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

**WRIT PETITION No.1985 of 2015**

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

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

> "…..to issue Writ of Mandamus or any other appropriate Writ or order or direction declaring
>
> (i) the action of the 2nd respondent in levying tax at 14.5% on the product "Aluminum Composite Panel" classifying the same as goods falling under V Schedule to the APVAT Act, 2005 for the assessment years 2009-10 to 2012-13, as illegal, arbitrary, high handed, without authority of law and jurisdiction and in violation of principles of natural justice and set aside the same and declare that the "Aluminum Composite Panels" are taxable only at 4% / 5% under Entry 27 of Schedule IV of APVAT Act, 2005;
>
> (ii) the order passed by the Authority for Clarification and Advance Ruling in A.R.Com/6/2014, dated 1.10.2014 is without authority of law and jurisdiction and in violation of principles of natural justice and set aside the same ……"

2. The petitioner is a Proprietary concern engaged in the business in purchase and sale of Aluminum Composite Panels, chemicals used for cement and concrete mixing. It is registered as a dealer under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for brevity "the Act") and is an assessee on the rolls of 1st respondent-Commercial Tax Officer, M.J. Market Circle, Hyderabad.

3. It is the case of the petitioner that Aluminum Composite Panels are covered by Entry 27 of Schedule

IV of the Act and, as such, the rate of tax applicable is at 4% to 5%, but not at 14.5%. In support of such plea, the petitioner relies on the orders vide CCT's Ref.No.PMT/P&L/A.R.Com/422/2005, dated 8.12.2005 and orders in CCT's Ref.No.PMT/P&L/A.R.Com/310/2005, dated 2.9.2005 passed by the 5th respondent-Authority for Clarification and Advance Ruling constituted under Section 67 of the Act. In the order dated 8.12.2005, the 5th respondent-Authority has ruled that the good of Aluminum Composite Panels attract tax at 4%; and in the order dated 2.9.2005, the said authority has ruled as under:

> "Entry 27 of Schedule IV of the Act reads "ferrous and non-ferrous metals and alloys and extrusions thereof". Thus besides ferrous metals, non-ferrous metals and oils and extrusions thereof are clubbed together in the entry. Aluminum is known as a non-ferrous metal. The customs clearance documents submitted by the applicant shows the HSN code 7606.91.90. On the basis of evidence furnished and in terms of the provisions of the A.P. VAT Act, 2005 we hold that the rate of tax applicable to the imported aluminum with LDPE composite panel is liable to tax @ 4%."

4. It is the grievance of the petitioner that without giving proper opportunity of hearing, under the guise of clarification, the 5th respondent-Authority has passed order in A.R.Com/6/2014, dated 1.10.2014, reviewing its earlier orders dated 8.12.2005 and 2.9.2005, stating that the material involved in Aluminum Composite Panels is a good falling under Schedule V of the Act, attracting tax @ 14.5%. Basing on the said order, 2nd respondent-Deputy Commercial Tax Officer, Gowliguda Circle, Hyderabad,

has passed the impugned order in Case No.03/2014, dated 24.12.2014, determining the tax payable by the petitioner at Rs.2,05,46,324/- for the period from 2009-10 to 2012-13. The impugned order is passed mainly relying on the clarificatory order dated 1.10.2014 passed by the 5th respondent-Authority. Aggrieved by the same, the present writ petition is filed.

5. Mainly, it is the case of the petitioner that the clarificatory order dated 1.10.2014 passed by the 5th respondent-Authority, in the absence of any clarification petition by the petitioner or any person, is contrary to law and such order is passed without giving any opportunity of hearing to the petitioner. It is submitted that there is no valid show cause notice indicating the reasons for reviewing/ clarifying the earlier orders dated 8.12.2005 and 2.9.2005 passed by the 5th respondent-Authority.

