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

WRIT PETITION No.12739 2014

ORDER: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S.Dwarakanath, 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 assessment order dated 30.03.2014, for the assessment year 2009-10, under the Central Sales Tax Act, 1956 (for short "the Act") is questioned in this writ petition as an order passed without jurisdiction.

While the initial challenge to the assessment order was on the ground that the person who passed the assessment order was not authorised to do so by the Deputy Commissioner (CT), before the assessment order was passed, an additional affidavit is filed wherein the impugned assessment order is subjected to challenge on merits also.

Sri S. Dwarakanath, learned counsel for the petitioner, would submit that the petitioner's claim for exemption under Section 5(2) of the Act, on the ground that the sales effected by them were high sea sales, was rejected mainly on the ground that the petitioner had failed to furnish proof of the original bill of entry authorised by the Customs Department; the petitioner had submitted copies of the bill of lading, the high sea sales agreement, a copy of the bill of entry for home consumption, and the letters of credit, to show that these transactions constituted high sea sales exempt from tax under Section 5(2) of the Act; the assessing authority had faulted the petitioner for not producing the original bill of entry; the original bill of entry would be submitted to the Customs Department, that too by the importer of the goods, and not the petitioner herein; and, as the petitioner had furnished a copy of the bill of entry along with other documents, which would clearly establish that these transactions constitute high sea sales exempt from tax under

Section 5(2) of the Act, the assessing authority had erred in rejecting the petitioner's claim on the ground that the original bill of entry was not produced, and the bill of lading did not contain an endorsement. Learned counsel would further submit that, while the bill of lading may not have contained an endorsement, a copy of the high sea sales agreement submitted by the importer, along with a copy of the bill of lading, the letter of credit and the bill of entry, to the customs authorities for assessing their liability to pay customs duty and for clearance of goods for home consumption, would establish that these sales are high-sea sales exempt from tax under Section 5(2) of the CST Act.

The assessee, a Government of India public sector undertaking, has been subjected to tax for Rs.2,49,13,541/- rejecting their claim that the high sea sales effected by them were exempt from tax under Section 5(2) of the Act. The exemption available under Section 5(2) is on the sale of goods effected by transfer of documents of title to the goods before they have crossed the customs frontiers of India. The assessing authority ought to have taken all the documents submitted by the petitioner into consideration in determining whether or not the petitioner was entitled for exemption under Section 5(2) of the CST Act.

It is wholly unnecessary for us to dwell on this aspect any further as Sri Shaik Jeelani Basha, learned Special Standing Counsel, on instructions, would fairly state that the matter could be remanded to the assessing authority to pass an order afresh, in accordance with law, after affording the petitioner an opportunity of a personal hearing. In view of the submission now made by the learned Standing Counsel, the impugned assessment order is set aside and the matter is remanded to the assessing authority directing him to pass an assessment order afresh in accordance with law. Needless to state that the assessment order, which the assessing authority may pass afresh, shall only be after the petitioner is afforded an opportunity of a personal hearing.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for

Commercial Taxes, would submit that as the officer who assessed the petitioner to tax earlier was an audit officer, who was specifically authorised by the Deputy Commissioner (CT) to assess the petitioner to tax, this Court may remand the matter to the territorial assessing authority. As the territorial assessing authority is empowered under the Act, and the Rules made thereunder, to assess the petitioner to tax without an authorisation from the Deputy Commissioner (CT), it is open to him to assess the petitioner to tax in accordance with law.

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, J)

(M.SATYANARAYANA MURTHY, J)

04th July 2016
JSU

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

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Date: 04.07.2016

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