(2014) 09 AP CK 0095

Andhra Pradesh High Court

Case No: Writ Petition No. 8665 of 2014

Mark Infrastructure Pvt. Ltd.	APPELLANT
Vs	
The Commercial Tax Officer	RESPONDENT

Date of Decision: Sept. 9, 2014

Acts Referred:

- Andhra Pradesh Value Added Tax Act, 2005 - Section 22(3), 29, 4(7), 4(7)(a), 4(7)(b)
- Constitution of India, 1950 - Article 14, 19(1)(g), 226, 227, 265

Citation: (2014) 59 APSTJ 164 : (2015) 77 VST 297

Hon'ble Judges: Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench: Division Bench

Advocate: M.V.J.K. Kumar, Advocate for the Appellant; M. Govind Reddy, Learned Special Standing Counsel, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.
The assessment order passed by the first respondent on 31.08.2013 is questioned in this Writ Petition as being arbitrary, illegal, in violation of principles of natural justice, Articles 14, 19(1)(g) of the Constitution of India and Section 4(7)(d) of the A.P. VAT Act, 2005 (hereinafter called the Act). The petitioner also seeks a declaration that they are not liable to pay tax in the light of the exemption under the proviso to Section 4(7)(d) of the Act; and, consequently, to direct the respondents to refund the tax deducted from the main contractor.

2. The petitioner is a works contractor engaged in the business of executing works relating to construction of buildings. The petitioner entered into an agreement with M/s. Sri Ramdas Motor Transport Corporation (for short SRMT) on 04.02.2011 for executing the works contract of construction of residential apartments. The said agreement dated 04.02.2011, which required the petitioner to construct residential apartments in the areas mentioned in the agreement within 24 months, stipulated

that payment would be made to them according to the stage of construction. The petitioner claims that SRMT, which is the owner of the property, had entered into agreements with various individual purchasers for the construction and selling of apartments; while SRMT was the owner of the land, they were nevertheless a contractor as they enter into agreements with independent purchasers for construction and selling of residential flats, along with the property; sale by SRMT, to individual and independent purchasers, is a deemed sale taxable under the provisions of the Act as works contracts.

3. It is the petitioners case that they had sought an option, for payment of tax by way of composition, as per the provisions of the Act and Rule 17(4) of the AP VAT Rules (hereinafter called the Rules); pursuant to the amounts received towards execution of the works contract, in a phased manner from SRMT, they had filed VAT 200 returns disclosing the contractual receipts, and had produced TDS certificates in support of payment of tax @ 1.25% as opted by them u/s 4(7)(d) of the Act; as they are builders, under the agreement with SRMT, Section 4(7)(d) of the Act, which is applicable to a dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes, is applicable to them; SRMT was deducting tax from them on the premise that they were liable to pay tax @ 1.25% in the light of their option for composition; the petitioner was also under a similar misconception; the proviso to Section 4(7)(d) exempts the sub-contractor from payment of tax; the petitioner, being the sub-contractor, is eligible for exemption and is not liable to pay tax under the Act; however, for the works executed by them, SRMT had deducted tax @ 1.25% from their contractual receipts; the petitioner had disclosed the receipts, relating to the execution of various contracts, in their returns and had provided details of the TDS; the same were accepted by the second respondent; pursuant to the authorisation issued by the third respondent, the first respondent conducted audit of their books of accounts; on verification, and pursuant to an authorisation for assessment, a notice dated 12.08.2013 was issued by the first respondent calling upon them to show cause against the proposal to levy tax @ 4% and 5%, as the case may be, on the turnover relating to the works executed for SRMT, along with other contracts, representing Rs. 8,60,02,248/- during the assessment year 2011-2012; since they had opted for composition, u/s 4(7)(d) of the Act, tax @ 4% or 5% could not be levied on them for the works executed by them for SRMT; they had filed their reply dated 30.08.2013 contesting the levy as improper, and had sought a personal hearing; however, without considering their objections and their request for personal hearing, the impugned order came to be passed referring to a letter dated 30.08.2013 whereby the petitioner is alleged to have agreed to pay the tax; the said letter dated 30.08.2013 was not addressed by the petitioner; the objections were sent to the first respondents office through their employee who had, by mistake, submitted it at the office of the second respondent, who is the regular assessing authority before whom returns were filed by the petitioner; as the offices of the first and second respondents were in the same

building, the reply ought to have been forwarded by the second respondent to the first respondent; the Managing Director of the petitioner fell sick during the period 03.09.2013 to 06.02.2014; he suffered from viral hepatitis and, consequently, the appeal could not be filed within time; the petitioner was not in a position to understand the show-cause notice, as nothing was mentioned therein giving reasons for levying a higher rate of tax; the contractual receipts from SRMT were disclosed in the returns; the impugned order levying tax on the petitioner at 4% or 5%, u/s 4(7)(b) and (c), instead of 1.00% or 1.25% u/s 4(7)(d), is without authority of law and is in violation of principles of natural justice; the petitioner is exempted from payment of tax as SRMT is liable to pay tax; even if the petitioner is ineligible for concessional rate of tax u/s 4(7)(d), they ought to have been levied tax u/s 4(7)(a) if the composition was found unacceptable; SRMT, which is selling flats, had collected tax at 1.25% from independent purchasers, and had remitted the same to the State exchequer under Rule 9 of the Rules; this shows that SRMT is the main contractor, in terms of the proviso to Section 4(7)(d) of Act; when a penalty order was passed, the petitioner filed an appeal before the first appellate authority which is pending; existence of an alternative remedy is not a bar for filing a Writ Petition; and in the light of the exemption available to the petitioner, and as tax was collected by SRMT by way of TDS and paid to the State exchequer, levy of a higher rate of tax u/s 4(7)(b) and (c) of the Act is illegal.

