HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No. 38634 OF 2016

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

Heard Sri D. Srinivas, learned counsel for the petitioner and Sri S. Suri Babu, learned Special 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 order passed by the revisional authority subjecting the petitioner to tax @ 14.5%, under Schedule IV to the AP VAT Act, 2005 (for short 'the Act'), on Tread Rubber which the petitioner sold to other dealers.

Sri D. Srinivas, learned counsel for the petitioner, submits that, in terms of Entry 120 of Schedule IV of the Act, Tread Rubber can only be subjected to tax @ 4%; and the revisional authority erred in placing reliance on the HSN codes to deny the petitioner the benefit of lesser rate of tax @ 4% for goods which fall within the ambit of Entry 120 of Schedule IV to the Act.

A Division Bench of this Court in *ESPI Industries & Chemicals Pvt. Limited, Hyderabad v. The Commercial Tax Officer, Tarnaka Circle, Hyderabad*[1], considered G.O.Ms.No.1615 dated 31.08.2005, wherein HSN Codes were made applicable, and held that the fact, that the said G.O was never introduced in the State legislature in the form of a bill, would establish that it was issued only in exercise of the powers conferred

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[1] 2007 (45) APSTJ 207

under Section 76(2) and not under Section 79(1) of the Act; the power conferred on the Government, under Section 76(2) of the Act, is to make provision not inconsistent with the purposes of the Act; and, in the guise of exercising its power under Section 76(2), the Government cannot restrict the scope of an entry in the Schedules to the Act. Consequently, reliance placed by the revisional authority on the HSN Codes would fall foul of the judgment of the Division Bench of this Court in *ESPI Industries*[1].

While we were initially inclined to admit the writ petition and grant stay, Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that, instead, the revisional authority may be permitted to examine the matter afresh in the light of the Division Bench judgment in *ESPI Industries*[1]; and pass an order afresh in accordance with law.

The order under challenge, in this writ petition, is therefore set aside, and the matter remanded to the revisional authority who shall give the petitioner an opportunity of being heard; and pass an order afresh in accordance with law.

The writ petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

A.SHANKAR NARAYANA, J

Date: 09.11.2016
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