THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO.22378 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The proceedings under challenge in this Writ Petition is the assessment order passed in Form VAT 305 dated 08.06.2016 levying tax on the petitioner, under the Telangana Value Added Tax Act, on the branch transfers effected by them outside the State, and in denying them input tax credit on the ground that tax invoices were not produced.

In terms of Section 6A(1) of the CST Act, where any dealer claims that he is not liable to pay tax under the CST Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case maybe, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form. The form stipulated in this regard, under the CST (R&T) Rules, is Form F. Failure of the dealer to produce F Forms would result in his being subjected to tax under Section 8 of the CST Act. Where the movement of the goods from one State to another is occasioned by a sale, the ingredients of Section 3(a) of the CST Act are attracted and, on failure on the part of the assessee to prove that it was an inter-state branch transfer by producing the necessary F Forms, the subject transaction may well be construed to be an inter-state sale liable to tax under Section 8 of the CST Act. It is only if the sale is an intra-state sale, can the assessee be subjected to tax under the Telangana Value Added Tax Act. The assessment order does not record any finding regarding the petitioner's contention that the subject goods moved from one state to another. If that be so, the petitioner could have only been subjected to assessment, and for levy of tax, under the CST Act, and not under the Telangana Value Added Tax Act.

Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, on instructions, would fairly state that, if the assessing authority were to accept that the goods moved from one State to another, the assessment could have only been made under the CST Act, and not under the Telangana Value Added Tax Act. He would submit that, since the records have now been transferred to the territorial assessing authority, the matter may be remanded for his consideration afresh.

Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would further submit that the petitioner was denied input tax credit for a sum of Rs.6,46,024/- on the ground that they had failed to produce tax invoices; and, since the tax invoices are now available for production, the assessing authority may be directed to examine this issue also.

As the very jurisdiction of the assessing authority to assess the petitioner to tax under the Telangana Value Added Tax Act would depend on his recording a finding that the goods had not moved from within the State of Telangana to another State, the impugned order must be and is, accordingly, set aside as the assessing authority has not recorded any finding in this regard. As the matter is now being remanded to the territorial assessing authority for his consideration afresh, we consider it appropriate to direct him to also examine whether the petitioner should be given the benefit of input tax credit for the disallowance of Rs.6,46,024/-, as they now claim to possess the required tax invoices. Needless to state that, before any fresh assessment order is passed, the petitioner shall be afforded an opportunity of a personal hearing.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(U.DURGA PRASAD RAO, J)

19th July 2016
RRB