THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT PETITION NO.21695 OF 2017

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

Heard Sri S.Dwarakanath, learned counsel for the petitioner and Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed at the stage of admission.

The validity of the assessment order in Form VAT 305A dated 05.10.2016 is put in issue in this Writ Petition. The petitioner claims concessional rate of tax at 5% under Entry 70 (vi) of the IV Schedule which reads as under.

> "Sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated in all qualities, in straight lengths and in coil form as rolled and in revitted condition".

In his reply to the show cause notice, the petitioner contended that galvanization is a process, of applying a protective zinc coating to steel or iron, to prevent rusting; if an exposed steel surface comes in contact with water or moisture, rust can take hold; and it forms a coating of zinc which, when intact, prevents corrosive substances from reaching the under lying steel or iron. The said contention is not even dealt with in the impugned order.

Sri S.Dwarakanath, learned counsel for the petitioner, would submit that, even otherwise, the Supreme Court in **Gujarat Steel Tubes Ltd., v. State of Kerala**[1] has held that mere galvanization does not change the character of the goods; and even after the process of galvanization, the goods still continue to remain steel;

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[1] **74 STC 176**

the entry itself includes galvanized sheets; and the order of the assessing authority suffers from non-application of mind.

While we were initially inclined to admit the Writ Petition and grant stay, Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, would fairly state that, since the petitioner's objections were not dealt with in the impugned assessment order, the assessing authority may be permitted to pass an assessment order afresh, after giving the petitioner an opportunity of being heard.

In the light of the submissions of the learned Special Standing Counsel, the impugned assessment order is set aside. The petitioner is permitted to file additional objections, if any, within two weeks from today. It is open to the assessing authority thereafter to pass a fresh assessment order in accordance with law after providing an opportunity of a personal hearing to the petitioner, if they so request. Needless to state that, in case the petitioner fails to file additional objections within the aforesaid period of two weeks, it is open to the assessing authority to proceed and pass a fresh 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, ACJ)

(T.RAJANI, J)

4th July 2017
NOTE: Issue CC by three days
B/O
RRB