

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 31933 of 2016

ORDER: (*Per VRS,J*)

The petitioner, who is a dealer under the Andhra Pradesh Value Added Tax Act, 2005, has come up with the present writ petition, challenging an order of assessment passed by the 2nd respondent herein.

2. Heard Mr. Katubadi Ismail, learned counsel for the petitioner, and Mr. Shaik Jeelani Basha, learned special standing counsel for Commercial Taxes appearing for the respondents.

3. The main objection of the petitioner to the impugned order is that his turnover has been worked out in the impugned order, solely on the basis of consumption of electricity, without any further evidence. It appears that several High Courts including this Court, the Madras High Court and the Kerala High Court, have taken a view that the number of units of electricity consumed alone cannot form the sole basis for determining the turnover. This issue has also been raised by the petitioner in his objections to the show-cause-notice. It is not known whether the decision of this Court in *N. Raja Pullaiah*

Vs. Deputy Commercial Tax Officer¹ and the decision of the Kerala High Court in *St. Teresa's Oil Mills Vs. State of Kerala²* were brought to the notice of the respondents. The 2nd respondent is obliged to consider this legal aspect in proper perspective.

4. Therefore, the Writ Petition is allowed, the impugned order is set aside, and the matter remitted back to the 2nd respondent. The 2nd respondent shall consider the detailed objections submitted by the petitioner, with reference to law on the point, give an opportunity of personal hearing, and then pass orders afresh. However, the admitted tax should be paid by the petitioner.

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

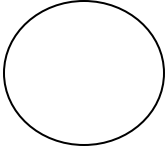
V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

31st January, 2017
cbs

¹ 1969 (1) APLJ 428

² 1970-25-497-STC



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