THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

Writ Petition No.39484 of 2015

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

Heard Dr. S.R.R.Viswanath, learned counsel for the petitioner, and Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, and, at their request, the writ petition is being disposed of at the stage of admission.

The order under challenge in this writ petition is the assessment order passed by the Assessing Authority (1st respondent herein) on 28.10.2015, levying tax at 14.5% on the sale of bio toilets to the Indian Railways, on the ground that the assessee had not furnished a declaration in Form 'C' or Form 'F' or the certificate in Form E-II.

Dr.S.R.R.Viswanath, learned counsel for the petitioner, would submit that the requirement of submitting a declaration in Form 'C' is only when the goods are sold to registered dealers under Section 8(1) of the Central Sales Tax Act, 1956 (for short "the CST Act') read with Rule 12(1), (6) & (7) of the CST (Registration and Turnover) Rules, 1957; sale of goods to the Government falls within the ambit of Section 8(2) of the CST Act for which Form 'C' is inapplicable; bio toilets are supplied exclusively to the Indian Railways, and form a part of the rail coaches; and, as the subject goods fall under Entry 51 of Schedule IV to the A.P.Value Added Tax Act, 2005 (for short "the VAT Act"), the goods can be subjected to tax only at 5% and not treated as "general goods", under Schedule V which are liable to tax at 14.5%. Entry 51 of the Schedule IV to the VAT Act reads as *"Rail coaches, engines and wagons"*. The contention of the petitioner is that these bio toilets are supplied exclusively to the Indian Railways; and as they form part of rail coaches, they would fall within the ambit of Entry 51 of Schedule IV to the VAT Act and can be subjected to tax only at 5%.

In the reply to the show cause notice issued by the 1st respondent, the petitioner stated that, on these bio toilet tanks, the CST payable, on inter-state sales, is @ 2%, if 'C' form is obtained; otherwise (i.e., CST sale without 'C' Form to Indian Railways Govt. of India) it would attract the same rate as applicable to the sale of goods within the

State i.e @ 5% under Entry 51 of Schedule IV to the A.P.VAT Act.

The Assessing Authority merely holds that bio toilets do not come under the category of rail coaches. No reasons are assigned as to how the Assessing Authority has come to the conclusion that these bio toilets do not fall under the said category. The Assessing Authority exercises quasi-judicial powers, and is obligated to assign reasons for arriving at any decision. No order of assessment can be passed on the *ipse dixit* of the Assessing Authority.

On this short ground, that the impugned order is bereft of reasons, it is set aside. The Assessing Authority shall, after affording the petitioner an opportunity of a personal hearing, pass a reasoned order afresh and in accordance with law.

The Writ Petition is disposed of accordingly.

The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 04.12.2015

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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