THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.13307 OF 2010

ORDER: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri V. Bhaskar Reddy, learned counsel for the petitioner and Sri S. Suribabu, learned Special Standing Counsel for Commercial Taxes.

The order under challenge in this writ petition is the order passed in revision by the Deputy Commissioner (CT), Guntur Division, Guntur dated 1.2.2010 rejecting the petitioner's request for exemption under G.O.Ms. No. 296, dated 4.9.1999 on the ground that, in order to claim exemption under Section 6-A of the Central Sales Tax Act, 1956 (for short 'the C.S.T. Act'), the dealer had to satisfy the conditions laid down therein to become eligible for exemption; though dealers were entitled for exemption on inter-state sales of chillies in terms of G.O. Ms. 296, dated 4.9.1999, filing of statutory forms was mandatory; and, as the dealers had failed to file 'F' declaration forms, they were liable to pay tax on the turnover of Rs.15,41,473/- @ 10%.

Section 6-A(1) of the Act stipulates that, 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 may be, 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 obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of the CST Act to have been occasioned as a result of sale.

Section 6-A exempts inter-state branch transfers being subjected to tax under the C.S.T. Act on condition that the dealer, who transfer goods from his branch within one State to his branch in another State, produces ‘F’ declaration forms. The consequence of the dealer failing to produce ‘F’ declaration forms is that these branch transfers, which would otherwise have been exempt from tax under Section 6-A of the C.S.T. Act, would now be subjected to tax under the C.S.T. Act as an inter state sale of goods.

G.O. Ms. No. 296, dated 4.9.1999 was issued under Section 8(5) of the C.S.T. Act. The said G.O. exempts from tax, under the C.S.T. Act, the sales of chillies, turmeric and cashewnut in the course of inter-state trade or commerce, provided that tax has been levied and collected on such goods under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short ‘the A.P.G.S.T. Act’).

Sri S. Suribabu, learned Special Standing Counsel for Commercial Taxes, would fairly state that the petitioner, a dealer carrying on business in the sale of chillies and turmeric, had claimed to have effected branch transfers to another State; the said goods had been subjected to tax under the A.P.G.S.T. Act; and tax had been collected thereupon.

As tax under the A.P.G.S.T. Act has been levied and collected, G.O. Ms. 296, dated 4.9.1999 would require the respondents to exempt inter-state sale of chillies and turmeric from tax under the CST Act. As failure on the part of the petitioner to furnish ‘F’ declaration forms would only require branch transfers to be treated as inter-state sale of goods (inter state sale of chillies and turmeric), G.O. Ms. No. 296 dated 4.9.1999 would apply; and, in terms thereof, the petitioner would be entitled to claim exemption from the tax on the deemed inter-state sale of chillies and turmeric. As the order under revision denied the petitioner exemption under G.O. Ms. No. 296 dated 4.9.1999, it must be and is accordingly set aside.

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

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

8th August 2016

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Date: 08.08.2016

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