THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.11506 of 2005

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

The relief sought for in this Writ Petition is to declare the action of the respondents, in including the cess paid under the provisions of the Andhra Pradesh Rural Development Act, 1996 in the purchase turnover for the purpose of levy of sales tax under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), as *ultra vires* the provisions of the Act, and as without jurisdiction.

The petitioner was assessed by the respondents to tax under the Act on the purchase turnover of paddy for the year 2002-03; and, pursuant thereto, a notice of demand dated 23.04.2005, was issued calling upon him to pay the sales tax dues of Rs.80,906/-. Questioning the action of the respondents, in seeking to levy sales tax on the purchase price of paddy inclusive of rural development cess, the petitioner has invoked the jurisdiction of this Court.

Sri P.Balaji Varma, learned counsel for the petitioner, would draw attention of this Court to G.O.Ms.Nos.950, 951 and 952 dated 10.09.2003 to submit that, while the Government had waived the outstanding demand relating to levy of rural development cess on the actual purchase prices paid by millers over and above the minimum support price of paddy, and also the outstanding arrears towards sales tax on the rural development cess component of the purchase value of paddy, they had, subsequently, by G.O.Ms.No.683 dated 03.09.2004 clarified that the intention of the Government was that rural development cess should be collected on the value of paddy, applying the minimum support price fixed by the Government from time to time; and the orders issued in G.O.Ms.No.950 dated 10.09.2003 should be applied retrospectively from 30.10.1995 subject to the condition that, where assessments were finalised and the demands raised were collected, such assessments should not be reopened.

The submission of Sri P.Balaji Varma, learned counsel for the petitioner, in effect, is that an artificial and invalid classification of dealers has been created under the said G.O; though retrospective effect was given, for waiver of sales tax on the rural development cess component, such a benefit was extended only to those whose assessments were still pending, and was denied to those whose assessments were completed.

The question whether exemption should be granted under Section 9 of the Act, and to whom, are all matters of policy with which this Court would not, ordinarily, interfere save where a clear case of violation of Part-III of the Constitution of India is made out. While extending the benefit of G.O.Ms.No.950 dated 10.09.2003 retrospectively from 30.10.1995, and in holding that completed assessments should not be reopened, the Government has, in its wisdom, chosen not to extend the said benefit to cases where the assessments were finalised, and the demands raised were collected. It is not the petitioner's case that grant of the benefit in terms of G.O.Ms.Nos.950 to 952 is illegal. It is their case that, though their assessments have been completed, they should also have been extended the benefit of the said G.O. Even, in those cases, where a classification is held to violate Part-III of the Constitution of India, this Court would only strike down the policy of the Government in extending the benefit of exemption. In the exercise of its jurisdiction under Article 226 of the Constitution of India, this Court would not make policy, or substitute the existing policy of the government, in directing them to extend the benefit also to those to whom such a benefit was not extended by the Government earlier. We see no reason, therefore, to set aside G.O.Ms. No.683 dated 03.09.2004, more so as the petitioner has not been able to show a clear infringement of Part III of the Constitution thereby.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

14th March, 2016.
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