THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.8531 of 2006

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

The jurisdiction of this Court, under Article 226 of the Constitution of India, has been invoked by the petitioner against the assessment order dated 02.02.2006 for the assessment year 2001-02.

The petitioner is a print waste paper dealer. He was earlier assessed to tax for the said period by assessment order dated 22.05.2003. Aggrieved thereby, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner who, by his order dated 11.12.2003, remanded the matter to the assessing authority.

In his order, dated 11.12.2003, the Appellate Deputy Commissioner noted that the assessing authority had held that the paper sold by the dealer were those which arose during the course of printing of newspapers due to multiple reasons including smudging of printing ink on the paper during the course of printing, overlapping of printing, non-printing, illegibility of the words printed, non-readability of the printed matter etc; the question which arose for consideration was whether the waste paper, generated due to above reasons, could be considered as newspaper waste or print waste as contended by the appellant; the certificates issued by the suppliers, who were also dealers in these wastes, clearly mentioned that "Printed Waste" gets generated due to initial set up of the machine, for checking the registration, colour of ink etc; the same certificates stated that newspaper waste is generated in a Newspaper Industry when excess newspapers are printed which were neither file copies nor old newspapers generated by the common man; these certificates were required to be considered; the commodity sold by the dealer could not be considered as newspaper waste primarily for the reason that "Newspaper Waste" was wastage of the finished product i.e newspaper; the decision of the Bombay High Court in ***The Commissioner of Sales Tax vs. Indian Express Newspapers (Bom.) P. Ltd.***[1] was another reason to hold that the commodity sold by the dealer is not "newspaper waste"; the observation of the Bombay High Court showed that the nature of the commodity was newspaper waste generated in the course of printing; the memo dated 20.03.2003 of the Commissioner of Commercial Taxes had clarified that even old newspapers, in the hands of waste paper dealers, were exempt under G.O.Ms.No.130 dated 14.02.1989 on proof being furnished by the dealer that they had not collected tax on their sales; the relevant sale and purchase invoice copies, shown by the dealer, clearly mentioned that the commodity purchased and sold was print waste; since, on inspection, it was stated that old newspapers were also included in the stocks of the dealer, and though the dealer may get exemption on sale of old newspapers being dealer in waste paper, such exemption was subject to the condition that no tax was collected on his sales by the dealer.

The Appellate Deputy Commissioner held that, in so far as print waste sales were effected by the dealer, they were covered by G.O.Ms.No.130 dated 14.02.1989 as such waste could not be considered as either old newspaper or newspaper waste for the reasons stated earlier and in the light of the Circular of the Commissioner of Commercial Taxes. However, in so far as the dealer could have effected sale of old newspapers, the matter was remanded by the Appellate Deputy Commissioner to the assessing authority to examine the purchase and sale invoices of the dealer to ascertain the

[1] (1984) 56 STC 38(Bombay)

quantum of old newspapers, if any purchased and sold by the dealer, and to grant relief on such sale of old newspapers only on being satisfied that no tax was collected by the dealer on these sales.

While the order of the Appellate Deputy Commissioner is not free from ambiguity, he does appear to have held that newspaper waste/print waste was exempt under G.O.Ms.No.130 dated 14.02.1989 and as clarified by the Commissioner of Commercial Taxes in Memo dated 20.03.2003. It is only with regards sale of old newspaper, was the matter remanded to ascertain whether or not the assessee had collected tax on such sales. The assessing authority erred in holding that the sales effected by the petitioner was only that of newspaper waste and, as such, tax was required to be levied thereupon.

While the order of the Appellate Deputy Commissioner could have been subjected to revision, under Section 20 of the A.P. General Sales Tax Act, if it was found to suffer from the errors referred to in the said provision, or were prejudicial to the interests of the Revenue, no such exercise of revision appears to have been undertaken, and the order of the Appellate Deputy Commissioner has attained finality. The assessing authority was, therefore, obligated to confine his examination only to the order of remand passed by the Appellate Deputy Commissioner, and to examine whether the petitioner had collected tax on the sale of old newspapers. The assessing authority has exceeded his jurisdiction in undertaking an examination as to whether the goods sold by the petitioner were newspaper waste, and in holding that such sale of newspaper waste was not exempt from tax. He ought to have confined his examination only to verify whether the petitioner had collected tax on the sale of old newspapers.

The impugned order of assessment is, therefore, set aside and the matter is remanded to the assessing authority to examine, in terms of the order of the Appellate Deputy Commissioner, whether the petitioner had collected tax on the sale of old newspapers.

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

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

30th November, 2016
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.8531 of 2006

Date: 30.11.2016

JSU