THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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T.R.E.V.C.No.37 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This revision is preferred by the Revenue against the order passed by the Sales Tax Appellate Tribunal in T.A.No.669 of 2005 dated 09.02.2015.

The respondent herein invoked the jurisdiction of the Tribunal aggrieved by the order passed by the Appellate Deputy Commissioner affirming the revised order passed by the Assessing Authority dated 21.07,2004. By the said order, the Assessing Authority passed an order of assessment under Section 14(4) of the APGST Act (for short "the Act") levying tax on the sale of stone chips treating the respondent herein as the last seller in the State.

In the order under revision, the Tribunal framed certain points for consideration among which were whether (1) the respondent was the last seller of stone chips in the State from 01.04.2000 to 14.11.2000 for the purpose of levying tax on the said turnover; and (2) whether the order of the appellate Deputy Commissioner, affirming the revised order of the Deputy Commercial Tax Officer, was valid under law.

With regards levy of tax on the respondent-dealer, for the sale of stone chips to a contractor executing works contract within the State of Andhra Pradesh, the Tribunal held that the purchaser of the goods from the respondent herein was also a registered dealer executing works contracts; if he had used the stone chips in the execution of works contract, the goods must be held to be involved and incorporated in the works; 'sale', under Section 2(n) of the Act, is defined to mean every transfer of property in goods (whether as such goods or in any other form in pursuance of a contract or otherwise) by one person to another in the course of trade or business; even if the said goods are incorporated in the execution of a works contract, then also it is a sale under law for the purpose of the Act; in such an event, it is the works contractor who will be the last seller in the State, and not the respondent herein; and this aspect was not considered by the Deputy Commercial Tax Officer. With regards the power of the Assessing Authority to pass a re-assessment order under Section 14(4) of the Act, the Tribunal held that, as there was no material *de hors* the earlier assessment, the power to re-assess the dealer to tax, under Section 14(4) of the Act, could not be exercised.

Sri S.Suribabu, learned Special Standing Counsel for Commercial Taxes, would fairly state that the question regarding re-assessment, under Section 14(4) of the Act, has been answered against the Revenue in ***Jithendar Roller Flour Mills, Hyderabad vs. Assistant Commissioner (CT)(LTU), Chariminar Division, Hyderabad***.

The only question, which necessitates examination in this revision, is whether sale of stone chips by the respondent to I.J.M.Gayatri Join Venture (a works contractor) is liable to tax under the Act. It is not in dispute that tax, on the sale of stone chips, was levied at the point of last sale in the State. The Assessing Authority held that the respondent was the last seller as he had sold goods to a works contractor. It is also not in dispute that the works contract was executed within the State of Andhra Pradesh. In a works contract, executed by a contractor, there is a deemed sale of goods by the contractor to the employer when the said goods are incorporated in the works. The last seller in the State is the works contractor, and not the respondent herein. The Tribunal has rightly held in favour of the assessee, and against the Revenue on this question also.

The TREVC fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

12th November 2015.

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Date: 12.11.2015

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