HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5069 of 2005

ORDER : (Per Justice R. Subhash Reddy)

In this writ petition, petitioner has questioned the assessment order dated 02.03.2005, passed by the respondent in Case No.22/2004-05, arriving at the tax payable by the petitioner at Rs.1,27,709/-.

2. Petitioner is running an educational institution in Brodipet, Guntur. In addition to the college being run by the petitioner, lodging and boarding facilities are also provided to the hostel inmates for monetary consideration. For the purpose of supplying food, the petitioner has purchased paddy worth Rs.31,92,735/- from unregistered dealers/farmers during the assessment year 2002-03. As the paddy is liable to be taxed at the purchase point, impugned orders are passed levying tax at the rate of 4% on the purchase turnover of paddy.

3. When the matter is called for hearing, it is submitted by the learned counsel for petitioner that in the judgment in **Gowtham Residential Junior College, Vijayawada & others Vs. The Commercial Tax Officer, Benz Circle, Vijayawada & others**, a Division Bench of this Court has held that purchase of food items by private educational institutions for supplying them to the students in the hostels cannot be construed as "Business", as defined under Section 2(1)(bbb) of the Andhra Pradesh General Sales Tax Act, 1957. Thus, it is submitted that the matter is covered to be allowed in terms of the said judgment. Even the learned Standing Counsel appearing for respondent submits that the subject matter is covered to be allowed in view of the aforesaid judgment.

4. We have perused the aforesaid judgment, wherein, a Division

Bench of this Court, by placing reliance on earlier judgments of Hon'ble Supreme Court, has held that purchase of food items by educational institutions for the purpose of supplying to students, cannot be construed as business activity for imposing tax in exercise of powers under Section 6-A of the APGST Act. In that view of the matter, this writ petition is covered to be allowed in terms of the aforesaid judgment.

5. Accordingly, the writ petition is allowed by quashing the impugned assessment order dated 02.03.2005. If the petitioner has already paid 50% of the disputed tax as per the interim orders of this Court, it is open for the petitioner to file appropriate application before the authorities concerned along with a copy of this order, seeking refund of such amount, and if any such application is filed, the same may be considered and disposed of expeditiously. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

30th March 2015

ajr **DR. B. SIVA SANKARA RAO, J**