

***HON'BLE SRI JUSTICE G.CHANDRAIAH**
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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+T.R.C. No. 62 of 2002

%23-06-2015

State of A.P. rep. by the State
Representative before STAT Petitioner

Vs.

\$ M/s.Siemens Limited
Respondent

!Counsel for the Petitioner: G.P. for Commercial Tax

Counsel for Respondent: Sri S. Dwarkanath

<Gist :

>Head Note:

? Cases referred:

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1) 70 STC 286

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JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This Tax Revision Case is preferred by the Revenue seeking revision of the orders dated 14.06.2000 in T.A.No. 320/1995 passed by the Sales Tax Appellate Tribunal, Hyderabad (for brevity "STAT") by raising the following two questions of law for adjudication.

- i) Whether the order imposing penalty is valid, if so, what amount of penalty can be imposed?
- ii) Whether the Hon'ble STAT A.P., Hyderabad is justified in setting aside the orders of the ACD(CT), Secunderabad Division?

Heard the learned Government Pleader for Commercial Tax, the learned counsel for the respondent and perused the material placed on record.

At the outset, the above questions are of general nature and they do not raise any real questions of law, however a perusal of the order of the Tribunal reveals that the issue involved is with respect to imposition of penalty on the assessee under Section 10(A)(1) of the Central Sales-Tax Act (for brevity "the Act"). Section 10(A) of the

Act reads as under:

- (1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of Section 10, the authority who granted to him or as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times.

Section 10 which deals with penalties reads as follows:

- (a)
- (aa).....
- (b) being a registered dealer, falsely represents when any class of goods that goods of such class are covered by his certificate of registration; or
- (c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-state trade or commerce that he is a registered dealer; or
- (d) of sub-section (3) of Section 8 falls, without reasonable excuse, to make use of the goods for any such purpose;
- (e)
- (f)

The applicability or otherwise of Section 10-(A) of the Act is required to be considered in the facts of this case. The Tribunal, as a matter of fact, found and waived the penalty as under:

“It is to be seen in the case on hand that the assessing authority has dropped proceedings under APGST Act originally initiated and show cause notice issued as per 19.06.1987 and has finally passed orders holding that there was no transit sale also under CST Act. Having given exemption under APGST Act, on the ground that their alleged transit, sales, covered by CST Act, the assessing authority did not impose tax under CST Act also on the disputed transactions. This made the appellant not filing the appeal against those assessment orders. However, it is also the case of the appellant that this transit sale is covered by a second sale coming under Section 6(2). The assessing authority has not imposed tax on the appellant that there was no transfer of interest in goods that were used in works contract has not accepted the case of the appellant that there was a transit sale covered by Section 6(2) of the APGST Act. It is also significant to notice that the A.C.T.O., who initiated the proceedings imposing penalty, remained silent for nearly four and half years until the appeal time is over for filing appeal by

the appellant against the assessment orders even though no tax has been imposed but because of holding it as not a transit sale.

In view of the fact that there are conflicting opinions expressed even by the Commercial Tax Officers who are conversant with all the provisions of the Sales Tax Act, it cannot be said that the appellant reputed dealer in Electrical Goods, who also believed that there was a sale made by him u/s.6(2) of the CST Act the notices of law and its interpretation making the departmental officials to treat that there was no sale of goods by the appellant because they were used in a works contract on the ground that the works contract is an indivisible contract, we cannot say that the appellant has malafide intentions as is held in the decision relied on by the appellant reported in (1988) 70 STC 286.

Therefore, for all these reasons we hold that the imposing of penalty on the alleged misuse of "C" forms is not sustainable. Hence, the point is held accordingly.

In the result, the appeal is allowed setting-aside the orders of both the lower authorities, imposing the penalty on the appellant."

The order of the Tribunal as extracted above would reveal that as a matter of fact, the Tribunal found that there was a bit of uncertainty in relation to the transaction whether the same is required to be assessed under C.S.T. or A.P.G.S.T. Act. Apart from that the Tribunal also found that there was no intention on the part of the assessee which is a requirement at the relevant point of time for levy of penalty. The Tribunal also relied on the principles laid down by this Court in ***Ravi Enterprises v. State of Andhra Pradesh***^[1]. Further, the transaction relates to the assessment year 1983-1984 whereas the penalty proceedings came to be initiated on 09.08.1992 i.e. after a long lapse of nine years.

In the light of the findings of fact the Tribunal had considered various aspects on record and gave a finding which is not challenged before this Court. The Tribunal, being the last finding authority and in the absence of such conclusive finding being challenged raising a specific question of perversity, we do not find any questions of law much less substantial questions for adjudication in the present case.

Hence, the Tax Revision Case is devoid of merits and dismissed. No order as to costs.

As a sequel to dismissal of the Tax Revision Case, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

23.06.2015

**CHALLA KODANDA
RAM,J**

Note: L.R. Copy to be marked

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