4. In the counter-affidavit, filed by the first respondent, it is stated that, before passing the impugned assessment order, a pre-assessment show-cause notice was issued to the petitioner; in reply thereto, the petitioner submitted letter dated 24.08.2013, received on 30.08.2013, stating that they had no objection to the proposed assessment; this letter contains the round seal of the petitioner company; he had passed the assessment order only after receipt of the said letter; he had referred to the said letter at page six of the assessment order; the petitioner had, however, suppressed this fact and had deliberately filed a copy of another letter dated 30.08.2013, which was never filed before him, and does not bear his signature or the seal of his office; this letter was filed only to mislead this Court, and to strengthen the petitioners case; after the assessment order was passed, a notice was issued to the petitioner, by the second respondent, asking him to pay VAT; the petitioner submitted a petition dated 19.02.2014 before the third respondent admitting his liability to pay VAT, as levied under the assessment order dated 31.08.2013, and had sought to pay the same in instalments; the third respondent had considered the request sympathetically, and had passed an order dated 05.03.2014 granting the petitioner eight monthly instalments to pay the said amount; as per the said order, the first instalment fell due on 25.03.2014; suppressing these facts, the petitioner had approached this Court by filing the Writ Petition on 20.03.2014, and had obtained interim stay of recovery of VAT on 21.03.2014; in their writ affidavit, the petitioner has neither mentioned that they had filed a petition seeking instalments nor that eight instalments were granted by the

third respondent; the judgments referred to by the petitioner, in the writ affidavit, deal with cases where a contract is awarded to a contractor either by the Government or some other agency and that contractor, in turn, engages subcontractors; in all those cases, the issue involved was whether or not the liability to pay VAT was on the main contractor; in the present case, the petitioner filed a copy of the agreement entered into between them and SRMT, wherein the petitioner was shown as a contractor or builder, and the other party was shown as the owner of the property; hence, there is a direct contract between the owner and the builder; the owner is not a works contractor under the Act, and is not liable to pay VAT; the petitioner has deliberately mis-stated that SRMT is the main contractor, and they are the sub-contractors; they have referred to all those cases where there is a contractor, a contractee and sub-contractors; in the present case, there are only two parties i.e., the owner of the property, and the contractor or the builder; as per clause 8 of the agreement, the petitioner is liable to pay sales tax or VAT and, hence, they cannot rely on these judgments; the petitioner is trying to mislead this Court suppressing facts; the petitioner had entered into an agreement dated 04.02.2011 with SRMT for construction of a residential building at Sarpavaram Junction in Kakinada; as per this agreement, SRMT is the land owner and the petitioner is the contractor or builder; there is a relationship of contractee and contractor in this case; it is not a relationship between the main contractor and a sub-contractor; nowhere is it mentioned in the agreement that the petitioner is a sub-contractor to SRMT; not only has the petitioner failed to prefer an appeal against the assessment order but they had also filed a no objection letter, to the pre-assessment show-cause notice, accepting and admitting their liability under the assessment order which has become final; they also filed a petition before the third respondent seeking instalments; after eight instalments were granted, they had approached this Court suppressing all these facts, and had obtained interim stay; the letter dated 30.08.2013 submitted by the petitioner to them, is different from the letter dated 30.08.2013 mentioned in the writ affidavit; the letter dated 30.08.2013, referred to in the writ affidavit, was never filed before him; the petitioner is deliberately misleading this Court; the genuineness of the medical certificate, filed by the petitioner, is highly doubtful; the petitioner claims to have fallen sick during the period 03.09.2013 to 06.02.2014, and claims to have suffered from viral hepatitis which is a serious illness; yet the Managing Director, of a big company like the petitioner, claims to have consulted only a doctor with an MBBS degree, and did not consult any specialist in the field; even the rubber stamp, on the so called medical certificate, is not visible to the naked eye; even otherwise, the petitioner is not a proprietary concern but is a company; hence, the illness of the Managing Director would not cripple the company, and would not bring its activities to a halt; the company has many directors, and other officers, to look after all its matters; the allegations in the writ affidavit are made only to mislead this Court; this is not a case of a main contractor and a sub-contractor, but is a case of the owner of the property and a builder, as is clear from the agreement filed by the petitioner; the petitioner,

having filed a no objection letter dated 30.08.2013, having admitted their liability and having sought instalments for payment of the entire tax, cannot now question the assessment order on its merits; the present case is not merely one of laches, but is a case where this Court is sought to be mislead by filing an affidavit with false allegations and twisting facts.

5. In their reply-affidavit, it is stated by the petitioner that the letter dated 24.08.2013, said to have been submitted on 30.08.2013, was not filed by the Managing Director who is not aware of the said letter; the said letter is filed by some employee of the company; even he does not state that he had accepted payment; he merely stated that an audit was conducted for assessment; and, referring to the demand by the first respondent, it was stated by the signatory that there was no objection; the Managing Director is not aware of the same, and it cannot be construed as his acceptance for payment of tax contrary to the statutory provisions; on enquiry it is learnt that the employee was coerced to file such a letter; the petitioner had approached the third respondent who informed him that, as an assessment order was passed, it could not be interfered with by him, and he could only grant instalments; pursuant thereto, an order was passed after filing an application; subsequently the petitioner was advised by their auditor that the assessment order was without authority of law, and contrary to Section 4(7)(d) of the Act which does not permit the first respondent to levy tax at 4% or 5% as per Section 4(7)(b) & (c); for construction of commercial or residential buildings, when there is a tripartite agreement, or where the owner of the land enters into an agreement for construction of apartments and sells the same, the owner should be treated as the main contractor; as per the proviso appended to Section 4(7)(d), the petitioner would become the sub-contractor, and is exempted from payment of tax; the clauses of the agreement would be relevant to the extent of payment of tax by the petitioner; they are paying taxes in accordance with the statutory provisions only; as the assessment order was void ab-initio, the Writ Petition was filed; the contention that the petitioner cannot challenge the assessment order in the light of the instalments granted by the third respondent, or that he had suppressed facts is not relevant for filing the Writ Petition challenging the assessment order; the petitioner had approached the first and second respondents who had expressed their inability, and had advised them to approach the third respondent; there is no malafide intention on their part in referring to SRMT as the main contractor and themselves as the sub-contractor; it cannot be said that the petitioner is trying to mislead the Court necessitating issuance of contempt proceedings against the Managing Director; failure to file an appeal does not preclude them from filing the Writ Petition; the no objection letter, alleged to have been filed prior to the assessment order admitting the turnover, cannot be considered as acceptance of liability; the grant of instalments would not predicate against the Writ Petition being entertained, as the assessment order is void; delay and laches are not a bar for entertaining a Writ Petition, under Article 226 of the Constitution of India, when the