6. It is submitted by the learned counsel for petitioner that under Section 67 (5) of the Act, though the 5th respondent-Authority is having power to review, amend or revoke its rulings, it can be done only by showing good and sufficient reasons, but not otherwise. In the order dated 1.10.2014, no reasons are assigned by the 5th respondent-Authority to review its earlier orders, except stating that objections are not filed and the Aluminum Composite Panels is a good falling under Schedule V of the Act, but not covered by Entry 27 of

Schedule IV of the Act.

7. When the matter was heard on 4.2.2015, on perusing the clarificatory order dated 1.10.2014 passed by the 5th respondent-Authority, *prima-facie*, we were of the view that sufficient reasons as contemplated under Section 67 (5) of the Act were not mentioned by the 5th respondent-Authority for reviewing/clarifying its earlier orders dated 8.12.2005 and 2.9.2005. Therefore, instead of keeping the matter pending, the learned Government Pleader for Commercial Taxes was directed to obtain instructions from the Department in that regard.

8. Today, on instructions, the learned Government Pleader submits that reasons are not assigned in the order dated 1.10.2014. Further, it is submitted that in similar situations in other States, the authorities have held that the Aluminum Composite Panels fall analytically under Schedule V of the Act only, but not covered by Entry 27 of Schedule IV of the Act, as such, they are charged tax at 14.5%. At the same time, it is fairly submitted by the learned Government Pleader that in the order dated 1.10.2014, the 5th respondent-Authority has not assigned valid reasons.

9. As per Section 67 in Chapter IX of the Act, the Commissioner can constitute a State level 'Authority for Clarification and Advance Rulings' comprising of three officers not below the rank of Joint Commissioner, to clarify, in the manner prescribed any aspect of the

implementation of the Act. In this case, in exercise of such powers under Section 67 of the Act, earlier, 5th respondent-Authority has passed orders dated 8.12.2005 and 2.9.2005, stating that the Aluminum Composite Panels attract tax at 4% to 5%, but not at 14.5%. At the same time, under Section 67(5) of the Act, the Authority for Clarification and Advance Ruling is empowered to review, amend or revoke its orders at any time for good and sufficient cause by giving an opportunity of hearing to the affected parties and the order giving effect to such review or amendment or revocation shall not be subject to the period of limitation.

10. It appears that earlier orders are passed on the application filed by the companies, which manufacture the goods falling under Schedule V of the Act, which include purchase and sale of Aluminum Composite Panels. As the petitioner is involved in the business of purchase and sale of Aluminum Composite Panels, based on the earlier orders dated 8.12.2005 and 2.9.2005, they were paying tax at 4% to 5%. In view of the provisions under Section 67(5) of the Act, the 5th respondent-Authority can review its own orders, however, it is empowered to do so only by showing good and sufficient cause and by giving an opportunity of hearing to the affected parties.

11. A perusal of Notices dated 25.1.2014 and 18.2.2014 issued by the 5th respondent-Authority to the petitioner also do not indicate any reasons for reviewing

its earlier orders. Therefore, unless the petitioner, who is the affected party, is notified the reasons before reviewing the orders on the proposed ground of reviewing the order under Section 67(5) of the Act, any order passed without giving an opportunity of hearing to the petitioner is contrary to the said provision and is in violation of the principles of natural justice.

12. Therefore, having regard to the fact that no sufficient reasons are indicated in the clarificatory/reviewing order dated 1.10.2014, we deem it appropriate to set aside the order dated 1.10.2014 issued by the $5^{th}$ respondent-Authority and the consequential assessment order dated 24.12.2014 issued by the $2^{nd}$ respondent-Deputy Commercial Tax Officer. However, we grant liberty to the $5^{th}$ respondent-Authority under Section 67 of the Act to review its earlier orders dated 8.12.2005 and 2.9.2005 by giving proper notice and opportunity of hearing to the petitioner and indicating the reasons for such review/clarification. Based on such ruling by the $5^{th}$ respondent-Authority, it is equally open to the assessing authority to pass appropriate assessment orders afresh.

13. Subject to the above directions, the writ petition is allowed at the admission stage. 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

05.02.2015.
Msr

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