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

WRIT PETITION Nos.4606 & 4610 of 2004 and 470 of 2010

COMMON ORDER : (Per Justice R.Subhash Reddy)

In view of the common questions of law on similar set of facts, all these writ petitions are heard together and are disposed of by this common order. For the purpose of disposal, we refer to the facts as arise in W.P.No.470 of 2010.

2. Petitioner is a Company which is engaged in the business of growing and selling of teak plants and bio-fertilizers and is a registered dealer under the provisions of the A.P.General Sales Tax Act, 1957 (APGST Act), on the rolls of the 1st respondent. For the assessment year 2004-05, the petitioner has filed returns in Form CST-VI, declaring the turnover for the assessment year 2004-05. The assessing authority i.e. the 1st respondent-Commercial Tax Officer, Punjagutta Circle, Hyderabad, has allowed exemption on the turnover by extending the benefit of orders issued by the Government in G.O.Ms.No.1090, dated 10.06.1957, vide orders dated 21.02.2006, showing the gross and net turnovers as Rs.3,56,66,492/- and 'nil' respectively. The teak plants are exempted by orders of the Government in

G.O.Ms.No.1070, Revenue, dated 09.12.2002 and vermicompost, which is a bio-fertiliser, is also exempted in terms of G.O.Ms.No.167, Revenue, dated 26.02.1999 (In the order of the primary authority, exemption G.O. issued with regard to vermicompost is mentioned as G.O.Ms.No.1090, dated 10.06.1957, but the relevant G.O. is G.O.Ms.No.167, dated 26.02.1999).

3. Thereafter, the 1st respondent, by impugned proceedings dated 19.11.2009, exercising powers under Section 14(4)(cc) of the APGST Act, has revised the earlier order on the ground that the orders issued by the Government in G.O.Ms.No.167, dated 26.02.1999, is a conditional one, granting sales tax exemption to the organic manure and bio-fertilizers sold inside the State. Interpreting the said orders of the Government as if exemption is limited to local sales but not for inter-State sale of organic manure and bio-fertilizers, the 1st respondent has revised the orders of assessment by withdrawing the exemption and arrived at the tax payable at Rs.3,12,050=00 and ordered for issuance of demand notice in Form CST-VIII.

4. In this writ petition, mainly, it is the case of petitioner that the exemption granted in G.O.Ms.No.167, dated 26.02.1999, is a general exemption in exercise of powers under Section 9(1) of the APGST Act, as such, same is

also applicable for inter-State sales, in view of the provision under Section 8(2) of the Central Sales Tax Act, 1956 (CST Act). It is also the case of petitioner that having considered the applicability of G.O.Ms.No.167, dated 26.02.1999, the assessing authority has granted exemption, and hence, it is not open to the same assessing authority to levy tax by exercising powers under Section 14(4)(cc) of the APGST Act on the same material by coming to a different opinion.

5. The 1st respondent-Commercial Tax Officer has filed counter affidavit. In the counter affidavit, while denying the various allegations made by the petitioner, it is stated that the petitioner is engaged in the business of growing and selling teak plants and bio-fertilizers and is an assessee under the APGST Act. While admitting that teak plants are exempted vide G.O.Ms.No.1070, dated 09.12.2012, it is stated that vermicompost which is a bio-fertilizer, is exempted in terms of G.O.Ms.No.167, dated 26.02.1999, if the sale is within the State of Andhra Pradesh. Referring to the provision under Section 14(4)(cc) of APGST Act, it is stated that when exemption is wrongly allowed, it is always open for the assessing authority to revise such assessment proceedings. It is averred that as the exemption granted by the Government vide G.O.Ms.No.167, dated 26.02.1999, is a conditional one and is applicable only to the sales effected within the State, petitioner is not entitled for the benefit of said G.O.,

as admittedly, sales took place outside the State of Andhra Pradesh.

6. Heard Sri S.Krishna Murty, learned counsel for petitioner in W.P.No.470 of 2010 and Sri M.V.J.K.Kumar, learned counsel for petitioners in W.P.Nos.4606 and 4610 of 2004, and the learned Special Standing Counsel for Commercial Taxes, Sri M.Govind Reddy, appearing for respondents.

