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

<u>WRIT PETITION No.34054 of 2016</u>

Between:

M/s. emmanuel Enterprises
Rep. by its Partner Mr. Deepu Dawson Gonti

PETITIONER

And

1. The Commercial Tax Officer, General Bazar Circle, Secunderabad Division, Hyderabad, and another.

RESPONSENTS

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
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ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioner has come up with the above writ petition challenging the action of the 1st respondent in subjecting freight charges to tax at 5% under the Central Sales Tax Act, 1956, treating the freight charges as part of the sale price.

2. Heard Mr. P. Balaji Varma, learned counsel for the petitioner and Mr. M. Govind Reddy, learned Special Government Pleader for taxes.

3. The short question that arises for consideration in this writ petition is as to whether freight charges would form part of the sale price or not, for the purpose of levy under the Central Sales Tax Act, 1956.

4. The expression "turnover" is defined in Section 2(j) of the Central Sales Tax Act, 1956, as follows:

> 2(j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the rules made thereunder."

5. Since turnover is determined on the basis of the aggregate of the sale price, we will have to now look into the definition "sale price". The expression "sale price" is defined in Section 2(h) of the Act, as follows:

> 2(h) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other

than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be in the sale price for the purposes of this clause."

6. A careful look at the definition of the expression "sale price" would show that the cost of freight, where such cost is separately charged, is excluded from the sale price. As a consequence, the freight charges cannot be included as part of the turnover.

7. In Hindustan Sugar Mills Etc vs State Of Rajasthan[1], the Supreme Court held that cost of freight is specifically excluded from the sale price, under the exclusion clause in Section 2(h). Therefore, following the same, the writ petition is allowed and the impugned order is set aside. The matter is remanded back to the Assessing Officer only on the limited question whether freight was separately charged so as to fall within the exclusion clause in Section 2(h) or not.

5. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE V. RAMASUBRAMANIAN

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JUSTICE J. UMA DEVI

19th January, 2017
Js.

[1] (1978) 4 SCC 271

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Date: 19-01-2017

Js.