THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.21219 of 2004

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

This writ petition is filed seeking a Writ of Mandamus to declare that all chemicals, other than those specified, fall within the purview of Entry 9 of Sixth Schedule to the APGST Act and accordingly hold that the chemical, namely, 'Ammonium Nitrate', manufactured and sold by the petitioner, attracts tax at the rate of 8% under Item 9 of Sixth Schedule to the APGST Act.

Petitioner is a Proprietary concern engaged in the business of manufacturing and selling of a chemical, namely, Ammonium Nitrate and is an assessee on the rolls of the 1st respondent-Commercial Tax Officer No.III, Nellore. The petitioner has reported the turnover for the assessment year 2003-04 by paying the tax at the rate of 8% on the the chemical *viz.,* Ammonium Nitrate being manufactured and sold within the state and, tax at the rate of 10% on inter-state sale of the same not covered by 'C' forms, treating it as a chemical falling under Entry 9 of the Sixth Schedule ("Dyes & Chemicals") to the APGST Act. Subsequently, the 1st respondent has issued a show-cause notice dated 31.08.2004, stating that Entry 9 of the Sixth Schedule covers the chemicals which are related to Dyes, and since 'Ammonium Nitrate' is a chemical, which aids the process of blasting, it does not fall under the said Entry 9 of the Sixth Schedule i.e., "Dyes & Chemicals". Further, alleging that 'Ammonium Nitrate' falls under Seventh Schedule and is taxable at the rate of 12%, the petitioner was called upon to file objections to the proposed balance tax payable by him at Rs.85,556/-.

When the matter is called for hearing, it is brought to our notice by learned counsel appearing for the parties that during pendency of the proceedings, Government has issued orders in G.O.Ms.No.189 dated 07.02.2005 in exercise of the powers conferred by Sub-section (1) of Section 9 of the APGST Act, in partial modification of the orders issued in G.O.Ms.No.1021, Revenue Dt.13.12.2004, directing that the rate of tax on the sale of all chemicals besides 'Calcium Carbide', which are not covered under Entry 9 of Dyes and Chemicals, in the state, shall be at eight paise in the rupee, upto 30.09.2004 only, under APGST Act.

The petitioner has already filed returns by paying tax at the rate of 8%. Further, inasmuch as the show-cause notice, dated 31.08.2004, pertains to the assessment year 2003-04, which ends by 31.03.2004, the same is covered by the aforesaid directions issued by the Government in G.O.Ms.No.189 dated 07.02.2005.

Further, it is brought to our notice that on the same ground, similar matters were allowed by this Court and a copy of one such order passed on 07.06.2007 in the case of **M/s. Velivennu Primary Agricultural Co-op. Credit Society Ltd., vs. The Commercial Tax Officer No.II, Tanuku** is placed on record.

In view of the directions issued by the Government in G.O.Ms.No.189 dated 07.02.2005, the show-cause notice dated 31.08.2004 is liable to be quashed.

Accordingly, the writ petition is allowed and the show-cause notice dated 31.08.2004 is hereby quashed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

31.03.2015

v v