7. It is contended by the learned counsel for petitioners in these writ petitions that the exemption granted by the Government in G.O.Ms.No.167, dated 26.02.1999, is general exemption and the benefit of such exemption is to be extended even to inter-State sales by virtue of provision under Section 8(2)(a) of the CST Act. It is also submitted that in exercise of powers under Section 14(4)(cc) of the APGST Act, it is not open for the respondents to change the opinion on the same material which was available at the time of passing of original order. The learned counsel appearing for petitioners have relied on the Division Bench judgments of this Court in **Penguin Textiles Ltd. v. State of Andhra Pradesh**[1], in **Anandi Roller Flour Mills Ltd. v. Commissioner of Commercial Taxes, A.P.**[2], in **I.T.C. Ltd. (I.B.D.Division) v. Deputy Commissioner (CT), Guntur Division & another**[3] and in **State of A.P. v. M/s.Ratnasree Box Makers,**

Rajahmundry[4].

8. On the other hand, it is contended by the learned Special Standing Counsel for Commercial Taxes, appearing for respondents that the exemption granted vide impugned G.O. is a conditional one, subject to the explanation to Section 8(2) of the CST Act and the same cannot be treated as a general exemption. He has relied on the judgments of the Hon'ble Supreme Court in **Commissioner of Sales Tax, Jammu & Kashmir & others v. Pine Chemicals Ltd. & others**[5], in **State of U.P. v. Poysha Industrial Co. Ltd.**[6] and in **Union of India & another v. Rapidur (India) Pvt. Ltd.**[7].

9. In this case, it is not in dispute that prior to the amended Act 16/2007, by which, Section 8 (1) and (2) are substituted, in case, if there is a general exemption in the State, same would be applicable for the inter-State sales under Section 8(2)(c) of the CST Act, but, however, as per the explanation, for the purpose of claiming the benefit of exemption under Section 8(2) of the Act, the sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law, the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions. It is not in dispute that in

the case on hand, G.O.Ms.No.167, dated 26.02.1999, is a G.O. issued by the State Government in exercise of powers under Section 9(1) of the APGST Act, and the said G.O. reads as under :

> "**Exemption of sales tax on the sale of Organic manure and Bio-fertilisers inside the State of Andhra Pradesh.**
>
> [G.O.Ms.No.167 Rev. (CT-II) Dept. Dt.26.2.1999]
>
> In exercise of the powers conferred by sub-section (1) of Section 9 of Andhra Pradesh General Sales Tax Act, 1957 (A.P.Act No.VI of 1957) the Governor of Andhra Pradesh hereby grants exemption from the tax payable under the said Act on the sales of Organic manure and Bio-fertilisers inside the State."

10. While it is the case of the petitioners that the said G.O. gives general exemption as it is issued in exercise of powers under Section 9(1) of the APGST Act without any specified circumstances and conditions, it is the case of respondents that it is a conditional order, as such, exemption cannot be extended to the sales outside the State. In the judgment relied on by the learned counsel for petitioners in **Penguin Textiles**' case (1 supra), in identical circumstances, this Court has considered the validity of the exemption notification issued by the Government in G.O.Ms.No.1067, dated 19.09.1985. In the said case, the assessing authority, by applying the orders of exemption granted by the Government in the

above said G.O., has granted tax exemption to the manufacturers of cotton hank yarn, but the revisional authority has revised the said assessment on the ground that the exemption is only conditional one but not a general one. This Court, while considering the various decided cases on the subject, has held that such G.O. was to be construed only as a general one, but not conditional one so as to deny exemption to the inter-State sales. In the said judgment, reference was made to **State of Madras v. N.K.Nataraja Mudaliar**[8], wherein, the Hon'ble Supreme Court, while considering the Constitutionality of the provision under Section 8(2)(a) of the CST Act, has held that the said Section was incorporated with a view to see that the consumers in the States to which the goods are imported are not placed at a disadvantage as compared to the consumers in the State from which the goods are imported and the said provision is bound to facilitate inter-State trade and also held that the purpose behind this Section is to see that the State Governments do not place the local consumers in a better position than the consumers outside.

11. Further, in **Anandi Roller Flour Mills'** case (2 supra), a Division Bench of this Court, while considering the exemption granted vide G.O.Ms.No.377, dated 02.05.1991, issued under Section 9(1) of the APGST Act, has held that the sale or purchase of wheat or wheat

products within the State is considered as a general exemption within the meaning of Section 9(1) of APGST Act and the same would be extended to the transactions in the course of inter-State sales by virtue of Section 8(2)(a) of the CST Act.

