THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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TREVC.No.43 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This revision, under Section 22(1) of the Andhra Pradesh General Sales Tax Act (for short "the Act"), is preferred against the order of the Sales Tax Appellate Tribunal, Visakhapatnam in T.A.No.470 of 2005 dated 19.11.2014.

The respondent herein is a registered dealer, and carries on business in the sale of creosote oil. The Assessing Authority passed an order of assessment holding that creosote oil does not fall under Entry 9 of Schedule VI to the Act as it was not "Dyes and Chemicals". He treated the said oils as "general goods" falling under Schedule VII to the Act and, accordingly, levied tax at 12% on the said sales. Aggrieved thereby, the assessee carried the matter in appeal. The Appellate Deputy Commissioner held that all chemicals do not fall within the ambit of Entry 9 of Schedule VI to the Act; and, therefore, creosote oil was general goods under Schedule VII to the Act. The appeal was dismissed. Aggrieved thereby, the dealer carried the matter in appeal to the Tribunal.

In the order under revision, the Tribunal agreed with the Assessing Authority that creosote oil does not fall under Entry 9 of Schedule VI to the Act; it was only those chemicals, which are used in the Dyes, that fall within the ambit of the said entry; both the Assessing Authority and the Appellate Deputy Commissioner did not commit any error or legal flaw in arriving at the conclusion that creosote oil falls within the ambit of general goods in Schedule VII to the Act. The Tribunal, however, relied on G.O.Ms.No.189 dated 07.02.2005, issued by the Government of Andhra Pradesh, directing that tax on all chemicals shall be levied at 8%. Under the said G.O. "all chemicals" besides "Calcium", which were not covered under Entry 9 of "Dyes and Chemicals", in the State, were liable to be taxed at 8% up to 30.09.2004. The Tribunal held that since creosote oil was also a chemical, even if it did not fall within the ambit of Entry 9 of the VI Schedule to the Act, the dealer was entitled for the benefit of G.O.Ms.No.189 dated 07.02.2005, and the rate of tax to be levied on its sale was only 8%.

Before us Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would contend that creosote oil is not even a chemical, and it neither falls within the ambit of Entry 9 of Schedule VI to the Act nor is the dealer entitled for the benefit of G.O.Ms.No.189 dated 07.02.2005.

It would be wholly inappropriate for us to examine the question, as to whether creosote oil is a chemical or not, as the learned State Representative, appearing on behalf of the Commercial Tax Department before the Tribunal, fairly conceded before the Tribunal that creosote oil was a chemical. It is not open to the Revenue to now turn around and contend, in revision, that creosote oil is not a chemical. Once creosote oil is accepted to be a chemical, the petitioner is entitled to claim the benefit of G.O.Ms.No.189 dated 07.02.2005. As we find no infirmity therein, we see no reason to interfere with the order of the Tribunal.

The Revision fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:30.11.2015.

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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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Date: 30.11.2015

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