THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SMT JUSTICE ANIS

TREVC Nos. 56 and 58 of 2015

COMMON JUDGMENT: ***(Per VRS,J)***

Both these revisions are filed by the State under Section 34(1) of the A. P. Value Added Tax Act, 2005 (for short 'the Act'), raising the following substantial question of law:

> *"Whether the Tribunal is correct in holding that the Bitumen and Bitumen Emulsion are one and the same and taxable @ 4%?"*

2. Heard Mr. Shaik Jeelani Basha, learned special standing counsel for Commercial Taxes appearing for the petitioner, and Mr. S. Dwarakanath, learned counsel for the respondent/assessee.

3. The respondent/assessee are dealers, engaged in the business of manufacture and sale of Bitumen Emulsion. Bitumen was originally included under Entry-14 of Schedule-IV of the Act and, consequently, it was taxable at 4%. By an amendment made under Act 13 of 2013, Entry-14 was modified to read as *"Bitumen and all varieties of Bitumen"*.

4. The respondent/assessee made an application to the Advance Ruling Authority, as to whether Bitumen Emulsion would fall under Entry-14 or not. The Advance Ruling Authority held that it would not fall within Entry-14. Consequently, an order of assessment was passed.

5. As against the order of assessment, the assessee filed a regular appeal before the Appellate Deputy Commissioner. As against the ruling of the Advance Ruling Authority, the assessee filed a direct appeal to the Value Added Tax Appellate Tribunal. After the dismissal of the regular appeal arising out of the order of assessment, the assessee filed a further appeal to the Tribunal. The Tribunal allowed both the appeals, on the ground that the product 'Bitumen Emulsion' was not substantially different from Bitumen, and that the same would fall within Entry-14. Aggrieved by the aforesaid decision of the Tribunal, the Revenue has come up with the present revisions.

6. The substantial question of law raised in both these revisions is covered by a recent decision of the Supreme Court in ***Commissioner of Commercial Tax, U.P. Vs. M/s. A.R.Thermosets (Pvt.) Ltd.*** in Civil Appeal No.2650 of 2016, dated 06.09.2016. In the said case, Bitumen was included in Entry-22 of Part-A of Schedule-II to the

U.P. Value Added Tax Act and it was taxable at 4%. The assessee was manufacturing Bitumen Emulsion and the Assessing Officer held that Bitumen Emulsion would not come within the purview of Entry-22, but would fall under the residuary entry, making it liable to tax at 12.5%. When the matter landed up, ultimately, in the Supreme Court, the Supreme Court pointed out that Bitumen and Bitumen Emulsion are one and the same, and that Bitumen Emulsion would certainly fall within Entry-22.

7. In the light of the said decision, which arose out of facts exactly identical to the cases on hand, the substantial question of law is answered against the Revenue and in favour of the respondent/assessee. Consequently, both the revisions are dismissed.

As a sequel, miscellaneous petitions if any pending in the tax revision cases shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

22nd September, 2016
cbs

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