THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.6816 of 2016

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

Heard Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri J.Anil Kumar, learned Senior 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 revisional order passed by the Deputy Commission (CT), Saroornagar dated 17.03.2015 withdrawing the concessional rate of tax on the interstate sale of rice/broken rice of Rs.5,70,37,283/- not covered by 'C' Forms, in levying tax @ 4%, and in withdrawing exemption on a turnover of Rs.18,30,735/- on the ground that the 'H' Forms furnished by the dealer was not supported by other documentary evidence.

In the impugned order, the revisional authority held that the dealer had filed copies of the waybills through which they claimed that they had transported rice to other states, and the 'B' Register statutorily maintained by them; the way bills were verified with reference to the check post reports on outgoing goods at all check posts; it was noticed, thereafter, that the supporting data submitted by the dealer was tallying only for Rs.2,84,27,374/- with the report of the check post, on outgoing goods at all check posts, as available in the G.I.S. module; the dealer did not file any details of the check posts through which the goods passed; and, therefore, the revisional proceedings were being withdrawn only on a turnover of Rs.2,84,27,374/-, and the remaining turnover of Rs.5,70,37,283/- was liable to tax @4%.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that the revisional authority had relied on the information obtained behind the petitioner's back in subjecting them to tax; the petitioner was not even furnished copies thereof; the impugned order was in violation of principles of natural justice; if, as is erroneously held by the revisional authority, the subject goods did not cross the check post, it would then be an intra-state sale liable to tax only under the Telangana Value Added Tax Act, 2005 (for short "the Act"), and not the Central Sales Tax Act; the impugned order was passed under the Central Sales Tax Act; the petitioner undertakes not to raise any objection regarding limitation even if the respondents were to assess the petitioners to tax under the Act; the assessing authority had verified the documents filed in support of the 'H' Forms, and had rejected the petitioner's claim with respect to a turnover of Rs.13,50,735/-; the revisional authority had erred in denying the petitioner the benefit of exemption from tax on the remaining turnover of Rs.4,80,000/-, though the 'H' Forms were supported by all the required documents; and the impugned order was liable to be set aside.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, under Section 16 of the Act, the burden lies on the petitioner to establish that the sales were in the course of inter-state trade or commerce; the petitioner's claim in this regard was cross checked with the information available in the G.I.S. which showed that these goods had not crossed the check post; and the impugned order of assessment was just and valid.

The goods, on which the petitioner claims concessional rate of tax, are rice and broken rice both of which are declared goods. While these goods were subjected to tax under the Central Sales Tax Act at 3% if it was accompanied by 'C' Forms, it was liable to be taxed at 4%, in case it was not accompanied by 'C' Forms. While Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that, in terms of the Circulars issued in this regard rice and broken rice, sold in the course of inter-state trade or commerce, was required to be subjected to tax only @3%, whether or not it was accompanied by 'C' Forms, Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, in the impugned order, the revisional authority has noted that the concessional rate was available, in terms of the Circular, only if the petitioner had produced supporting evidence i.e (i) triplicate copies of way bills (ii) the data of the names of the check posts through which the goods had been transported to other States; and (iii) relevant entries in the ‘B’ register statutorily maintained by the miller.

From the revisional order, it does appear that the revisional authority, on cross verification, was of the view that a substantial part of the turnover, representing inter-state sale of rice and broken rice, had not even crossed the check post. He came to such a conclusion based on the G.I.S. data which is not reflected in the show cause notice issued by him earlier. It is evident, therefore, that the revisional authority relied on information obtained behind the petitioner’s back without furnishing a copy thereof to the petitioner herein. To this extent, the impugned order is in violation of principles of natural justice.

We find considerable force in the submission of Sri V.Bhaskar Reddy, learned counsel for the petitioner, that if, as held by the revisional authority, a substantial part of the turnover related to goods which did not even cross the check post, and leave the State of Telangana, the petitioner could only have been assessed to tax under the Telangana Value Added Tax Act, and not the Central Sales Tax Act, as it would be a case of intra-state sale and not an inter-state sale.

As the impugned assessment order was passed in violation of the principles of natural justice, it must be and is, accordingly, set aside. Whether he assesses the petitioner to tax under the Central Sales Tax Act or under the Telangana Value Added Tax Act, the revisonal authority shall issue a fresh show cause notice along with the information obtained by him from G.I.S, or any other information which he seeks to rely upon. In case, he is of the view that the subject goods are intra-state sales, and not inter-state sales, it is open to him to issue a show cause notice under the Act. He shall also grant the petitioner an opportunity to submit their objections thereto. Suffice it to make it clear that, in case the revision/assessment is sought to be made under the Act, it is open to the petitioner to raise all such objections as are available to them in law, other than that the revision/assessment is barred by limitation.

In so far as 'H' Forms are concerned, while the assessing authority rejected the petitioner's claim for exemption from tax, under Section 5(3) of the Act, for a turnover of Rs.13,50,735/-, the revisional authority had denied them the benefit of exemption for an additional turnover of Rs.4,80,000/- on the ground that the "H" Forms were not accompanied by supporting documents.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that, as the Assessing Authority has himself noted that the remaining turnover, other than a turnover of Rs.13,50,735/-, was supported by 'H' Forms and supporting documents, the revisional authority had erred in not granting them exemption on a turnover of Rs.4.80 lakhs. These are all matters which the revisional authority is required to consider on the basis of the document on record, or such other documents which the petitioner may choose to submit in addition thereto. Suffice it to make it clear that, as the impugned order is set aside for violation of principles of natural justice, any order which the revisional authority may pass shall only be after furnishing copies of the documents which he chooses to place reliance upon, and after affording the petitioner an opportunity of personal hearing.

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

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 14.03.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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