THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

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

<u>WRIT PETITION No.20973 OF 2004</u>

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<u>ORDER</u>: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed with the prayer, which reads as under:

> "To issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring that all chemicals other than those specified elsewhere, fall within the purview of entry – 9 of the VI th schedule to the APGST Act and accordingly hold that all such chemicals are taxable @ 8% under item 9 of the VI th Schedule of the APGST Act read with G.O.Ms.No.910 dt.
> 31-12-1999 and declare that the action of the 2nd respondent in levying the tax @ 12% treating the chemicals as unclassified goods, as illegal, arbitrary and set aside the impugned assessment order dt.29-9-2004 for the assessment year 2001 – 2002 under the APGST Act in respect of the levy of higher rate of tax on the sale of chemicals and direct the 2nd respondent to levy sales tax on the sale of chemicals only @ 8% and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Petitioner is a Private Limited Company registered under the Companies Act, 1956 and is a registered dealer under Andhra Pradesh General Sales Tax Act, 1957 (for short, 'APGST Act') and Central Sales Tax Act, 1956 on the rolls of Commercial Tax Officer, Nacharam. It is involved in the business of manufacturing and selling of chemicals, namely, Potassium Silicate and Sodium Silicate. For the assessment year 2001 – 02, a show-cause notice was issued calling upon the petitioner to submit written objections, if any, to the proposed levy of tax. Pursuant to the same, petitioner has filed objections for levying tax on the turnover of Rs.2,56,721/- at 12% stating that in view of Entry (9) of Schedule VI of APGST Act, tax payable on the chemicals dealt with by them is only 8%, but not 12% as proposed in the pre-assessment notice, but the assessing authority, without accepting the objections of the petitioner, on the ground that the chemicals dealt with by the petitioner fall under residuary Schedule VII, but not exclusively under Entry (9) of Schedule VI of APGST Act and as such, tax should be levied at 12%, passed order, dated 29.09.2004, vide Assessment No.:11261/2001-02(APGST), arriving at the balance tax payable by the petitioner as Rs.65,984/-.

When the matter is called, it is submitted by the learned counsel for petitioner that the subject matter of this Writ Petition is squarely covered by the judgment of this Court in W.P.No.87 of 2007, dated 07.06.2007.

From a perusal of the aforesaid judgment, it is clear that in exercise of the powers conferred under Sub-Section (1) of Section 9 of APGST Act, Government has passed orders vide G.O.Ms.No.189, dated 07.02.2005, 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.

Inasmuch as the impugned order relates to assessment year, 2001 – 02 and further, in view of the orders passed by the Government vide the aforesaid G.O., tax leviable on the chemicals dealt with by the petitioner is only 8%, but not 12% as levied by the assessing authority. In that view of the matter, we are of the view that the order of the assessing authority levying tax at 12% on the chemicals manufactured and sold by the petitioner is liable to be set aside.

Accordingly, the Writ Petition is allowed by setting aside the order of the assessing authority levying tax at 12% on the chemicals manufactured and sold by the petitioner. We further direct that tax to be levied on such chemicals is 8%, in terms of the orders passed by the Government vide the aforesaid G.O.. It is open to the respondents to pass appropriate revised orders and take steps in accordance with law.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 31, 2015

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