assessment order is contrary to the provisions of the Statute; the petitioner had filed their objections to the show-cause notice dated 30.08.2013 addressing it to the first respondent, but had, by mistake, filed it in the office of the second respondent who is their regular assessing authority; such a mistake on the part of the petitioners employee cannot be put against them; the second respondent ought to have forwarded the objections to the first respondent; the Managing Director of the petitioner did not file any letter accepting the demand, and it cannot be said that the petitioner is trying to mislead the Court; it is not for the first respondent to doubt the genuineness of the medical certificate; the order of assessment was handed over to the employee of the petitioner and, in the light of the illness of the Managing Director, no appeal could be preferred there against ; the assessment order is contrary to Section 4(7)(d) and Form 250 of the Act, without authority and jurisdiction, and in violation of Article 265 of the Constitution of India; there is no estoppel against a statute; as the impugned order of assessment is without authority and jurisdiction, the petitioner cannot be denied the remedy of invoking the jurisdiction of this Court under Article 226 of the Constitution of India; the first respondent is estopped from passing an assessment order contrary to Section 4(7)(d) of the Act; the impugned order is in complete derogation of the statutory provisions; and it is also in violation of principles of natural justice, as the first respondent had not applied his mind while passing the assessment order.

6. It is convenient to examine the rival contentions, of Counsel on either side, under different heads.

I. IS THE ASSESSMENT ORDER DATED 31.08.2013

ASSESSING THE PETITIONER TO TAX u/s 4(7)(b) OR (c) OF THE ACT, AND NOT u/s 4(7)(d) OR (a) THEREOF, ILLEGAL AND VOID AB-INITIO?

7. Section 4(7)(b) of the Act, as it stood prior to its amendment by Act 21 of 2011 with effect from 15.09.2011, stipulated that every dealer executing works contract may opt to pay, by way of composition, tax at the rate of 4% on the total value of the contract executed for the Government or local authority. After its amendment, clause (b) of Section 4(7) stipulates that 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, at the rate of 5% of the total amount received or receivable by him towards execution of the works contract either by himself or through the sub-contractor subject to such conditions as may be prescribed. Under the proviso thereto 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. Clause (c) of Section 4(7) of the Act, prior to its amendment by Act 21 of 2011 with effect from 15.09.2011, stipulated that any dealer executing works contracts, other than for the Government and local authority, may opt to pay tax by way of composition at the rate of 4% of the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed. Clause (c) was omitted by Act 21 of

2011 with effect from 15.09.2011.

8. Rule 17(2) of the Rules relates to treatment of works contracts under composition. Rule 17(2)(a) stipulates that any VAT dealer, who executes a contract and opts to pay tax as specified in Section 4(7)(b), must register himself as a VAT dealer. Rule 17(2)(b) stipulates that such VAT dealer shall pay tax at 4%/5% of the total consideration received or receivable whichever is earlier. Rule 17(2)(c) stipulates that, in case where the VAT dealer opts for composition, he shall, before commencing the execution of the work, notify the prescribed authority on Form VAT 250 of the details including the value of the contract on which the option has been exercised. Under the proviso thereto, a consolidated Form VAT 250 can also be filed by the contractor who undertakes multiple works contracts of similar nature. Rule 17(2)(f) stipulates that, if any part of the contract is awarded to a sub-contractor, the sub-contractor shall be exempted from tax on the value of the sub-contract, and shall not be eligible to claim input tax credit on the inputs used in the execution of such subcontract.

9. Dealers executing works contracts for the government or local authorities were, hitherto, entitled to exercise option under clause (b) of Section 4(7) prior to its amendment and every other dealer executing works contracts was entitled to exercise option under clause (c) of Section 4(7) of the Act. After its amendment, the option exercisable by a dealer executing works contract, either for works contracts executed for the Government, local authority or other works, is only under clause (b) of Section 4(7). Exercise of option to pay tax under composition would enable such a dealer to pay tax at the rate of 5% of the total amount received or receivable towards execution of the works contract either by himself or through a sub-contractor.

10. Section 4(7)(d), as it stood prior to its amendment by Act 21 of 2011, stipulated that every dealer, engaged in construction and selling of residential apartments, houses, buildings or commercial complexes, may opt to pay tax by way of composition at the rate of 4% on twenty five per cent of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed. After its amendment, clause (d) of Section 4(7) stipulates that 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 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. Under the proviso thereto, no tax shall be payable by the sub-contractor of a works contractor, who opts to pay and has paid tax under this clause on the turnover relating to the amount received as a subcontractor 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.

11. The twin conditions required to attract Section 4(7)(d), and thereby enable payment of tax at 1.25%, are (1) the dealer should be engaged both in construction and in selling of residential apartments, houses, buildings or commercial complexes; and (2) he should have opted to pay tax by way of composition. Under the proviso thereto, a sub-contractor of such a works contractor (the dealer referred to in Section 4(7)(d)) is exempt from payment of tax. In order to claim such exemption, the sub-contractor is required to produce evidence that the main contractor has exercised the option for composition u/s 4(7)(d) in respect of the specific work. It is only if the works contractor has exercised the option of composition to pay tax u/s 4(7)(d) of the Act, is his sub-contractor exempt from payment of tax.

