HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.21671 of 2002

Order: (Per Justice R. Subhash Reddy)

This Writ Petition is filed with the following prayer:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble court may be pleased declaring the proceedings of the Assistant Commissioner of CT (LTU), Nizamabad Division, Nizamabad dated 09.09.2002 in G.I.No.7992/92-93 received on 24.09.2002 as illegal, without jurisdiction and violative of the principles of natural justice inasmuch as no show cause notice was issued to the petitioner company before issuance of the impugned proceedings, apart from being ultra vires the proceedings of the learned Commissioner of Commercial Taxes dated 20.05.2000 in CCT's Ref.No.:LIII(1)1375/98 and set aside and to direct the first respondent to comply with the directions of the second respondent herein and pass such appropriate orders and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case."

2. Petitioner is a company registered under the Companies Act, 1956 and is a dealer under the provisions of the A.P. General Sales Tax Act, 1957 (for short "the Act") on the rolls of the Commercial Tax Officer, Medak Circle, Medak. Petitioner is engaged in the business of manufacture of refractory bricks, fire bricks, mortar etc., most of which were being sold to Visakhapatnam Steel Project, a registered dealer on the file of the Commercial Tax Officer, Visakhapatnam. For the assessment years 1992-93, 1993-94 and 1995-96, petitioner was assessed under the Act, on the sales of refractory bricks, fire bricks and mortar sold to the industries claiming concessional rate of tax at 4% on the basis of 'G' declaration forms issued by the purchasing

dealers, which are issued on the basis of

G-2 – registration certificates issued by the competent registering authorities of the purchasing dealers. The assessing authority did not permit concessional rate of tax and imposed normal rate of tax on the turnovers of Rs.3,24,07,389/-, Rs.1,59,65,400/- and Rs.1,01,28,460/- respectively for the aforesaid three assessment years. As against the orders of the assessing authority, petitioner carried the matter in appeal before the Appellate Deputy Commissioner, Secunderabad Division. The appellate authority allowed the appeal by order dated 25.06.1997. However, the 1st respondent, by exercising powers of review under Section 20(1) of the Act, alleging that the order passed by the appellate authority is prejudicial to the interests of revenue, issued show-cause notice proposing to revise the orders of the Appellate Deputy Commissioner and restore the orders of the assessing authority. Petitioner filed objections to the show-cause notice. Thereafter, the Commissioner of Commercial Taxes, A.P., Hyderabad passed order dated 20.05.2000 vide proceedings CCT's Ref.LIII(1)/1375/98, operative portion of which reads as under:

> "The Authorised Representative filed copies of G2 certificates of the buying dealer stating that refractory bricks are included therein and the certificate is valid with effect from 1.4.89. The assessing authority shall verify the same with the registering authority of the buying dealer. If the registering authority of the buyer dealer inadvertently included this item in G2 certificate during the relevant period, the benefit of doubt can be given to the assessee. Otherwise, it will be fair and reasonable to make the assessee responsible for payment of tax.
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> Hence in exercise of powers vested in me under Section 20 (1) of the Act I hereby modify the orders of the ADC in the reference 2nd cited on the above times. The assessing authority is directed to comply with the above directions and pass orders accordingly.
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> The proposed revisions are accordingly disposed off."

3. Consequent to the order of the Commissioner, the assessing authority passed further order dated 09.09.2002. Though the assessing authority referred to the order of the Commissioner dated 20.05.2000, however, modified its earlier orders disallowing concessional rate of tax on the sale of fire bricks and mortar. It is that order which is under challenge in this Writ Petition.

4. Heard learned counsel for the petitioner and learned Special Standing Counsel for Commercial Taxes on behalf of the respondents.

5. It is submitted by the learned counsel for the petitioner that, in spite of specific directions issued by the Commissioner in the order dated 20.05.2000, the assessing authority, without carrying out the directions in the said order, simply modified its earlier order and disallowed the claim for concessional rate of tax on the sale of fire bricks and mortar. Learned counsel for the petitioner, while relying on G-2 certificate, a copy of which is placed on record, in which it is stated that refractory bricks are covered under G-2 certificate issued by the competent authority, states that there is no reason to deprive concessional rate of tax to the petitioner-assessee, who is the seller.

6. On the other hand, it is submitted by the learned standing counsel that refractory bricks which are sold by the petitioner are not consumable for the purpose of manufacturing activity of the purchasing dealer and are not covered by G-2 certificate at all; as such, petitioner is not entitled for any concessional rate of tax under Section 5B of the Act.

7. Having heard the learned counsel for the parties, we have perused the material on record.

8. From a reading of the order dated 20.05.2000 vide proceedings CCT's Ref.LIII(1)/1375/98, passed by the Commissioner, Commercial Taxes, it is evident that, directions are issued in clear terms to the effect that, if the registering authority of the buyer dealer inadvertently

includes refractory bricks in G-2 certificate during the relevant time, benefit should be given to the assessee; otherwise it will be fair and reasonable to make the assessee responsible for payment of tax. From a perusal of the order passed by the assessing authority, which is consequent to the order dated 20.05.2000 passed by the Commissioner, it is clear that, except extracting certain portions of the order dated 20.05.2000; the assessing authority has not carried out the directions contained therein.

9. Whether refractory bricks form part of G-2 certificate or not and if they form part of G-2 certificate, is it by the inadvertence on the part of the registering authority of the purchasing dealer, are matters which are to be examined in the light of the directions issued by Commissioner, Commercial Taxes in the order dated 20.05.2000. As the assessing authority has failed to examine such aspects, we deem, it is a fit case to set aside the order of the assessing authority, dated 09.09.2002 and dispose of the Writ Petition with a direction to the assessing authority to pass appropriate orders by carrying out the directions issued by the Commissioner, Commercial Taxes in the order dated 20.05.2000, as expeditiously as possible preferably within three months from today.

10. Writ Petition is accordingly disposed of. No order as to costs. As a sequel, miscellaneous petitions, if any pending, stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 16, 2015

MRR