THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.4957 OF 2004

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed with the prayer, which reads as under:

> "it is prayed that the Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the 1st Respondent seeking to enforce the demand under the Central Sales Tax Act, 1956 for the assessment year 1997-98 as illegal and without jurisdiction and consequently interdict the 1st Respondent from taking any coercive steps for recovery of demand to the extent of Rs.10,18,000/- for the year 1997-98 (CST) and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

Petitioner, a registered dealer under Andhra Pradesh General Sales Tax Act, 1957 (for short, 'APGST Act') and Central Sales Tax Act, 1956 (for short, 'CST Act'), deals in Cashew Nuts. For the assessment year 1997 – 98, petitioner was assessed under CST Act by respondent No.3 on the export sales of Cashew Nuts of Rs.1,01,80,000/- resulting in a demand of Rs.10,18,000/-. Aggrieved by the same, petitioner carried the matter by way of appeal before the Appellate Deputy Commissioner (Commercial Taxes), Kakinada at Visakhapatnam.

Subsequently, the assessment order was revised by the Deputy Commissioner (Commercial Taxes), Vizianagaram Division, by order, dated 29.08.2001, passed in G.I.No.1295/97-98 (APGST). As per the revised order, entire turnover was brought under APGST Act and tax was assessed accordingly. It is stated that against the order of the revised assessment order, dated 29.08.2001, matter was carried in appeal and same was dismissed. Subsequently, the appeal filed by the petitioner before the Appellate Deputy Commissioner (Commercial Taxes), Kakinada, was dismissed as infructuous in view of the revised assessment order, dated 29.08.2001.

In this Writ Petition, it is the grievance of the petitioner that when the entire turnover is brought under the purview of APGST Act and tax is determined, again the same turnover cannot be subject matter under CST Act.

In the counter affidavit, it is stated that in view of the dismissal of appeal filed by the petitioner, garnishee notice, under Section 17 of APGST Act is issued for recovery of tax of Rs.10,18,000/- on the turnover of Rs.1,01,80,000/-.

From a perusal of the orders, it is clear that though originally petitioner was assessed under CST Act, the same was brought under APGST Act vide order, dated

29.08.2001, and accordingly, tax is determined, which is confirmed by the appellate authority. In that view of the matter, the same turnover cannot be the subject matter under CST Act.

In that view of the matter, the Writ Petition is disposed of directing the respondents not to take any steps for enforcement of the demand under CST Act and the garnishee notice is hereby quashed, in view of the revised order passed by the revisional authority bringing the entire turnover under APGST Act.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 17, 2015
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