12. Rule 17(4) of the Rules relates to treatment of Apartment Builders and Developers under composition. Rule 17(4)(a) stipulates that, where a dealer executes a contract for construction and selling of residential apartments, houses, buildings or commercial complexes and opts to pay tax by way of composition u/s 4(7)(d), he must register himself as a VAT dealer. Rule 17(4)(b) stipulates that, before commencement of the execution of the work, the VAT dealer shall notify the prescribed authority on Form VAT 250 of his intention to avail composition for all works undertaken by him. Rule 17(4)(d) requires such a VAT dealer to pay tax by way of composition at 4%/5% on 25% of the total consideration received or receivable or the market value fixed for the purposes of stamp duty, whichever is higher; and the balance 75% of the total consideration received or receivable shall be allowed as deduction for the purpose of computation of the taxable turnover. In effect the tax payable, u/s 4(7)(d) read with Rule 17(4)(d), is 1%/1.25% of the total consideration received or receivable towards the cost of land as well as construction or the market value fixed for the purposes of stamp duty, whichever is higher. Rule 17(4)(e) requires the VAT dealer, executing the contract mentioned in Rule 17(4)(a), to calculate the tax due at the rate of 5% of the total consideration or the market value fixed for the purpose of the Stamp Duty, whichever is higher, and to enter such details in Form VAT 200, filed for the month in which the sale of such property is concluded and registered. The tax due is required to be paid with the return in Form VAT 200, and the particulars of payment of tax, made directly or through the sub-registrar, are required to be reported in the relevant columns in Form VAT 200.

13. The petitioner filed an application for composition of payment of tax in Form VAT 250. The name of the contractee is mentioned therein as SRMT, Kakinada. The nature of the contract is referred to therein as construction of residential apartments, the date of contract as 04.02.2011, and the full value of the contract as Rs. 26 Crores. Form VAT 250 is common to all cases of composition u/s 4(7)(b) to (d).

While the petitioner claims to have ticked column 3 of Form VAT 250 which relates to composition u/s 4(7)(d), the fact remains that the contractees name is shown therein as SRMT, and the nature of contract as construction of residential apartments. Section 4(7)(d) is applicable only to a dealer engaged both in construction and selling of residential houses/buildings/commercial complexes, and not merely to those engaged only in construction, and not in the sale, of residential apartments. It is not even the petitioners case that they are engaged in selling residential apartments. It is evident, therefore, that they are not entitled for composition u/s 4(7)(d) of the Act. Consequently the Form VAT-250 filed by them, exercising the option of composition, could only have been u/s 4(7)(b)/(c) of the Act. Their contention that SRMT is a contractor, and they are the sub-contractor, is also not tenable as Form VAT-250 submitted by them refers to SRMT as the contractee and not as a contractor.

14. The benefit of the proviso to Section 4(7)(d) of the Act is available to a sub-contractor only on production of evidence that the main contractor had exercised option u/s 4(7)(d) in respect of the specific work, and subject to other conditions specified in the Rules. It is only if SRMT was engaged both in the construction, and in the sale, of residential apartments, they had exercised the option of composition u/s 4(7)(d) of the Act, and they had sub-contracted execution of works contract to the petitioner, can the petitioner claim the benefit of exemption under the proviso to Section 4(7)(d) of the Act. No documentary evidence has been placed by the petitioner before this Court to show that SRMT is a dealer engaged both in the construction, and in the sale of, residential apartments; or that SRMT has exercised the option of composition u/s 4(7)(d) of the Act. The agreement, a copy of which is enclosed to the Writ Petition, refers to SRMT as the owner and not as a Contractor. It refers to the petitioner as a contractor or a builder, and not as a subcontractor. It does not refer to SRMT as being engaged in construction of residential apartments. Even if we were to presume that SRMT is engaged in the business of sale of residential apartments, no documentary evidence has been placed by the petitioner on record to show that SRMT is also engaged in construction of residential apartments. As it is evident from the agreement that SRMT is not constructing the subject residential apartments, and the contract for construction of residential apartments between SRMT and the petitioner is between a contractee and the contractor and not between a contractor and his sub-contractor, the petitioners claim, to be entitled for exemption under the proviso to Section 4(7)(d) of the Act, is not tenable.

15. Section 22(3) of the Act stipulates that a company registered under the Companies Act, or any other person notified by the Commissioner, shall deduct, from out of the amounts payable by them to a dealer in respect of works contract executed for them, an amount calculated at such rate as may be prescribed; and such contractee, deducting tax at source, shall remit such amount in the manner prescribed. Under the proviso thereto, no deduction shall be made, from any

amount paid as consideration to any subcontractor, if tax was already deducted by the contractee. Rule 18(1)(e) of the Rules stipulates that, if any tax is deducted u/s 22(3) in respect of any dealer executing works contract, and the work in whole or any part of such work is awarded by him to a sub-contractor, the tax, proportionate to the amount paid as consideration to the sub-contractor out of the tax deducted by the contractee, shall be transferred to the sub-contractor by issuing Form 501B to the sub-contractor. The sub-contractor is required to file Form 501B to the authority prescribed, along with the return in Form VAT 200. While Form VAT 501A is the certificate of tax deduction at source given by the person responsible for deduction of TDS, Form VAT 501-B is the certificate of transfer of tax deduction at source by the contractor to the sub-contractor and is required to be signed by the contractor. Rule 18(1)(bc) of the VAT Rules requires the contractee to complete the Form VAT 501-A supplied by the contractor, indicating the TIN of the contractor, the amount of tax deducted at source and the details of the related contract, and to supply the same to the contractor within fifteen days from the date of each payment.

