THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

<u>Writ Petition No.10381 of 2006</u>

<u>ORDER:</u> (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this writ petition is to declare that the petitioner is entitled for sales tax exemption for the 5 year period 19.09.1995 to 28.09.2000 under the final eligibility certificate, granted by the 3rd respondent, dated 10.03.1998. A consequential relief is sought to declare the action of the 1st respondent, in trying to recover sales tax for the assessment years 1996-97 and 1997-98 from the petitioner, pursuant to the revision orders passed by the 2nd respondent dated 11.09.2003 and 23.01.2004, is illegal and arbitrary, and to set aside the said orders. By the orders under revision dated 11.09.2003 and 23.01.2004, the petitioner was called upon to pay tax for the years 1996-97 and 1997-98 on the ground that the final eligibility certificate issued by the Government of Andhra Pradesh dated 10.03.1998 has prospective effect, and does not have retrospective application.

Sri D.Srinivas, learned counsel for the petitioner, would draw our attention to the final eligibility certificate dated 10.03.1998 whereby the petitioner was granted exemption from payment of tax for the five year period from 19.09.1995 to 28.09.2000. The reason, for which the final eligibility certificate dated 10.03.1998 grants exemption from an anterior period from 19.09.1995, is because the earlier final eligibility certificate given to the petitioner was cancelled and subsequently, on the petitioner's representation, the final eligibility certificate dated 10.03.1998 was issued. It is not even the case of the respondents that the petitioner had collected tax from their customers during the assessment years 1996-97 and 1997-98.

As held by the Full Bench of this Court in ***Panchalingal Carbonic Gas Pvt. Ltd. vs. State of Andhra Pradesh*[1]**, and the Supreme Court in ***Vadilal Chemicals Limited vs. State of Andhra Pradesh*[2]**, the certificate issued by the Department of Industries would necessitate compliance, and the respondents are estopped from denying the dealer the benefit of exemption which they are entitled to in terms of the final eligibility certificate. Consequently, the petitioner would be entitled for exemption in terms of the final eligibility certificate dated 10.03.1998 from 19.09.1995 to 28.09.2000.

The fact, however, remains that the final eligibility certificate requires the petitioner not to collect tax from their customers in order to avail the benefit of exemption. While Sri D.Srinivas, learned counsel for the petitioner, would assert that the petitioner did not collect tax from its customers during the said period, this aspect necessitates examination by the respondent officials.

While setting aside the impugned orders passed by the revisional authority on the ground that the period of revision i.e 1996-97 and 1997-98 is covered by the final eligibility certificate dated 10.03.1998, we consider it appropriate to direct the assessing authority to verify whether the petitioner had collected sales tax from their customers during the assessment years 1996-97 and 1997-98 and, if so, to take necessary action for recovery of the said amount in accordance with law.

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

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

16th November 2016
JSU

[1] (2004) 40 APSTJ 41
[2] (2005) 41 APSTJ 79

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Date: 16.11.2016

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