THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN
&
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.17482 of 2017

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

Heard Sri Dr. S.R.R. Viswanath, learned counsel for the petitioner and Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes and with their consent, the writ petition is disposed of at the stage of admission.

The order impugned in this writ petition is the assessment order dated 06.02.2017 passed by the Assistant Commissioner (CT) (LTU), Anantapur whereby the petitioner was called upon to pay tax of Rs.1,72,32,089/- i.e. CST @ 5% of the direct export sales of spices not covered by bills of lading, and other documents, for Rs.34,46,41,775/-.

While the petitioner claims to have submitted all documents, apart from the bills of lading, to show that the goods were, in fact, exported and were exempt from tax under Section 5(1) of the Central Sales Tax Act, 1956, the assessing authority rejected the petitioner's claim for exemption under Section 5(1) of the CST Act on the ground that the bills of lading were not submitted to him. The case of the petitioner was that bills of lading were lying in the office of the Tirupati Commissionerate of Customs, Central Excise and Service Tax and, despite his repeated requests, copies of the bills of lading were not furnished. The petitioner claims to have obtained copies of the bills of lading from the Tirupati Commissionerate, and to have made an application to the assessing authority under Rule 60 of the A.P. Value Added Tax Rules seeking rectification of the earlier assessment order. The petitioner's request was rejected on the ground that, under Rule 60, the assessing authority lacked jurisdiction to revise the earlier assessment order.

If, as is contended by Dr. S.R.R. Viswanath, learned counsel for the petitioner, the entire turnover represents direct exports, it is then exempt from tax under Section 5(1) of the CST Act. While the bill of lading is, undoubtedly, a document evidencing export of goods, the petitioner appears to have submitted other documents to show that the goods were, in fact, exported.

Be that as it may, as it is now contended before us on behalf of the petitioner that copies of bills of lading, for the turnover subjected to tax, are now available and shall be produced before the assessing authority, if an opportunity is given to him to do so, we consider it appropriate to set aside the impugned order. The petitioner shall furnish the copies of bills of lading to the assessing authority within one week from today and, on receipt of the documents, the assessing authority shall consider the same and pass an assessment order afresh in accordance with law. It is made clear that, in case the petitioner fails to submit copies of the bills of lading to the assessing authority within one week from today, it is open to the assessing authority to proceed and pass an assessment order afresh in accordance with law. As the matter has been remanded to the assessing authority, the order of attachment of the bank account of the petitioner shall continue till a fresh assessment order is passed at the earliest and, in any event, within one month from today. The respondent shall, however, restore the facility of downloading Form 600 waybills to the petitioner forthwith.

The writ petition stands disposed of accordingly. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

June 6, 2017
DSK