**THE HON'BLE SRI JUSTICE K.C. BHANU**
**AND**
**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Special Appeal No.23 of 2002**

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

This appeal by the appellant/assessee is directed against the orders dated 09.03.2002 of the Commissioner of Commercial Taxes in CCT's Ref.L.III(2)/188/98-II.

**2.** We have heard the submissions of the learned counsel for the appellant and the learned Special Standing Counsel for Commercial Taxes. We have perused the material record.

**3.** The facts, in brief, are as follows: - 'The assessee was assessed by the Commercial Tax Officer for the year 1995-96 *vide* order dated 08.05.1998 G.I.No.8276/95-96. By the said order, the assessing authority had allowed the claim for exemption under G.O.Ms.No.314 Revenue (CT-II) Department dated 28.04.1988 on the sales made to Tirumala Tirupathi Devasthanams, Tirupathi. The Commissioner by the order impugned having found that the said order so far it related to the said exemption is incorrect and prejudicial to the interests of the revenue of the State had taken up *suo motu* revision by exercising the powers vested in him under Section 20(1) of the APGST Act and had disallowed the exemption by confirming the show cause notice and by setting aside the orders of the assessing authority. Having been aggrieved of the said orders, the assessee preferred this appeal.'

**4.** During the course of submissions, it is submitted that subsequent to the orders, which are impugned in this appeal, the assessing authority had passed revised final assessment orders dated 18.03.2002 for the year 1995-96.

**5.** Now the only question before this court is – 'Whether in the facts and circumstances of the case, the Commissioner was justified in passing the revisional orders confirming the proposal in the show cause notice and setting aside the orders of assessment and in not allowing the exemption under G.O.Ms.No.314 Revenue (CT-II) Department dated 28.04.1988 on the sales made to Tirumala Tirupathi Devasthanams, Tirupathi ('the TTD' for short)?

**6.** The learned counsel for the appellant would contend as follows: 'The appellant's had supplied spices and others goods to the TTD and had claimed exemption of sales tax as per the provisions of G.O.Ms.314 dated 28.01.1988 exempting with effect from 01.04.1976 the said goods from tax payable under the APGST Act on the sales and purchases of goods by the TTD. Initially when the assessing authority did not allow the exemption in the earlier assessment years 1988-89 to 1993-94, the matter was carried in appeals to the Sales Tax Appellate Tribunal. While so, the Tribunal by order dated 04.09.1995 had allowed the appeals filed by another dealer by holding that the intention of the Government Order is to give benefit of tax to all suppliers also. Thereupon the State had preferred Tax Revision Cases before this court against the orders of the Tribunal. This Court by judgment dated 21.12.2011 in TRC.Nos.82 and 83 of 2011 had held that there is no dispute that the TTD and Girijan society are exempted from payment of sales tax as well as purchase tax and that the sales tax cannot be collected from the assessee who is a selling dealer, when the purchaser of the goods is exempted. In view of the decisions and also the subsequent GO.Ms.No.162 dated 03.04.2002 issued by the Government in exercise of powers conferred by sub section (1) of Section 9 of the Act, the goods are exempted from payment of tax under the Act on the sales made by the local dealers to the TTD. Since the assessment is prior to 06.02.2000 and as the selling dealer i.e., the assessee herein did not charge tax from the TTD, the order impugned is unsustainable and is liable to be set aside by allowing exemption on the sales made to the TTD.'

**7.** The learned special standing counsel did not dispute the legal position obtaining, the applicability of the ratio of the decision of this Court, the applicability of the terms of the G.O dated 03.04.2002 and also the factual position.

**8.** The two Government Orders read as follows:

GO.Ms.No.314, Rev.(CT-II) Dept. dt.28.4.1988:

> **In exercise of powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh (Act VI of 1957), the Governor of Andhra Pradesh hereby, exempts with effect from 1st April, 1976 from the tax payable under the said Act, on the sales and purchases of goods by the Tirumala Tirupathi Devasthanams.**

G.O.Ms.No.31, Rev. dt.11.01.1991:

> **In exercise of powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh (Act VI of 1957), the Governor of Andhra Pradesh hereby exempts the tax payable under the said Act, on the sales or purchases, as the case may be, of Minor Forest Produce, Agricultural Produce, Commodities and Daily Requirements made by Girijan Co-operative Corporation Ltd., Visakhapatnam.**

In **Vijayalakshmi enterprises, Vijawayada v. State of Andhra Pradesh (**rendered in TRC.Nos.82 and 83 of 2011)[1] this Court having referred to the above Government Orders had considered the entitlement of the dealer to claim exemption on the sales made to the TTD and Girijan society for the assessment years 1999-2000 and 2000-2001. Having regard to the above Government Orders relied upon by the dealer and the facts of the case, this Court held as follows: -

> **'A plain reading of the two Government Orders would reveal that TTD as well as Girijan Society are exempted from payment of tax under the Act on the sales and purchases of goods by them. When they are exempted from paying the tax on the purchase of goods from the petitioner, whether or not the Government Orders explicitly exempt the petitioner from paying the tax? Impliedly, it follows that the revenue cannot levy and collect tax on the sales effected by the petitioner to buyer who is exempted from payment of purchase tax.**
>
> **The interpretation is also supported by the judgment of the Supreme Court in Peekay Re-Rolling Mills (P) Ltd., V. Assistant Commissioner [(2007)4 SCC 30].'**

The learned counsel for the appellant contended that the ratio in the above decision squarely applies to the facts of the case which are not in dispute. Be that as it may.

**10.** GO.Ms.No.162 Revenue (CT-II) Department dt.03.04.2002 which is relied upon by the appellant reads as follows:

> **In exercise of the powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act.VI of 1957) the Governor of Andhra Pradesh hereby exempts from the payment of tax under the said Act on the sales made by the local dealers to Tirumala Tirupati Devasthanams, Tirupati, prior to the 6th February 2000 provided that the selling dealers did not charge tax from the TTD.**

**11.** The terms of the GO make it explicitly clear that the Government have exempted from the payment of tax under the APGST Act on the sales made by the local dealers to TTD prior to 06.02.2000 provided such selling dealers did not charge tax from the TTD. In the case on hand, the assessment under the APGST Act is of the year 1995-96 and therefore, the claim of the appellant is covered by the terms of the abovementioned GO; and hence, the claim of the appellant for exemption is valid and the appellant is accordingly eligible for exemption from the payment of tax under the APGST Act on the sales which were admittedly made prior to 06.02.2000 by the appellant to the TTD as the appellant did not charge tax from the TTD.

**12.** Viewed thus, we find that the revisional order, which is impugned is unsustainable and is liable to be set aside.

**13.** Accordingly, the Special Appeal is allowed and the order impugned is set aside and the order dated 08.05.1998 of the Commercial Tax Officer is restored. The Commercial Tax Officer shall pass appropriate consequential orders, if necessary. There shall be no order as to costs.

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

**K.C. BHANU, J**

**M. SEETHARAMA MURTI, J**

**18.02.2015**
*Vj*

[1] 2012 APSTJ (Vol 54) page 39