THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.13258 of 2016

ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri V. Bhaskar Reddy, learned counsel for the petitioner, and Sri T. Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is disposed of at the stage of admission. The action of the 1st respondent in passing the impugned assessment order dated 29.03.2014 (a certified copy of which was served on the petitioner on 15.03.2016), is questioned in this writ petition as being arbitrary and illegal.

The order impugned in this writ petition is the assessment order passed under CST Act for the assessment year 2009-2010. The petitioner, a dealer carrying on business in iron ore in the States of Andhra Pradesh, Telangana and Karnataka, was assessed to tax under Section 5 (3) of the CST Act (for short 'the Act') on the ground that they had failed to furnish 'H' declaration forms for the turnover of sale preceding the export under Section 5 (3) of the Act. It is the petitioner's case that the balance sheet and the profit & loss account, on which reliance was placed by the assessing authority, related to transactions in all the three states of Telangana, Andhra Pradesh and Karnataka; a substantial part of the turnover of Rs.4,53,92,099/- constituted the sale preceding exports from the State of Karnataka; this turnover was declared by the petitioner in their returns filed before the Commercial Tax authorities in the State of Karnataka; and the assessing authority in the State of Telangana lacked jurisdiction to subject such sales to tax under the Act. The assessing authority, however, subjected the entire turnover to tax on the ground that, as 'H' declaration forms were not furnished, exemption could not be granted under Section 5(3) of the Act.

The petitioner has now filed a copy of the assessment order passed by the Deputy Commissioner of Commercial Taxes (Audit &

Recovery), Ballari dated 31.08.2015, in support of his submission that the turnover of Rs.4,53,76,899/- was exempted from tax by the Commercial Tax authorities in the State of Karnataka as deemed exports against form ‘H’.

While passing the impugned order of assessment, the assessing authority did not have the benefit of examining the assessment order passed by the Deputy Commissioner, Commercial Taxes (Audit & Recovery), Ballari dated 31.08.2015. Ends of justice would be met if the impugned assessment order is set aside, and the petitioner is permitted to submit a copy of the said assessment order, passed by the sales tax authorities in the State of Karnataka, to the assessing authority. In case a copy of the said assessment order is filed within two weeks from today, the assessing authority shall consider the same, afford the petitioner an opportunity of a personal hearing; and, thereafter, pass an assessment order afresh in accordance with law.

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

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date: 26.04.2016
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