THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SPECIAL APPEAL No.2 OF 2002

JUDGMENT:- (per Hon'ble Sri Justice M.Seetharama Murti)

This is an appeal by the appellant/dealer assailing the order, dated 18.10.2001, of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the learned Government Pleader for Taxes (Andhra Pradesh). We have perused the material record.

3. The appellant is engaged in the business of manufacture and sale of aluminium vessels. It is stated that the appellant purchases aluminium scrap from unregistered dealers and manufactures aluminium vessels from the scrap. As per the observations in the impugned order, ordinarily, any goods, which are liable to be taxed either under Section 5 or Section 6 of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "A.P.G.S.T.Act"), if are purchased from an unregistered dealer and are used in the manufacture of other goods by any dealer, then, such purchases attract tax liability under Section 6-A of the A.P.G.S.T. Act, but the appellant had claimed exemption both on the sales of aluminium vessels manufactured by him and also on the purchases of aluminium scrap on the ground that his case comes under the tax holiday scheme spelt out in G.O.Ms.No.498, Industries & Commerce Department, dated 16.10.1989. The Commissioner of Industries vide proceedings in file No.10/1/5/2647, dated 21.12.1995, granted sales tax exemption of

Rs.14,55,950/- for a period of five years from 26.3.1995 to 25.3.2000 to the SSI unit owned by the appellant under the said scheme. The Commercial Tax Officer, Narasannapeta (for short, "the CTO"), however, has not accepted the claim of the appellant while passing a provisional assessment order and had held that the scheme of tax holiday applies only to the tax payable on the sales of finished goods and not to the tax payable on purchases. Therefore, the CTO had levied tax on a turnover of Rs.6,61,110/- which represented purchases of aluminium scrap in the hands of the assessee/the appellant. Aggrieved of the order of the CTO the appellant had filed an appeal before the Appellate Deputy Commissioner, Kakinada ('the ADC' for short). The ADC had allowed the appeal upholding the contention of the dealer that contingent purchases under Section 6-A of the A.P.G.S.T. Act are also covered under the tax holiday scheme and had set aside the assessment orders. The CTO, while making the final assessment, had followed the orders of the ADC and had granted exemption on turnover of Rs.11,18,122/- representing purchase of aluminium scrap. He had also allowed holiday on a tax of Rs.1,70,324.60ps. The Joint Commissioner (CT), Legal had subsequently initiated revision proceedings against the order of the ADC and had later dropped the revision proceedings. The Commissioner, who was of the view that the orders of the ADC, the final assessment proceedings of the CTO and the discharge proceedings of the Joint Commissioner are prejudicial to the interests of the revenue of the State, had proposed to revise those orders and had issued a show cause notice. The Commissioner had finally passed the impugned orders. By the said orders, the Commissioner had set aside the above said orders of the ADC and the final assessment order of the CTO as well as the Joint Commissioner (CT), Legal and had confirmed the proposal in his show cause notice and had accordingly held that the contingent purchases of aluminium scrap are liable to tax and are not eligible for exemption under tax holiday scheme and that the tax due on contingent purchases should be remitted to the Government treasury and that the dealer is eligible for tax holiday on the net tax payable on the finished products. Having so held he had directed the assessing authority to give effect to his orders. Aggrieved thereby, the appellant had filed this appeal.

4. A perusal of the legal provisions and the Government Orders, which are relevant, would show that the procedure, which was followed by the CTO in his

earliest order (provisional order), is in accordance with law. Therefore, it is fairly conceded that though the appellant is enjoying the tax holiday, it is applicable only to the tax payable on the sales of finished goods and not applicable to the tax payable on purchases, and that therefore, the order of the ADC, final assessment order of the CTO and the order of the Joint Commissioner are liable to be set aside and that the order of the Commissioner, which is impugned and which is in accordance with law, is to be upheld.

5. In view of the aforementioned facts and reasons, we see no reason to interfere with the order of the Commissioner, which is in accordance with facts and law.

6. In the result, the Special Appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Special Appeal shall stand closed.

K.C.BHANU,J

M.SEETHARAMA MURTI,J

Date: 26.02.2015

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