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

WRIT PETITION Nos.36497 & 36727 of 2016

W.P.No.36497/2016

Between:

M/s. Hindustan Dorr-Oliver Limited,
Rep. by its Assistant General Manager,
Mr. A. Muthukaruppan

PETITIONER

And

1. Commercial Tax Officer, Agapura Circle, Hyderabad, and another.

RESPONSENTS

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

WRIT PETITION Nos.36497 & 36727 of 2016

COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The dealer registered under the Value Added Tax Act, 2005 has come up with the present writ petitions challenging the orders of assessment passed by the Commercial Tax Officer for the years 2009-2010 and 2010-2011.

2. Heard Mr. R.L. Ramani, learned Senior Counsel appearing for the petitioner and Mr. J. Anil Kumar and Mr. T. Vinod Kumar learned Special Standing Counsel appearing for the respondents.

3. As against the impugned orders of assessment, the petitioner admittedly has an effective alternative remedy available under the statute. But they have come up with the present writ petitions bypassing the alternative remedy on the short ground that the turnover that was already subjected to assessment under the Central Sales Tax Act, 1956, has also been included in the turnover assessed under the impugned orders. If that is really so, the issue strikes at the very root of the jurisdiction of the Assessing Officer, and hence, we entertained the writ petitions on 25.01.2007 with a direction to the learned Standing counsel for the department to find out whether an assessment under the VAT Act, 2005 could be made on the very same turnover that was subjected to an assessment under the Central Sales Tax Act, 1956 or not.

4. It is seen from the orders of assessment impugned in both these cases that admittedly, the petitioner reported a turnover of Rs.75,34,85,712/- to be allowed as deduction of exempted turnover under VAT Act. It was for the financial year 2009-2010. Similarly for the financial

year 2010-2011, the petitioner claimed deduction of exempted turnover of Rs.52,07,34,484/-.

5. The Assessing Officer suspected as to how the dealer could have produced C-Forms to the tune of Rs.121,13,94,988/- and reported only a gross turnover of Rs.7,45,82,387/-. But nevertheless, the fact remains that the turnover of Rs.121,13,94,988/-, has already been assessed to tax at 2% as inter state sales. The assessment under Central Sales Tax Act, 1956, has remained untouched. So long as the same remains untouched, the very same turnover cannot, in law, form part of the turnover available for assessment under the VAT Act, 2005. Therefore, on this short ground, the impugned orders are liable to be set aside and the matter remitted back. Therefore, the writ petitions are allowed, the impugned orders are set aside. It will be open to the Assessing Officer to proceed in accordance with law keeping in mind the fact that there cannot be a overlapping of turnovers under both the enactments.

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

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

14th February, 2017
Js.

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

<u>WRIT PETITION Nos.36497 & 36727 of 2016</u>

Date: 14-02-2017

Js.