16. Form VAT-501A, as noted hereinabove, relates to tax deducted at source from the contractor VAT dealer, and not a subcontractor. Rule 18(1)(bd) requires the contractor to submit Form VAT 501-A duly certified by the contractee, together with the return in Form VAT 200, by the 20th of the month following the month in which payment was received. Along with their monthly returns, the petitioner filed the certificate of tax deducted at source in the Form VAT 501A, and not Form VAT 501-B. It is evident, therefore, that the contract between SRMT and the petitioner is between a contractor and a contractee, and not a contractor and a sub-contractor. Consequently the petitioner is not entitled to claim protection under the proviso to Section 4(7)(d) of the Act.

17. Clause (8) of the agreement between SRMT and the petitioner, stipulates that the contract value is inclusive of all taxes; and any liability, on account of Sales Tax, VAT etc., shall be to the account of the petitioner. Having accepted liability to pay VAT, the petitioner cannot now turn around and contend that the liability to pay VAT is on SRMT, and they are not liable to pay tax under the Act. No material has been placed on record to show that SRMT had collected tax at 1.25% from independent purchasers, and had remitted the same to the State exchequer. On the other hand tax at 1.25% was deducted from the petitioners bills by SRMT and paid to the department. The petitioner has not even chosen to array SRMT as a respondent in the Writ Petition. It is clear that SRMT is the contractee, and the petitioner is the contractor and not the sub-contractor.

18. The petitioners contention that, even if they are not entitled for exemption u/s 4(7)(d) and its proviso, they are liable to be subject to tax u/s 4(7)(a) of the Act, and not u/s 4(7)(b)&(c) of the Act, is also not tenable. Having submitted an application for composition in Form VAT 250, the petitioner cannot now be heard to contend that they should have been assessed to tax u/s 4(7)(a) of the Act, as Section 4(7)(a) of the

Act is applicable only to a dealer who has not exercised the option of composition u/s 4(7)(b) to (d) of the Act.

19. Section 4(7)(a) of the Act stipulates that, notwithstanding anything contained in the Act, 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. Rule 17(1)(a) stipulates that, in the case of contracts not covered by sub-rules (2) and (4), the VAT dealer is required to pay tax on the value of the goods, at the time the goods are incorporated in the work, at the rates applicable to the goods. Rule 17(1)(b) provides that such a VAT dealer shall be eligible to claim input tax credit on 75% of the tax paid on the goods purchased, other than those specified in Rule 20(2); and he is eligible to issue a tax invoice. Rule 17(1)(c) stipulates that, where a VAT dealer mentioned in clause (a), awards any part of the contract to a registered sub-contractor, no tax shall be payable on the consideration paid to the sub-contractor. Rule 17(1)(d) provides that the value of the goods, used in the execution of the work in the contract, declared by the contractor shall not be less than the purchase value and shall include seigniorage charges etc. Rule 17(1)(e) prescribes the deductions, from the total consideration received or receivable, for arriving at the value of the goods at the time of incorporation. Rule 17(1)(f) stipulates that, where tax has been deducted at source, the contractor VAT dealer shall obtain Form 501A with unique Form ID from the Assistant Commissioner/Commercial Tax Officer concerned and supply the same to the contractee. The contractee is required to complete Form 501A with required information, and supply the same to the contractor within fifteen days after the end of the month in which the deduction is made. The contractor VAT dealer is required to submit Form 501A along with his tax returns. Rule 17(1)(g) provides that, if the dealer has not maintained accounts to determine the correct value of the goods, he shall pay tax at the rate of 14.5% on the total consideration or receivable subject to the deductions specified in the table given therein. In such cases the contractor VAT dealer is not eligible to claim input tax credit or to issue tax invoices. The percentage of value eligible for deduction under Rule 17(1)(g), in the case of civil works like construction of buildings etc, is 30%. A dealer, who has not opted for composition and who does not maintain books of accounts, is required to pay tax at 14.5% on the total consideration received or receivable subject to deduction of 30%. In effect, the dealer is required to pay 14.5% tax on 70% of the total consideration received or receivable on the execution of the works contract relating to construction of buildings.

20. It is not even the petitioners case that they are maintaining proper books of accounts, or that they have filed their returns u/s 4(7)(a) of the Act. It is evident from the monthly returns filed by the petitioner, copies of which also form part of the record placed before this Court, that the returns filed by them is on the basis of their claim for composition and not u/s 4(7)(a) of the Act. Under Rule 17(1)(a) of the Rules the dealer is required to pay tax on the value of the goods, at the time of its

incorporation in the work, at the rate applicable to the goods. Even if the dealer does not maintain books of accounts, Rule 17(1)(g) requires him to pay tax at 14.5% on the total consideration received or receivable subject to deduction of 30%. The monthly returns filed by the petitioners do not show their having paid tax at 14.5% of 70% of the total consideration received or receivable on the execution of works contracts relating to construction of residential apartments. Having given their no objection to the demand, and having sought permission for payment of tax and penalty in instalments, these contentions are being raised by the petitioner, for the first time in the present writ proceedings before this Court, only to avoid payment of tax which they are liable to pay under the Act.

II. DOES THE ASSESSMENT ORDER CONTRAVENE ARTICLE 265 AND WAS IT PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

21. Article 265 of the Constitution of India prohibits levy or collection of tax save by authority of law. The assessment order passed by the first respondent is in accordance with the provisions of the Act and the Rules and is, therefore, not in contravention of Article 265 of the Constitution of India. Having failed to submit their reply to the show-cause notice dated 12.08.2013, despite receipt of a copy thereof on 14.08.2013, the petitioner cannot now be heard to contend that the impugned assessment order dated 31.08.2013 is in violation of principles of natural justice.

III. THE WRIT PETITION AS FILED IS AN ABUSE OF PROCESS OF COURT:

22. The relevant records, from the offices of the respondents, have been submitted for our perusal by Sri M. Govind Reddy, Learned Special Standing Counsel for the Commercial Taxes. The said records disclose that the show cause notice, issued by the Commercial Tax Officer on 12.08.2013, was received by Sri Y. Ram Mohan Rao, General Manager (Finance) of the petitioner company. One week thereafter, a letter dated 24.08.2013 was addressed by him to the Commercial Tax Officer that, as per the VAT audit assessment for the period from 2009-10 to 2012-13 conducted by him, he had made a demand of tax liability of Rs. 67,58,184/-. The said letter dated 24.08.2013 gives a break-up of the tax liability for each of the four years 2009-10 to 2012-13, records the petitioners no objection in this regard, and bears the seal of the petitioner company. The said letter was received by the first respondent on 30.08.2013.

