HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.4611 of 2004

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

This writ petition is filed by the petitioner seeking the following relief:

> "….. *Mandamus* declaring the judgment of the STAT in 34 APSTJ p.153 rendered by two members bench as illegal and improper and contrary to the judicial discipline in the presence of the earlier precedents of the jurisdictional High Court directly on the issue reported in 6 APSTJ p.258 and 26 APSTJ p.78, 28 APSTJ p.294, 29 APSTJ p.227, 21 APSTJ p.21 which are binding under Article 227 of the Constitution of India as also the earlier judgment of the Tribunal rendered by a larger bench consisting of three members leading to issuance of the impugned circular dated 24.2.2003 in CCT's Ref.AII(2)/18/2003 as illegal, improper, without authority of law and without jurisdiction and consequently set aside the order of the assessment passed by the second respondent dated 29.11.2003 in assessment GI.No.354/02-03 under the CST Act restricting the deduction of CST collections to the net tax payable and consequently direct the assessing authority to allow the CST collections as per the books of accounts as deduction in terms of Section 8A of the CST Act and accordingly pass the assessment order ….."

2. When the matter is taken up for hearing, it is submitted by the learned counsel for petitioner as well as the learned Special Standing Counsel for Commercial Taxes that the issue involved in this writ petition is squarely covered by the judgment of this Court in W.P.No.7690 of 1999 and batch, dated 10.09.1999, in the case of SRI LAXMIGANAPATHI ENTERPRISES Vs. COMMERCIAL TAX

OFFICER.

3. In view of the same, following the judgment in the case of SRI LAXMIGANAPATHI ENTERPRISES (supra), this writ petition is allowed and the impugned assessment order dated 29.11.2003 is set aside and the matter is remanded to the 2nd respondent-Commercial Tax Officer, Mandapeta, East Godavari District, for fresh consideration and pass appropriate orders in accordance with law, after providing an opportunity of hearing to the petitioner, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

30.03.2015.

Msr

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