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

WRIT PETITION No.20827 of 2016

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

Heard Sri Dantu Srinivas, learned counsel for the petitioner, and Sri S.Suri Babu, Special Standing Counsel for Commercial Taxes and, with their consent, this Writ Petition is disposed of at the stage of admission. The proceedings, under challenge in this Writ Petition, is the assessment order dated 11.05.2016 passed by the second respondent for the tax period 2011-2012 to 2015-2016 (upto October, 2015) as illegal, arbitrary and without jurisdiction.

The petitioner carries on business in the purchase and sale of Ammonium Nitrate and Explosives mainly from within the State, and effects sale of these commodities to local registered dealers. They claim that the goods sold by them fall within the ambit of Entry-100 (65) of Schedule-IV of the Act which reads thus: '***Nitrites'; 'Nitrates***'. The assessing authority however, relying on the notification issued by the Government of India dated 21.07.2011 under the Indian Explosives Act and the Ammonium Nitrate Rules, 2012 classifying Ammonium Nitrate as an explosive, held that, since explosives are liable to tax at 14½%, the sale of Ammonium Nitrate is also liable to tax at the said rate.

It is only goods, which do not fall within the ambit of Schedules-I to IV and VI of the Act, which are liable to be treated as unclassified goods falling within the ambit of Schedule-V liable to tax at 14½ %. The assessing authority ought to have examined whether or not the subject goods fall within the ambit of Entry-100 (65) of Schedule-IV to the Act for it is only if they do not, would he be justified in levying tax at 14½% under Schedule-V of the Act. The assessing authority erred in relying on the notification issued under the Indian Explosives Act and the Ammonium Nitrate Rules to hold that the subject goods fall within the ambit of Schedule-V to the Act instead of confining his examination to the provisions of the A.P. VAT Act and its schedules. He should have, in the first instance, examined whether the subject goods fall within the ambit of

Entry-100 (65) of the Act, and it is only after recording a finding that it did not and assigning reasons for arriving at such a conclusion, could he have considered subjecting the goods to tax at 14.5% treating them as unclassified goods falling within the ambit of Schedule-V of the Act.

The impugned order of assessment is set aside. The assessing authority shall, after affording the petitioner a personal hearing, pass an order afresh after examining whether or not the subject goods fall within the ambit of Entry-100 (65) of the Act. The Writ Petition stands disposed of accordingly. 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

04th July, 2016.
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