23. The impugned order passed on 31.08.2013 refers to the show-cause notice issued in Form VAT 305-A dated 12.08.2013 which was served on the petitioner on 14.08.2013 calling for their written objections along with documentary evidence, if any. It also records that, in response to the notice, the petitioner had filed a no objection letter on 30.08.2013, and had requested that the assessment be finalized. The turnover, and the tax proposed in the show-cause notice, was confirmed by the C.T.O. and an order in Form VAT 305 was passed. A copy of assessment order dated

31.08.2013 was served on the General Manager (Finance) Sri Y. Ram Mohan Rao on 31.08.2013, who also furnished his Mobile phone number i.e. 91771-55509 while acknowledging receipt thereof. Thereafter, a penalty show cause notice dated 02.09.2013 was issued to the petitioner which was also received by Sri Y. Ram Mohan Rao on 16.09.2013. The petitioner filed their reply thereto on 03.10.2013 stating that they would not be able to bear the penalty. They requested that the total penalty imposed on them be waived by considering the following facts (1) before the project commencement, they had come to the department and had submitted Form 250 VAT and asked their circle officials for the tax impact on this project. They had said that it is only 1.25% on the total turnover (or) 5% on 25% of the total turnover as per Section 4(7)(d); (2) with this information, they had advised their contractor to deduct VAT TDS as per the formula above; (3) in the audit they came to know that this project would come u/s 4(7)(b) i.e., 5% tax on the total turnover; and (4) the total amount (99%) of the demand raised related only to one project i.e., construction of residential apartments at Kakinada. The petitioner requested the CTO to consider the present scenario of the construction industry which was in a bad situation (i.e. delay in release of bills, high competition, etc.), and waive the penalty imposed on them. They also stated that they would clear the tax due, as per the demand raised by the CTO, on or before the requested time in their earlier letter. They further stated that they had advised their contractor to deduct tax at 5% on the total turnover; and they had implemented the same for the month of September, 2013. This letter dated 03.10.2013 was also addressed by Sri Y. Ram Mohan Rao, General Manager (Finance) and bears the seal of the petitioner company. A penalty order dated 18.10.2013 was passed confirming the proposed levy of penalty of Rs. 16,89,427/- for the tax period 2009-10 to 2012-13. This letter was served on the petitioner on 24.10.2013, receipt of which was acknowledged by Sri Y. Ram Mohan Rao, General Manager (Finance) of the petitioner company.

24. Thereafter, an arrears notice dated 28.10.2013 was issued requesting the petitioner to pay the balance VAT of Rs. 67,58,184/- within three days from the date of receipt of the notice failing which action would be initiated u/s 29 of the Act to realize the balance tax without further notice in the matter. The second respondent issued urgent notice dated 07.11.2013 calling upon the petitioner to pay tax of Rs. 67,58,184/- and penalty of Rs. 16,89,427/- within three days of receipt of the notice. The petitioner was also informed that, if the tax demanded with interest was not paid within three days, coercive steps would be taken to recover the arrears without further notice. This letter of the second respondent dated 07.11.2013 was served on the petitioner on 12.11.2013, and bears the seal of the petitioner company. Again on 06.12.2013 the second respondent demanded payment of amounts, outstanding of a VAT dealer, from the bank or third party in Form VAT 206. By the notice in Form VAT-206 both the petitioner, and their bankers i.e., Punjab National Bank, were informed that Rs. 84,47,611/- were the outstanding dues; and, in accordance with the provisions of Section 29 of the Act, they were required to make payment of the

outstanding amount by way of demand draft or bankers cheque in the name of the second respondent. Copies of this letter dated 06.12.2013 was served both on Punjab National Bank and the petitioner company on 09.12.2013. Another demand for payment of amount, outstanding of a VAT dealer, from the bank or third parties in Form VAT 206 was issued on 02.01.2014 both to SRMT and the petitioner. The said letter dated 02.01.2014 was sent to SRMT by registered post with acknowledgement due on 02.01.2014 and a copy of the said letter was served on the petitioner on 07.01.2014. By their letter dated 08.01.2014, SRMT acknowledged receipt of the notice issued by the second respondent on 02.01.2014, and informed him that there was no outstanding amount due to be paid to the petitioner as on 04.01.2014; and, in respect of any future bills to be paid hereinafter, they would remit the amount to the second respondent directly.

25. The petitioner informed the Deputy Commissioner (CT), by their letter dated 19.02.2014, that they had not deducted any tax from parties or clients; instead, they had instructed their employers to deduct tax from their running bills, and deposit the same with the commercial taxes department on their behalf regularly; this was done as per the advice of their assessing authority at the time of filing Form 250; they had almost completed all their previous works; some were at the closure stage, for which they had to invest more funds; their profitability was almost nil; they had stopped all their works since the last three months, and they were under severe pressure from their suppliers for payment; their pending dues to bankers, finance companies and other statutory authorities had also mounted due to stoppage of work at sites because of non-receipt of payments, after issue of notice by the authorities; it was impossible for them to make total payment in a single instalment, as there were almost no receipts from their employers since the last two months; their cash flow would be severally affected, and they would not be in a position to continue their business, as they would not be left with any monies if such payments were made; and third parties would take advantage of the garnishee notices. The petitioner requested that they be allowed to pay the tax due and payable in instalments. They stated that payment in instalments would help them continue their business, and help them make payments to clear the tax dues to the Commercial Tax Department. While agreeing to pay the first instalment of Rs. 3.00 lakhs, and the second instalment of Rs. 5.00 Lakhs in the first week of April, 2014, the petitioner stated that the balance instalments of Rs. 5.00 Lakhs each would be made in monthly intervals till the total dues were cleared. They requested the Deputy Commissioner (CT) to consider their proposal.

