THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.7027 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The proceedings, under challenge in this Writ Petition, is the assessment order passed in Form VAT 305 dated 19.03.2014 subjecting the petitioner's turnover of Rs.7,07,42,299/- to tax at 14.5%, and calling upon them to pay tax at Rs.1,02,57,633/-.

The petitioner carries on business in the purchase and sale of recharge coupons, sim-cards, salt, sugar cubes etc., and is a registered dealer both under the Telangana Value Added Tax Act and under the Central Sales Tax Act. A notice was issued by the first respondent on 10.10.2013 calling upon the petitioner to show cause why a turnover of Rs.7,07,42,299/- should not be subjected to tax under the CST Act as the petitioner had failed to file separate forms/ documentary evidence for the said turnover which they claimed were exempt sale transactions. The assessing authority proposed to disallow the exemption, and to levy tax at a higher rate.

In their initial reply to the show cause notice dated 19.11.2013, the petitioner informed the assessing authority that they had filed CST returns for the said period and the turnover stated in the said notice was correct; and the said turnover did not include inter-state transactions, but only represented the turnover of zero percent tax goods sold within the state. They sought time to give a break up. Subsequently, by their letter dated 04.12.2013, the petitioner informed the assessing authority that they had filed a nil CST return for the period 2010-11, and the exempt turnover stated in the notice was correct; the said turnover did not include inter-state sale transactions but only represent zero percent tax goods sold within the state; they sold mobile recharge cards, salt, sugar cubes apart from other taxable goods; and the turnover of zero percent tax products during the said period was enclosed as Annexure-A. In annexure A, the petitioner gave a break up of the monthly sales of recharge cards, salt, and sugar cubes representing the total turnover of Rs.7,07,42,301/-.

The assessing authority passed an assessment order dated 19.03.2014 holding that the assessee had filed letter dated 04.12.2013 stating that the exempted turnover, shown in the show-cause notice, was the sale of zero percent tax goods sold within the state i.e., mobile recharge cards, salt and sugar cubes; they had failed to produce supporting documents/evidence such as Balance Sheet, Profit and Loss Account statement towards exempt transactions; hence, it must be considered that there were no valid objections or documents/evidence to submit; and, hence, the show cause notice was being confirmed, and an assessment order was being passed based on the available records as the assessment for the year 2010-11 would be barred by limitation by the end of March 2014.

While the show cause notice issued earlier stated that the subject transactions represented inter-state sales liable to tax under the CST Act, the petitioner, in their reply thereto, had stated that they were not inter-state sales transactions, but were sale of zero percent tax goods sold within the State. In order to subject the petitioner to tax under the CST Act, the assessing authority was obligated to record a finding that the turnover represented inter-state sales, and the petitioner’s contention to the contrary was not tenable. No such finding has been recorded in the assessment order. While Section 16 of the Telangana Value Added Tax Act places the onus on the assessee to establish that the subject goods are zero percent tax goods, the jurisdiction of the assessing authority to subject the petitioner to tax under the CST Act is only if these transactions are inter-state sales. The impugned order of assessment is set aside on the ground that it is bereft of reasons.

Sri S.Dwarakanath, learned counsel for the petitioner, would submit that, if the assessing authority were to issue a notice afresh proposing to subject the petitioner to tax under the Telangana Value Added Tax Act and give them an opportunity of a personal hearing, they would produce evidence to show that these goods, sold within the State, were zero percent tax sales; and, in case the assessing authority proposes to subject them to tax under the CST Act, an opportunity of a personal hearing be afforded to the petitioner to enable them to produce evidence to show that the goods sold by them are intra-state sales, and not inter-state sales liable to tax under the CST Act.

In view of the submission now made by Sri S.Dwarakanath, learned counsel for the petitioner, the impugned assessment order is set aside. The matter is remanded to the assessing authority who shall, in case he proposes to subject the petitioner to tax under the CST Act, give them an opportunity of a personal hearing, and then pass an order afresh in accordance with law. If, on the other hand, the assessing authority proposes to subject the petitioner to tax under the Telangana Value Added Tax Act, he shall put them on notice, give them an opportunity of filing their reply thereto, afford them an opportunity of a personal hearing, and thereafter pass an assessment order in accordance with law.

The Writ Petition stands disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

5th July 2016
RRB