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

WRIT PETITION No.16776 of 2014

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

This writ petition is filed by the petitioner-Singareni Collieries Company Limited seeking the following relief:

> "….. to issue a Writ of Certiorari or any other appropriate writ or order or direction –
>
> (a) quashing the order of 1st respondent in A.O.No.38656, dated 17.5.2014 for the tax period 2008-09, as illegal, arbitrary, contrary to the provisions of the Act and also the directions of this Hon'ble Court in Writ Petition No.18732 of 2010, dated 27.6.2011 and in Writ Petition No.27844 of 2012, dated 7.9.2012 and declare that the Graders are not liable to Entry Tax under Andhra Pradesh Tax on Entry of Motor Vehicles into Local Areas Act, 1996; and
>
> (b) alternatively, if the levy is declared to be upheld, direct the 1st respondent to adjust the sum of Rs.7,95,877/- paid by the petitioner towards the Entry Tax against the demand raised as per the impugned order dated 17.5.2014 and in accordance with the directions of this Hon'ble Court in Writ Petition No.27844 of 2012, dated 7.9.2012, and pass such other order or orders ….."

2. The petitioner is a Government Company engaged in the business of extraction and sale of coal across the country and is a registered dealer on the rolls of 1st respondent-Assistant Commissioner (CT), LTU, Warangal Division, Warangal, under the provisions of A.P. VAT Act, 2005. Through the impugned order dated 17.5.2014, the 1st respondent has levied Entry Tax of Rs.7,51,386/- on the Graders procured by the petitioner.

3. Mainly, it is the case of the petitioner that the Graders are not being used on the roads and, as such, they do not fall within the definition of 'Motor Vehicles' under the provisions of Motor Vehicles Act, 1988 (for brevity "the Act"). It is stated that the Graders are unlike Excavators and Road Rollers as declared under Section 2 (28) of the Act as per the decision in M/s. BOSE ABRAHAM vs. STATE OF KERALA[1]. It is also the case of the petitioner that the said vehicles have already been subjected to tax under the provisions of the Andhra Pradesh Tax on Entry of Motor Vehicles into Local Area Act, 2001 (fore brevity "the 2001 Act") and, therefore, the very same vehicles cannot be subjected to tax again under the Andhra Pradesh Tax on Entry of Motor Vehicles into Local Area Act, 1996 (for brevity "the 1996 Act"). It is further submitted that though objections are raised by the petitioner, without recording any finding thereon, the impugned order is passed.

4. It is submitted by the learned counsel for petitioner that in similar circumstances, W.P.No.16790 of 2014 was allowed by order dated 19.09.2014 remanding the matter to the assessing authority with specific directions to examine whether Graders and Water Sprinklers fall within the definition of Motor Vehicles and liable to tax under the 1996 Act, with a further direction that if they already suffered tax under the 2001 Act, can the very same equipment be further levied tax under the

provisions of the 1996 Act.

5. On the other hand, it is contended by the learned Special Standing Counsel for Commercial Taxes that a report is called for from the jurisdictional authority, which indicates that even the Graders are motor vehicles, as such, they are liable for tax. So far as collection of tax under the 2001 Act is concerned, it is submitted that the matter is pending before the Hon'ble Supreme Court and unless refund of such amount is ordered, the petitioner is not entitled to claim adjustment of the said amount at this point of time.

6. Having heard learned counsel for the parties, we have perused the impugned order dated 17.5.2014 and also the earlier order dated 19.09.2014 passed in W.P.No.16790 of 2014.

7. A perusal of the order dated 19.09.2014 passed in W.P.No.16790 of 2014 shows that there is a clear direction so far as Graders and Sprinklers are concerned and as the respondents have not recorded any finding whether such equipment falls within the definition of 'Motor Vehicles' for the purpose of levying tax under 1996 Act, directions were issued to consider the same and pass appropriate orders.

8. Even in the impugned order dated 17.5.2014, though the objections raised by the petitioner were recorded, there is no finding as such so far as Graders are concerned. If any opinion is obtained from the

jurisdictional authority, the same can be the basis for recording a finding, but in the absence of any finding, it is not open for the respondents to pass the impugned order based on the material, which is not adverted to in the impugned order, though the same is referred in the counter affidavit.

9. In that view of the matter, as the above aspects are not considered by the Assessing Authority and also in view of the order dated 19.09.2014 in W.P.No.16790 of 2014, we set aside the impugned order dated 17.5.2014 and the 1st respondent-Assistant Commissioner (CT), LTU, Warangal Division, is directed to examine whether the Graders falls within the definition of 'Motor Vehicle' so as to levy tax under the provisions of the Andhra Pradesh Tax on Entry of Motor Vehicles into Local Area Act, 1996 and further examine, if the equipment was subjected to tax under the provisions of Andhra Pradesh Tax on Entry of Motor Vehicles into Local Area Act, 2001, whether the very same equipment can again be subjected to tax under the provisions of the 1996 Act and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

10. The writ petition is allowed as indicated above. 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
16.02.2015.
Msr

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[1] 121 STC 614