26. By his letter dated 25.02.2014, the second respondent informed the Deputy Commissioner (CT) that, keeping in view their financial problems, the petitioner may be granted instalments to clear the arrears as early as possible. The third respondent, in his proceedings dated 05.03.2014, referred to the petitioners representation that they were not in a position to pay the entire tax demand immediately as they had almost stopped the work at site, and were not in a position

to claim any bills from their clients; they had not paid salaries since the last three months; their business had come to a halt and, in view of these reasons, they had requested for grant of instalments. The third respondent also noted that the petitioner had preferred an appeal against the penalty order; at the time of filing the appeal, they had paid Rs. 1,57,000/-; the outstanding VAT balance and penalty was Rs. 67,58,184/- and Rs. 15,32,427/-, totalling to Rs. 82,90,611/-; and, accordingly, eight monthly instalments were granted to the petitioner subject to the condition that the instalment amount should be paid on or before the due date. The Deputy Commissioner (CT) granted the petitioner the facility of instalments to clear the tax and penalty dues amounting to Rs. 82,90,611/-, commencing from the month of March, 2014, in 8 instalments of Rs. 10,36,329/- each with interest. The first instalment was due and payable on 25.03.2014. The second respondent, by his proceedings dated 06.03.2014, informed the Manager, Punjab National Bank, Sanathnagar Branch, Hyderabad, that the notice issued on 06.12.2013 was revoked in view of the orders issued by the Deputy Commissioner (CT) on 05.03.2014. A similar letter was addressed to SRMT on 06.03.2014. The petitioner filed this Writ Petition on 20.03.2014, and obtained an interim order of stay on 21.04.2014, just a few days prior to the date on which the first instalment fell due.

27. It is not in dispute that the petitioner received the show-cause notice dated 12.08.2013 on 14.08.2013. It is also not in dispute that no reply was filed thereto by the petitioner before the first respondent, prior to the assessment order being passed on 31.08.2013. The petitioner claims to have submitted their objections, vide letter dated 30.08.2013, not to the first respondent, but to the office of the second respondent on the same day. The letter dated 30.08.2013 contains initials, which the Learned Counsel for the petitioner contends is the signature of the person, in the office of the 2nd respondent, who received the said letter. The letter does not even bear the stamp or seal of the office of the second respondent. The writ affidavit is silent regarding the name and identity of the person who is alleged to have received the said letter. The petitioners contention that their employee had, by mistake, delivered the said letter to the office of the second respondent cannot be readily accepted as, even subsequent thereto, in the correspondence between the petitioner on the one hand and respondents 1 to 3 on the other, no reference is made to their having submitted their objections, to the show cause notice dated 12.08.2013, on 31.08.2013.

28. The contention of the first respondent, that the genuineness of the medical certificate filed along with the writ petition is doubtful, cannot be readily brushed aside. It is the petitioners case that their Managing Director (i.e., the deponent of the writ affidavit) had suffered serious illness for more than five months which, according to the enclosed medical certificate, necessitating his having to take rest, and in his inability to monitor the company''s day-to-day affairs. The certificate dated 03.02.2014 is issued not by a specialist, but by a doctor with an M.B.B.S. degree. Even the rubber stamp on the medical certificate is not visible. The said certificate

dated 03.02.2014 records that Sri V. Ravi Kumar (the Managing Director of the petitioner company) was under his treatment for viral hepatitis, he was advised rest from 03.09.2013 to 03.02.2014, and he is fit to resume duties from 04.02.2014. No material is placed on record to show the basis on which the said MBBS doctor concluded that the Managing Director of the petitioner-company suffered viral hepatitis; and what tests were conducted and medicines prescribed for such illness. The certificate does not state that the illness was of such a nature as to render him immobile. The genuineness of the said certificate cannot, therefore, be readily accepted. It is difficult to believe that the assessment and penalty orders passed by the 2nd respondent, which resulted in a huge monetary liability on the petitioner-company and in virtually crippling their finances, was not even brought to the notice of their Managing Director. It does appear that the medical certificate has been filed only to give an impression that the repeated admission of liability by the petitioner, before the respondent authorities, was without the knowledge of the Managing Director; and, thereby, contend that the petitioner-company could not be held liable therefor.

29. Even if the submission that the Managing Director of the petitioner company fell seriously ill because of viral hepatitis, for a period of over five months from 03.09.2013 to 06.02.2014, were to be accepted, the letter dated 30.08.2013 was submitted by the petitioner prior thereto. The Managing Director of the petitioner-company could not, therefore, have been unaware of the no objection conveyed on behalf of the petitioner to the demand raised by the first respondent. Receipt of the letter dated 30.08.2013, the subsequent letters, and several other proceedings from the commercial tax department, was acknowledged by the General Manager (Finance) of the petitioner-company. However, an impression was created in the writ affidavit that the letter dated 24.08.2013, received by the first respondent on 30.08.2013, was addressed by a lower rung employee of the petitioner-company. The writ affidavit makes no mention of the said no-objection letter having been submitted by the General Manager (Finance) of the petitioner-company. If a wrong or misleading statement is deliberately and willfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceeding and thus amount to contempt of court. (Naraindas v. The Government of Madhya Pradesh; Afzal v. State of Haryana; In Re: Sri V. Satyanarayana Rao). An attempt to deceive the court by disguising the nature of a claim is contempt. In re: Sri V. Satyanarayana Rao, .

