HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No.3610 of 2017

ORDER: (per Hon'ble Sri Justice V.Ramasubramanian)

Aggrieved by an order of assessment passed on 11.03.2010 under the C.S.T. Act 1956, the dealer is before us.

2. Heard Mr.P.Balaji Varma, learned Counsel for the petitioner, and Mr.Shaik Jeelani Basha, learned Special Standing Counsel appearing for the respondents.

3. An order of assessment was passed on 30.03.2009 in relation to the assessment year 2005-2006, arriving at the turnover, on the basis of the material placed. Obviously, the petitioner did not file 'C' Form, 'H' Form and 'F' Form.

4. But, on an appeal filed by the petitioner, the Appellate Deputy Commissioner (CT) passed an order dated 19.12.2009. The operative portion of the order of the appellate authority reads as follows:

> "The appellant at the time of filing of the appeal has filed 20 photostat copies of C forms covering a turnover of Rs.7,62,25,784/- and also filed one 'C' declaration form covering a turnover of Rs.7,47,261/- at the time of hearing and could not file C forms for a turnover of Rs.13,64,675 out of the disputed turnover of Rs.7,83,37,720/-.
>
> The appeal is, therefore, remanded to the assessing authority to obtain the original C forms

forms from the appellant dealer verify them and allow concessional rate of tax on a turnover of Rs.7,69,73,045/- if the 'C' forms are found to be in order and assess the turnover of Rs.13,64,675/- not covered by C forms at higher rate of tax of 12.5% and pass order afresh.

Regarding the second contention of the appellant that he made preceding sale of Mango Pulp U/s 5 (3) of the CST Act to M/s Clean Foods Limited, Madanapalli, who is stated to have exported Mango Pulp could not produce the required documents form H declarations and bills of lading to claim exemption under Section 5 (3) of the CST Act. The dealer has filed a list of 'H' forms along with Photostat copies of the same at the time of hearing covering a turnover of Rs.2,24,83,835/- out of the total disputed turnover of Rs.3,73,13,820/-. The balance turnover of Rs.1,48,29,985 was contended to be stock transfers/export sales. However, the dealer has not filed either H declaration forms nor F declaration forms covering a turnover of Rs.1,48,29,985/-

The appeal is, therefore, remanded to the assessing authority to obtain original H declaration forms from the appellant dealer, verify them and grant exemption on the turnover of Rs.2,24,83,825/-, if the H declaration forms are found to be in order and assess the turnolver of Rs.1,48,29,985/- not covered by either F or H declaration forms at higher rate of tax of 12.5% and pass orders afresh."

5. After the matter was so remanded, the Assessing Officer took note of 21 numbers of 'C' Forms, 2 numbers of 'H' Forms

and 2 numbers of 'F' Forms and passed the impugned order of assessment. But while doing so, he rejected the 'F' Form on the ground that the appellate authority had already rejected the same. The relevant portion of the impugned order is as follows:

> "In this (these) circumstances, verified the C/H/F declaration forms filed by the dealer. The 'F' Form filed by the dealer for Rs.1,48,29,985/- is summarily rejected as the Appellate Deputy Commissioner (CT), Vijayawada, has clearly directed the assessing authority to assess the said turnover @ 12.5%. The remaining statutory forms are accepted and appropriate exemptions are allowed………."

6. Challenging the said order so belatedly, on the ground that the petitioner company has already been closed, and also on the ground that the impugned order was served only in July 2014, the petitioner is before us.

7. It is true that there has been an enormous delay on the part of the petitioner. It is also true that the petitioner ought to have agitated the matter in a regular appellate forum. There is also one question as to whether such forms can be produced after the order of assessment was made. This issue is now pending consideration before a Bench of this Court.

8. However, it is seen from the impugned order that the Assessing Officer has completely misread the order of the

appellate authority. Once the appellate authority passes an order of remand, the power of the Assessing Officer to consider the material is not circumscribed. The Assessing Officer himself has recorded that 'F' Forms were in fact produced. Therefore, merely on the basis of the penultimate paragraph of the order of the appellate authority, the production of F Form could not have been rejected.

9. Therefore, the Writ Petition is allowed, setting aside the impugned order and directing the respondents to take note of the 'F' Form and re-determine the tax amount payable, if any. But, in view of the fact that the petitioner has come up after long time, the amount if any already paid by them, shall not be sought refund of. However, if after considering the 'F' Form, any amount of tax is still found due and payable, the same may be adjusted from out of the amount already paid by the petitioner.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. No order as to costs.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

09.02.2017
Gsn.