THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.41670 of 2016

Order: (**Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan**)

Heard Sri M.V.J.K. Kumar, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission. The order under challenge in this writ petition is the assessment order dated 7.7.2015 to the extent tax was levied on the petitioner under Section 4(4) of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act').

Sri M.V.J.K. Kumar, learned counsel for the petitioner, would submit that, in the light of the law declared by this Court in **K.G.F. Cottons (P) Ltd. vs. Assistant Commissioner (CT)**[1], the respondents were not justified in levying tax under Section 4(4) of the Act on husk to the extent it related to purchase of paddy from agriculturists.

Sri Shaik Jeelani Basha, learned Standing Counsel for Commercial Taxes would submit that, the assessment order was passed more than a year ago; the assessing authority had levied tax on other turnovers also; and the belated challenge to the assessment order was not justified.

In **K.G.F. Cottons (P) Ltd**[1], a Division Bench of this court elaborately examined the scope of Section 4(4) of the Act, and its applicability to declared goods under the Central Sales Tax Act. The law declared by the Division bench, in the aforesaid judgment, was not considered by the assessing authority when he passed the impugned assessment order on 7.7.2015. We see no reason,

[1] [2015] 81 VST 1

therefore, to non-suit the petitioner on the ground of delay and laches.

To the limited extent, tax was levied on the sale of husk under Section 4(4) of the Act, the impugned assessment order is set aside, and the matter is remanded to the assessing authority to examine the matter afresh in the light of the law declared by the Division Bench of this Court in **K.G.F. Cottons (P) Ltd**[1]. The assessing authority shall, after giving the petitioner an opportunity of a personal hearing, pass a fresh assessment order with utmost expedition, and in any event not later than two months from the date of receipt of a copy of this order. Except in so far as the turnover which has been subjected to tax under Section 4(4) of the Act is concerned, the assessment order does not necessitate interference on all other issues.

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

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

5th December, 2016

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