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

Writ Petition No.1835 of 2016

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

The assessment order dated 22.12.2015 is questioned in this writ petition, among others, on the ground that the order suffers from non-application of mind, as the contentions urged by the petitioner have not been taken into consideration.

A perusal of the order would show that the assessing authority relied on two rulings of the Advance Ruling authority in the cases of ***M/s.Global Steel Company, Hyderabad*** (A.R.Com/57/2011 dated 10.11.2011) ***and M/s.C.K.Engineering Corporation, Visakhapatnam*** (A.R.Com/28/2012 dated 15.09.2012)***.***

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would contend that the ruling in ***M/s. Global Steel Company, Hyderabad*** was based on the HSN codes notified by the Government vide G.O.Ms.No.1615, dated 31.08.2005, which is contrary to the law declared by this Court in ***ESPI Industries and Chemicals Pvt. Ltd. vs. Comercial Tax Officer***[1] and ***MGRM Medicare Limited vs. Commercial Tax Officer***[2]; the other ruling related to fabrication of structures; and as the petitioner only manufactures cold rolled sections and does not carry out fabrication, the advance ruling in the case of ***M/s.C.K.Engineering Corporation, Visakhapatnam*** is also not applicable. Learned counsel would draw attention of this Court to the order passed by the Sales Tax Appellate Tribunal in ***M/s. Sagar General Industries, Hyderabad vs. The State of Andhra Pradesh*** (T.A.No.68 of 1997 dated 05.10.2001) in support of his submission that the goods manufactured by them fall within the ambit of Entry 70 of IV Schedule to the A.P.Value Added Tax Act, 2005 (for short “the Act”).

In the impugned order, the Assessing Authority distinguished the judgment of the Tribunal in ***M/s. Sagar General Industries, Hyderabad*** holding that the observations made therein went beyond the question which arose for consideration before the Tribunal. Having so held, the Assessing Authority went on to hold that, as the claim of the dealers that the Tribunal had held “Purlins” as falling under declared goods under Entry 2 of the III Schedule to the erstwhile APGST Act was incorrect, the question as to whether C/Z Sections fall under the category of Purlins and Metal Crash Barrier/Guard rail beams would come under Cold Roll formed sections and the expert opinion relied upon by the dealer in this regard and its acceptability as per the decisions of the Courts, did not warrant further consideration.

The mere fact that the order of the Tribunal was found inapplicable, does not absolve the Assessing Authority of his duty to examine the material placed before him, by the petitioner, that the subject goods are C/Z Sections falling under the category Cold Roll formed sections. The Assessing Authority has failed to examine the material placed by the petitioner in this regard. While the Advance Ruling Authority’s decision is, no doubt, binding on the Assessing Authority under Section 67 of the Act, if the Advance Ruling Authority’s decision is contrary to the law declared by this Court, the Assessing Authority is bound by the judgment of the jurisdictional High Court and not the Advance Ruling Authority. We, however, refrain from expressing any opinion as to whether the Advance Ruling Authority’s decision in ***M/s. Global Steel Company, Hyderabad*** falls foul of the law declared by this Court in ***ESPI Industries and Chemicals Pvt. Ltd.***[1], as these are matters which the Assessing Authority is required to consider in the first instance.

Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, while contending that the Assessing Authority is bound by the Advance Ruling Authority's decision, and the decision of the Advance Ruling Authority does not fall foul of the judgment passed by this Court, would fairly that the Assessing Authority ought to have examined the material placed by the petitioner in support of their submission that the subject goods fall under the category of C/Z Sections and come under Cold Roll formed sections under Entry 70 of IV Schedule to the Act.

The impugned order is set aside. The Assessing Authority shall, after giving the petitioner an opportunity of personal hearing, consider the material placed by them in support of their submission that the subject goods fall within the ambit of Entry 70 of IV Schedule to the Act, and that the decision of the Advance Ruling Authority is inapplicable to the facts of their case; and, thereafter, pass an order afresh in accordance with law.

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: 03.02.2016.
JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[1] (2008) 12 VST 112 (AP)

[2] (2011) 45 VST 47 (AP)