HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

T.R.C.No.77 of 2002

-

ORDER: (Per Dr.Justice B.Siva Sankara Rao)

Impugning the order of the Sales Tax Appellate Tribunal in T.A. No.293 of 1997 dated 30.07.2001, the present revision is maintained by the State against M/s.Mahaveer Enterprises (India) Ltd, Boggulakunta, Hyderabad. The respondent was on the rolls of the Commercial Tax Officer, M.J.Market, Hyderabad and the Commercial Tax Officer (Intl.) inspected the business premises of the said dealer and found that the dealer evolved certain schemes in sales promotion of certain products like Candles, Exhaust Fans and Kitchen wear by giving free samples subject to specified quantity of purchase. The entire commodities that were selling including those covered by free samples were purchasing by the dealer against C-forms intending for resale. The allegation there from was misuse of C-forms so far as giving of samples of the goods purchased concerned by saying those are not within the purview of resale in levying tax by assessing the same to that extent by the order passed by the Assistant Commercial Tax Officer, holding the dealer committed the offence punishable under Section 10(d) of the C.S.T.Act in levying the penalty of 1 ½ times of the tax due on the said turnover related to free samples for free supply of articles. The dealer went unsuccessful including appeal before the Appellate Deputy Commissioner and there from he went successful before the Sales Tax Appellate Tribunal, where by placing reliance on the judgment of Gujarat High Court in ***Ruby Laboratories V. Commissioner of Sales Tax,*** the Tribunal allowed the contention of the dealer also by relying upon earlier expression of that Tribunal in ***Sri Ramakrishna Medical***

Agencies V. State of A.P.

2) It is impugning the same, the present revision is maintained by the State with the contentions as involving question of law in interpretation as to the Sales Tax Appellate Tribunal is justified in setting aside the order of the Appellate Deputy Commissioner confirming the order of the Assistant Commercial Tax Officer in levying penalty holding misuse of C-forms meant for resale when the goods purchased given as free suppliers.

3) The respondent assessee to the revision even served, failed to attend. Heard the learned Special Government Pleader for Commercial Taxes Department and taken as heard the respondent-assessee for deciding on merits. Perused the material on record as the point involved is the question of law referred above in maintaining the revision, no further formulation of it at the cost of repetition does arise.

4) Practically there is no allegation muchless any material in support of the allegation in the penalty order passed by the Assistant Commercial Tax Officer that was confirmed by the Appellate Deputy Commissioner concerned to say that the dealer purchased these goods without any intention for resale. Admittedly the business carried on by the dealer is purchase and sale of the goods for profit. Undisputedly the free supply of these articles is made in the course of such business of sale of the goods and not outside the business or unconnected with. When free supplies of these articles is made to the customers of the dealer and not to the third parties that too for rotation in bulk sale to encourage bulk purchase of quantities with the free supplies as additional incentive that is definitely in the course of sale and part of sale though not directly the goods purchased are for resale as it is boosting the sales as an incentive those were given.

5) Having regard to the above, the Tribunal is right in allowing the appeal of the dealer by setting aside the penalty order and this conclusion is lending support from the expression of the Division Bench of Gujarat High Court dated 26.11.1970 in ***Ruby Laboratories***

supra.

6) In the result, the revision is dismissed. No order as to costs.

7) Miscellaneous Petitions, if any, pending in this Tax Revision Case shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

April 20, 2015

ksh