THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Special Appeal No.19 of 2003

JUDGMENT:(per Hon'ble Sri Justice M. Seetharama Murti)

This appeal by the appellant/dealer is directed against the orders dated 19.09.2002 of the Commissioner of Commercial Taxes, in CCT's.Ref.No.LV(3)/29/99-I.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the learned Special Government Pleader for Taxes (Andhra Pradesh). We have perused the material record.

3. The facts which are necessary for consideration, in brief, are as follows: -'The appellant/dealer is engaged in purchase of raw cashew nuts from the local ryots on behalf of the non-resident principals and transferring the local purchases to the non-resident principals during the relevant assessment year. The assessee had filed the said patties (invoices) before the Department and claimed exemption on the entire turnover involved on such purchase of cashew nuts made on behalf of the non-resident principals. A provisional assessment order was passed by the Assistant Commissioner, (CT) (Intelligence), Visakhapatnam on 28.03.1998 rejecting the claim of exemption on the subject turnover, which represented the transactions of raw cashew nut purchases which were made on behalf of non-resident principals. The said order was said to have been based on the information obtained on an investigation made by the Department with the said non-resident principals of Kollam in Kerala State. Aggrieved of the said orders, the dealer had preferred an appeal before the Appellate Deputy Commissioner (CT) Kakinada ('the ADC' for short). The ADC had allowed the said appeal of the dealer and had remanded the matter to the assessing authority with a direction to examine the issue involved with reference to the evidence that may be produced by the dealer and ascertain whether the dealer had included the tax in the purchase value of cashew nuts made on behalf of non-resident principals etcetera. On such remand, the matter was taken up by the Commercial Tax Officer, Dwarakanagar ('the CTO' for short). After due enquiry and verification of the assessment order of the Andhra Pradesh Agricultural Market Committee and after confirmation of the values mentioned in the assessment order by the Secretary of the said Market Committee that the value is the basic value without any tax, the CTO had given the relief to the dealer/appellant by his orders dated 28.02.2001. The Commissioner had proposed to revise the orders of the ADC and also the CTO and had issued a show cause notice *inter alia* stating that the assessees have purchased cashew nuts at one rate and passed on the same to the dealers at Kerala at another rate by including purchase tax @ 9% and also collected market cess @ 1% on the purchase value only and that they have given one set of sale patties to the dealers in Kerala and produced another set of patties before the Department. In response to the show cause notice, the appellant had filed detailed objections and sought for a personal hearing and an opportunity to adduce necessary evidence. However, the Commissioner had passed the impugned orders confirming the proposal in the show cause notice and had accordingly set aside the orders of the ADC (CT), Kakinada and had restored the orders dated 28.03.1998 of the assessing authority i.e., the Assistant Commissioner (CT) (Intelligence), Visakhapatnam. Aggrieved of the said orders, the appellant had preferred this appeal.'

4. The learned counsel for the appellant submits that neither an opportunity to adduce evidence nor an opportunity of personal hearing was given by the respondent herein and that the principles of natural justice were violated and that the Commissioner had passed orders based on various other reasons, which are not mentioned in the show cause notice, and that the Commissioner instead of remitting the matter either to the ADC or CTO had erred in confirming the levy on his own without giving any opportunity of hearing to the appellant.

5. The learned Government Pleader while supporting the order impugned had stated that the matter may be remanded to the CTO for fresh consideration on merits.

6. Having regard to the facts and the submissions, we deem it appropriate to set aside the impugned order and remit the matter to the CTO.

7. Accordingly, the appeal is allowed and the impugned order is set aside and the matter is remitted to the CTO for fresh consideration of the facts in regard to the disputed turnover and levy of tax thereon, having regard to the facts and law, however, after giving an opportunity of hearing to the appellant/dealer and also to adduce evidence, if any. The CTO shall complete the whole exercise and pass final orders within three months from the date of receipt of a copy of this judgment.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

11.03.2015

Vjl