THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.10396 OF 2010

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

This Writ Petition is filed seeking to declare the action of respondents in levying tax on consignment sale and stocks transferred, which are exempt from tax under Section 6A of the Central Sales Tax Act, 1956 (for short, 'CST Act'), treating the same as interstate sales not covered by 'C' Forms, even after filing 'F' Forms, sale patties and delivery challans, as illegal and arbitrary.

Petitioner is an assessee on the rolls of respondent No.1 engaged in the business of manufacturing Sponge Iron and MS Ingots having manufacturing units at Marlapaka, Srikalahasthi and branch at Chennai. It sells the goods through Head Office and also through its branch at Chennai. During the assessment year 2007 – 08, it has sold certain goods within as well as outside the State and also to the foreign buyers, and has filed monthly returns in Form CST VI claiming certain exemptions, including on the sales made through its branch, treating the same as stock transfer and consignment sale under Section 6A of the CST Act. As the petitioner has not filed month wise sales details, show-cause notice, dated 18.11.2009, was issued. Pursuant to the same, petitioner has filed detailed statement of accounts, but as the petitioner has not filed sale proceeds from the consignment agent, payment details for the stock transfers etc., exemption of tax on such consignment sales and stock transfers was disallowed by treating the same as interstate sales not covered by ‘C’ Forms, and a revised show-cause notice, dated 20.03.2010, was issued. As the petitioner has not filed objections to the show-cause notice, dated 20.03.2010, assessment order, dated 30.03.2010, was passed, levying tax at Rs.3,34,28,823/-, which includes an amount of Rs.3,02,73,457/- levied on the aforesaid consignment sales and stock transfers.

In this Writ Petition, it is the case of the petitioner that on the turnover of Rs.75,68,36,436/-, being consignment sale and stock transfer of sponge iron lumps, though the petitioner has filed ‘F’ declaration forms, which is sufficient for seeking exemption, exemption is not granted and by treating the same as interstate sale not covered by ‘C’ Forms, an amount of Rs.3,02,73,457/- was levied as tax. It is his further case that without considering the legal aspects, the assessment order was passed treating the consignment sale and stock transfer as interstate sale. Further, in support of his case, the petitioner has relied on the judgment of the Honourable Supreme Court in **Ashok Leyland Ltd. v. State of Tamil Nadu and another**[1]**.**

Having heard the learned counsel for parties, we have perused the material on record.

This Court, by order, dated 29.04.2010, while admitting the Writ Petition, granted interim order subject to condition of petitioner depositing an amount of Rs.25,00,000/- within a period of eight (8) weeks from the date of that order. Today, when the matter is called, it is submitted by the learned counsel for petitioner that pursuant to the said order, dated 29.04.2010, Rs.25,00,000/- was deposited.

In view of the claim made by the petitioner that the consignment sales and stocks transferred to the branch office could not have been treated as interstate sales, and in view of the judgment of the Honourable Supreme Court in **Ashok Leyland**'s case (supra), we are of the view that it is a fit case for reconsideration by the assessing authority.

Accordingly, the Writ Petition is allowed. The assessment order, dated 30.03.2010, is set aside and the matter is remitted to the assessing authority to consider the claim of the petitioner, in view of the aforesaid judgment of the Honourable Supreme Court, and to pass fresh orders, after hearing the petitioner. It is made clear that it is open to the assessing authority to examine the claim of the petitioner by calling for necessary records. The assessing authority shall pass orders as expeditiously as possible, preferably within a period of three (3) months from the date of receipt of a copy of this order. It is also made clear that the amount of Rs.25,00,000/- stated to have been deposited by the petitioner, shall be subject to the final orders to be passed by the assessing authority.

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

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 20, 2015
MD

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[1] (2004) 134 STC 473