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

Writ Petition No.42218 of 2016

Order: (per V.Ramasubramanian, J.)

Aggrieved by the demand for sales tax under the Central Sales Tax Act, 1956, for the assessment year 2014-15, the dealer has come up with the present writ petition.

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

3. The petitioner submitted monthly returns for the assessment year 2014-15. He also filed Form-VI disclosing gross and net turnover at Rs.1,31,76,500/-.

4. After scrutinising the monthly returns, the Assessing Officer found that the dealer has paid tax at 4%, being inter state sales. On the ground that the statutory forms for claiming concessional benefits were not enclosed, the Assessing Officer issued a show cause notice dated 04-7-2015 demanding tax at 5%, on the total turnover, due to the failure of the dealer to produce the forms.

5. On the ground that the dealer did not file any reply, the Assessing Officer completed assessment. While doing so, he had levied tax at 14.5%. Therefore, contending that the order was far beyond the scope of the show cause notice, the petitioner is before us.

6. Unfortunately, the show cause notice dated 04-7-2015 does not indicate the entry under which the goods dealt by the petitioner would fall. The show cause notice simply demands tax at 5%. But in the impugned order of assessment, the Assessing Officer had treated the goods sold by the petitioner as falling under the residuary entry in Schedule-V to the A.P. VAT Act.

7. According to the petitioner, they deal in footwear, which fall under entry 46 of Schedule-IV to the Andhra Pradesh Value Added Tax Act, 2005. Entry 46 in Schedule-IV related originally to "plastic footwear". Subsequently, the entry was modified to read as "Plastic footwear and Hawaii chappals". However, with effect from 01-7-2008, the entry 46 was made to read as follows:

> "Moulded Plastic footwear and Hawaii Chappals and straps thereof".

8. If the goods of the petitioner fall under entry 46, the rate of tax payable is 5%. If the goods do not fall under any of the entries in Schedule-IV, the goods may attract tax at 14.5%.

9. The original show cause notice dated 04-7-2015 did not even indicate what type of goods are dealt by the petitioner. Therefore, a fresh dispute relating to the nature of the goods and the classification, could not have been raised all of a sudden springing a surprise, in the order of assessment. Hence, the order of assessment is liable to go.

10. In view of the above, the writ petition is allowed and the impugned order is set aside. It is open to the Assessing Officer to issue a fresh show cause notice if there is a dispute with regard to the nature of the goods. In response to the show cause notice, the petitioner may raise all objections including the objection relating to the classification as well as the present status, whether the sale was concluded or whether the goods were returned or not and thereafter, the Assessing Officer may pass a fresh order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

23rd January, 2017.
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AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.42218 of 2016
(per VRS, J.)

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