

Dealers Liable to register under VAT whose Taxable Turnover exceeds Rs.10 Lakhs in 3 Months to avail ITC: The Hon'ble High Court, Telangana

Fact of the Case

The petitioners, M/s Balaji Agencies seek a mandamus declaring the Section 17(3) of the A.P. VAT Act, 2005 to the extent "every dealer whose taxable turnover in the preceding three months exceeds Rs.10,00,000" and Section 49(2) the relevant portion of denial of input tax credit is illegal, arbitrary and discrimination and clarify the same and consequently set aside the impugned order passed by the respondent authority and consequently declare that the petitioner is entitled to claim the input tax credit.

The petitioner is a wholesale distributor of soft drinks and it is a registered turnover tax dealer (TOT) on the roles of respondent under A.P. VAT Act, 2005 from April 1, 2006.

Mr. Kunuku Durga Prasad, counsel for the petitioner contended that that the provision in Section 17 (3) to the extent "Every dealer whose taxable turnover in the preceding three months exceeds Rs.10 lakhs" is discriminatory and Section 49(2) denying input tax credit for failure to register as VAT dealer is also illegal and arbitrary.

On the other hand, the Government Pleader opposing the writ petition stating that the petitioner failed to apply for VAT dealership registration within the time prescribed under the law. Therefore, the respondent correctly assessed him to pay 12.5% tax treating him as VAT dealer and denied him the input tax credit because he was only a TOT dealer at that time and there is no illegality in the order impugned.

He further argued that the petitioner could not point out any arbitrariness or illegality in the provisions and he could not substantiate how the Section 17(3) and Section 49(2) are illegal or ultra-vires to the Constitution.

Decision of the Case

The division bench of Justice observed that since the turnover of the petitioner for the 1st quarter ending 30.06.2006 was Rs.13,14,724/- which exceeded Rs.10 lakhs, the petitioner had an opportunity to apply for registration as VAT dealer. As per Rule (5) of A.P. VAT Act, the petitioner was required to make an application by the 15th of the month subsequent to the month in which the liability to register for VAT arose, meaning thereby, he should have applied before 15.07.2006 for VAT registration since the turnover for the 1st quarter ending 30.06.2006 exceeded Rs.10 lakhs. He did not avail that opportunity but waited for completion of a 12 months period. The total turnover for the 12 months period from 01.04.2006 to 31.03.2007 was Rs.43,47,418/-.

The court added that as per the second leg of Section 17(3), he has to apply for VAT registration since the total turnover for 12 preceded months exceeded Rs.40 lakhs. As per Rule-5 (b), he has to apply for VAT registration before 15.04.2007. However, he applied for VAT registration only on 18.05.2007 i.e., long after the expiry of the stipulated period.

Therefore, the court held that respondent rightly rejected his claim and passed the impugned order directing the petitioner to pay VAT @ 12.5% and also treating him as VAT dealer. In this regard, it should be noted that as per Section 4(1), every dealer registered or liable to be registered as VAT dealer (emphasis supplied) shall be liable to pay tax on every sale of goods in the State at the rate specified in the schedules. In the instant case, since the petitioner was liable to be registered as a VAT dealer, the respondent rightly levied 12.5% tax. The petitioner cannot plead any illegality or irregularity in the

order impugned. So also the petitioner cannot challenge the provision under Section 17(3) and Section 49(2) of A.P. VAT Act.

The Telangana High Court held that Dealers Liable to register under Value Added Tax (VAT) whose taxable turnover exceeds Rs.10 Lakhs in 3 Months to avail Input Tax Credit (ITC).