12. The aforesaid two judgments support the case of petitioners. G.O.Ms.No.377, dated 02.05.1991, which is subject matter of scrutiny before the Division Bench of this Court in **Anandi Roller Flour Mills'** case (2 supra), is similar to the orders issued by the Government in the present case in G.O.Ms.No.167, dated 26.02.1999, as this G.O. is also issued not only in exercise of powers under Section 9(1) of the APGST Act, but is applicable to all the sales of Organic manure and bio-fertilisers in the entire State. Restricting such benefit of exemption to the sales inside the State under the APGST Act cannot be construed as a specified circumstance or specified condition within the meaning of explanation to Section 8(2) of the CST Act.

13. The judgment relied on by the learned Special Standing Counsel in the case of **Commissioner of Sales Tax, Jammu & Kashmir** (5 supra), would not render any assistance in support of his case, as much as in the aforesaid judgment, identical provisions were considered under the provisions of the Jammu and Kashmir General Sales Tax Act, but the G.O. granting exemption was

restricted to manufacturers in a large and medium industrial units and sold within five years of commencement of production by such Units. In those circumstances, the Hon'ble Supreme Court has held that such an exemption is not a general one, but is a conditional one. But, as much as there was no such condition prescribed in the orders issued by the Government in G.O.Ms.No.167, dated 26.02.1999, the ratio laid down by the Hon'ble Supreme Court in the above judgment would not render any assistance in support of the case of respondents.

14. The judgment in **Poysha Industrial Co. Ltd.**'s case (6 supra) also would not render any assistance in support of the case of respondents, as much as in the exemption G.O. which was subject matter of the said case, exemption was only for specified goods produced by a specified Company, as such, it is construed that it is not a general exemption. Even in the judgment in **Rapidur (India) Pvt. Ltd.**'s case (7 supra), relied on by the learned Standing Counsel, exemption was restricted to registered small scale industrial units, as such, same view was taken as is taken in **Commissioner of Sales Tax, Jammu & Kashmir** (5 supra).

15. For the aforesaid reasons, and further, in view of the judgments of this Court in **Penguin Textiles Ltd.** (1 supra)

and in **Anandi Roller Flour Mills Ltd.** (2 supra), we are of the view that the exemptions granted by the Government in G.O.Ms.No.167, dated 26.02.1999, are general exemptions and are not confined to any specific circumstances or under specified conditions covered by explanation to Section 8(2) of the CST Act.

16. Another contention advanced by the learned counsel for petitioners is that no case is made out for the assessing authority to revise the assessment under Section 14 of the APGST Act. But, from a perusal of the provision under Section 14(4)(cc) of the APGST Act, it is clear that where the assessing authority is of the opinion that the whole or any part of the turnover of a business of a dealer has escaped assessment of tax by wrongly allowing exemption, the assessing authority is empowered to determine the escaped assessment and assess the turnover so determined. In that view of the matter, we do not find any merit in such contention advanced by the learned counsel for petitioners.

17. As we are of the view that the exemption granted by the Government in G.O.Ms.No.167, dated 26.02.1999 is a general exemption and is not covered by explanation to Section 8(2) of the CST Act as it then existed, the impugned order is liable to be set aside. Accordingly, the writ petition in W.P.No.470 of 2010 is allowed and the impugned order, dated 19.11.2009, passed by the 1st

respondent-Commercial Tax Officer, in G.I.No…./2004-05(CST), is set aside.

18. In view of the findings recorded in W.P.No.470 of 2010, the writ petitions in W.P.Nos.4606 and 4610 of 2004 are also allowed. However, the question whether the products manufactured and sold by the petitioners in these two writ petitions are bio-fertilisers or not, is left open and these orders will not preclude the assessing authority from taking appropriate steps in accordance with law, if the products sold by the petitioners in these two writ petitions are not bio-fertilisers.

As a sequel, pending miscellaneous applications, if any, shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO, J

29th September 2015

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[1] (2002) 34 APSTJ 18

[2] 32 APSTJ 124

[3] 129 STC 104

[4] (1989) 8 APSTJ 185

[5] (1995) 96 STC 355

[6] (1996) 101 STC 529

[7] 119 STC 18

[8] 22 STC 376 (SC)