Limited, No.301, 3rd Floor, Olbee Business Centre, Rajbhavan Road, Somajiguda, Hyderabad-500082. State of Telangana. Rep. by its Finance and Accounts Manager and Authorised Signatory, Mr. N. P. Ravishankar.

...PETITIONER

AND

1. The Deputy Commercial Tax Officer, Vidyanagar Circle, Secunderabad Division, Hyderabad.
2. The Commercial Tax Officer, Vidyanagar Circle, Secunderabad Division, Hyderabad.
3. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st Respondent in non refunding of TDS amount of Rs.35,98,513/- for the tax period August, 2016 to June, 2017 as arbitrary, contrary to laws, without jurisdiction and the same is in violation of principles of natural justice and consequently set aside the proceedings of the 1st respondent dated 18/09/2019, as null and void more particularly invoking provisions of Section 57 of the TVAT Act by the 1st respondent for forfeiture of tax instead of refunding the TDS amount due to the petitioner in high handed and arbitrary manner not valid in the eye of law.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the 1st respondent in forfeiting the tax to a tune of Rs.35,98,513/- vide Proceedings dated 18/09/2019 for the tax period August, 2016 to June, 2017 which is actually liable to be refunded to the petitioner as TDS amount, till the disposal of the above writ petition, otherwise the petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI. SHAIK JEELANI BASHA

Counsel for the Respondents : GP FOR COMMERCIAL TAX

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WP.No.25424 of 2019

ORDER:

This Writ Petition is filed questioning the proceedings dt.18.09.2019 of the Audit Officer(1st respondent) served on the petitioner on 20.09.2019 for the tax period 2016-17 and 2017-18 refusing to refund to the petitioner tax deducted at source amounting to Rs.35,98,513/- and wrongly forfeiting the same under Section 51 of the Telangana VAT Act, 2005 (for short 'the Act').

2. According to the petitioner, it had a contractual relationship with M/s Infosys Limited for execution of certain works as per the orders placed on it by M/s Infosys Limited and that it had wrongly deducted TDS.

3. According to the petitioner, since the contractee is in a SEZ zone, works executed by the contractor/sub-contractor would not be subjected to tax under Section 7A of the Act.

4. The 1st respondent had, in the impugned order dt.18.09.2019, denied refund to the petitioner on the ground that in the counter affidavit filed by the 1st respondent it is contended that there was no confirmation from M/s Infosys

Limited about the execution by the petitioner of the contract works during the period 2016-17 and 2017-18.

5. However, it is not in dispute that M/s Infosys had addressed a letter HYD/CT/02 dt.20.02.2020 to the 1st respondent confirming that petitioner was its contractor and had executed certain works under Works Contract for the above said period and that they had deducted VAT TDS against the payments made to the petitioner and remitted to the CTO, Madhapur Circle Hyderabad, periodically, and also issued 501A Certificates to the Contractor periodically. Copies of 501A certificates for the financial year 2016-17 and 2017-18 were also furnished to the 1st respondent.

6. In view of the furnishing of material by M/s Infosys Limited to the 1st respondent about the petitioner executing works for it, and also tax having been deducted by it of VAT TDS, we are of the opinion that the 1st respondent would have to reconsider the issue about the refund of tax claimed by the petitioner.

7. Accordingly, this Writ Petition is allowed; the impugned order dt.18.09.2019 passed by the 1st respondent is set aside; the matter is remitted back to the 1st respondent to consider afresh the issue of refund after taking into account

the material forwarded to him vide letter No.HYD/CT/02 dt.20.02.2020 by M/s Infosys Limited, and the documents annexed to the said letter. This exercise shall be completed within a period of eight (08) weeks from the date of receipt of a copy of this order. No order as to costs.

8. Consequently, miscellaneous petitions pending if any, shall stand closed.

//TRUE COPY//

SD/-K.AMMAJI
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Deputy Commercial Tax Officer, Vidyanagar Circle, Secunderabad Division, Hyderabad.
2. The Commercial Tax Officer, Vidyanagar Circle, Secunderabad Division, Hyderabad.
3. The Principal Secretary, Revenue (CT) Department, State of Telangana, Telangana Secretariat, Hyderabad.
4. One CC to Sri Shaik Jeelani Basha Advocate [OPUC]
5. Two CCs to the GP for Commercial Tax, High Court for the State of Telangana at Hyderabad. (OUT)
6. Two CD Copies.

CHR



HIGH COURT

DATED:30/09/2020

ORDER

W.P.No.25424 of 2019



ALLOWING THE WRIT PETITION
WITHOUT COSTS

Amr 8
5/10/2020