HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM
T.R.C. No.84 OF 2002

ORDER:- (per CKR,J)

This revision case is filed by the Revenue against the order dated 07.02.2002, in Tribunal Appeal No.311 of 1998, passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (hereinafter referred to as "the Tribunal"), raising the following two questions of law:

i) Whether the revision made by the DC vide the impugned orders is justified and sustainable or not?

ii) Whether the S.T.A.T. is justified in allowing the appeal by setting aside the orders of revision by the DC (CT)?

2) At the outset we may say that these two questions which have been raised do not fall for consideration as there are no questions of law. Thus, on that simple ground alone this Tax Revision Case is liable to be dismissed. Apart from this, the case of the Revenue is that the dealer, who is a Contractor, had utilized certain amount of bitumen for laying the roads. The Commercial Tax Officer accepted the plea of the dealer and granted exemption on the various items like bitumen and other material used in laying the road. However, the Deputy Commissioner (Commercial Taxes), Warangal Division, in exercise of the revisional powers had found that while accepting the contention of the dealer that the stone-ballast/chips are eligible for exemption under G.O.Ms.No.387, Rev.(CT-II), dated 04.05.1991, so far as bitumen was held to be liable to be taxed. The reason for revising the order of the Commercial Tax Officer is that there is no proof produced by the dealer of payment of tax on the purchase / procurement of the bitumen by the R&B Department. The dealer

appealed to the Tribunal and the Tribunal after considering the material on record and also the specific finding of the Deputy Commissioner that the bitumen was supplied by the Department had held the legal burden to discharge the tax liability is on the R&B Department, on account of the fact, the bitumen is liable to be taxed at the point of first sale. If at all tax burden is to be discharged, it is for the R&B authorities being the first purchasers to discharge such liability. In that view of the matter, the Tribunal held the liability of purchase tax which was cast on the R&B (being purchasers) cannot be fastened on the dealer.

3) In the light of facts on record, there is no infirmity in the order of the Tribunal and the Tribunal rightly rejected the contention of the Department, especially considering the fact that the bitumen was supplied by the Department. For coming to the conclusion the certificate dated 01.01.1998 issued by the Department to the effect that during the years 1991-1992 and 1992-1993 the department has supplied the bitumen to the dealer for road laying works and further the dealer was not authorized to purchase the bitumen tar from outside, was relied on. All these questions are pure questions of facts. On appreciation of the same, the Tribunal had rightly rendered its judgment and there is no question of law, which arises from the order for consideration of this Court in exercise of Section 22 of the Act.

4) Accordingly, this Tax Revision Case is dismissed. There shall be no order as to costs.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date: 30.06.2015
Ssv