30. The affidavit, filed in support of the Writ Petition, makes no mention of any of the events which took place subsequent to the assessment order dated 31.08.2013. As is evident from the facts narrated hereinabove, the petitioner was repeatedly called upon to pay the tax due; proceedings u/s 29 of the Act was instituted; and both the petitioners bankers and the contractee i.e. SRMT were called upon to pay, the amounts due from them to the petitioner, directly to the 2nd respondent. The

petitioner received the assessment order dated 31.08.2013 on the same day. It is only after several letters were issued calling upon them to pay the demanded amount, and proceedings u/s 29 of the Act were initiated for recovery of the arrears, did the petitioner make an application on 19.02.2014 seeking payment of the tax and penalty in instalments. The Deputy Commissioner (CT) granted instalments by his proceedings dated 05.03.2013. The petitioner was required to pay the first instalment on 25.03.2014. Suppressing all the facts, subsequent to the assessment order dated 31.08.2013 including their having sought for and being granted instalments for payment of the tax with penalty, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India on 20.03.2014, and obtained an interim order of stay on 21.03.2014.

31. "Suppressio veri", i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute-one by inaction and the other by action. "Suppressio veri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false. (Black''s Law Dictionary with pronunciations-Sixth edition). If a false statement willfully and deliberately made amounts to contempt, suppression of a relevant and material fact would equally amount to contempt as both interfere with the due course of justice and obstruct the administration of justice. In re: Sri V. Satyanarayana Rao, .

32. The contention that suppression of facts is not relevant for filing the Writ Petition, challenging the assessment order, is only to be noted to be rejected. The plea of estoppel is taken for the first time in the reply affidavit after the 1st respondent had pointed out, in his counter-affidavit, the fact that the petitioner had suppressed their having made an application seeking instalments on 19.02.2014, and their being granted instalments by the Deputy Commissioner on 05.03.2014. It is also for the first time in the reply affidavit that the petitioner now contends that their employee was coerced to file the letter dated 30.08.2013 before the 1st respondent. Nowhere in the earlier correspondence, after the assessment order was passed on 31.08.2013 till they filed the Writ Petition, was any such plea taken. It is only after the Writ Petition was filed and the petitioner had obtained interim stay, is this contention now raised in the reply affidavit, evidently to drag on proceedings and avoid payment of the admitted liability, and the interest and penalty thereon.

33. Several judgments were relied upon by Sri MVJK Kumar, Learned Counsel for the petitioner, in support of his contention that the delay of seven months in invoking the jurisdiction of this Court, questioning the assessment order dated 31.08.2013, is not so inordinate or belated as to justify dismissal of the Writ Petition on the ground of delay and laches. Learned Counsel also contends that the mere fact that the petitioner had sought for, and was granted, instalments for payment of the demanded tax and penalty, would not preclude them from questioning the assessment order as there is no estoppel against a statute. It is wholly unnecessary

for this Court to refer to the judgments cited on behalf of the petitioner, both regarding delay and laches and there being no estoppel against a statute, for the petitioner is not being non-suited for delay and laches or for their having sought payment in instalments, but for their conduct in suppressing material facts and in seeking to mislead this Court by false averments and misrepresentation of facts.

34. In order to sustain and maintain the sanctity and solemnity of proceedings in law courts it is necessary that parties should not make false or, knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the Court where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by recourse to misrepresentation, and conceals material facts, it does so at its own risk. Such a party must be ready to take the consequences that follow. There is a compelling need to take a serious view in such matters to ensure purity in the administration of justice. (Vijay Syal v. State of Punjab). As a petition containing misleading and inaccurate statements, if filed to achieve an ulterior purpose, amounts to an abuse of the process of the court, the litigant should not be dealt with lightly. A litigant is bound to make full and true disclosure of facts. (Manohar Lal v. Ugrasen; Tilokchand Motichand v. H.B. Munshi). Whenever the court comes to the conclusion that its process is being abused, it would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the courts to deter a litigant from abusing the process of the court by deceiving it. Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, . It is the duty of the High Court to ensure that its judicial process is not abused and its order does not become an instrument or aid to overreach the adversary. (M.V. Venkataramana Bhat v. Returning Officer and Tahsildar).

35. When a person invokes the equitable and extraordinary jurisdiction of the High Court, under Articles 226/227 of the Constitution, he must approach the court not only with clean hands but also with a clean mind, a clean heart and a clean objective. The judicial process should never become an instrument of oppression or abuse or a means to subvert justice. He, who seeks equity, must do equity. The legal maxim Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, means that it is the law of nature that one should not be enriched by the loss or injury to another. Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, .

36. The power, under Article 226 of the Constitution of India, is discretionary and is exercised only in furtherance of the interest of justice and in larger public interest, and not merely on a legal point being made out. The interest of justice and the public interest coalesce. They are very often one and the same. The Court has to weigh public interest vis-�-vis private interest while exercising its discretionary powers. Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, . Not only has the petitioner suppressed relevant and material facts, but has also sought to

mislead this Court misrepresenting facts. We see no reason, therefore, to exercise discretion, under Article 226 of the Constitution of India, to interfere.

IV. CONCLUSION:

37. While every abuse of the process of the Court may not necessarily amount to Contempt of Court, abuse of the process of the Court calculated to hamper the due course of a Judicial proceeding, or the orderly administration of justice, is Contempt of Court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties or in some other manner. But it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process, and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "contempt of Court" may seem to suggest, but to protect and vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. In re: Sri V. Satyanarayana Rao,
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38. Deceiving the Court by deliberately suppressing a fact, or giving false facts, may be a punishable contempt. Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bonafides. In such cases the court has extensive alternative powers to prevent an abuse of its process. Where the Court, by exercising its powers under rules of court or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt. (Halsbury''s Laws of England, (4th Edn., Vol. 9, paragraph 38).

39. Both on merits and for abuse of process of Court, the Writ Petition is liable to be, and is accordingly, dismissed. While initiation of contempt proceedings for such misrepresentation and suppression of facts is in order, we refrain from doing so and, instead, dismiss the Writ Petition with exemplary costs of Rs. 25,000/- which the petitioner shall pay to the State Government within four weeks from today. The miscellaneous petitions pending, if any, shall also stand dismissed.