THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 44311 of 2016

ORDER: ***(Per VRS,J)***

Aggrieved by an order passed by the revisional authority under Section 32(2) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act"), the dealer has come up with the present writ petition.

2. Heard Mr. G. Narendra Chetty, learned counsel for the petitioner, and Mr. T. Vinod Kumar, learned special standing counsel for Commercial Taxes (Telangana) appearing for the respondents.

3. In the original order of assessment, the Assessing Officer accepted that the DEPB licenses were utilized by the dealer for the import of goods. But, the revisional authority, in the impugned order, has taken a stand that the dealer failed to produce the original DEPB licences and that, therefore, the mere production of the bills of entries cannot be accepted. Hence, the dealer is before us.

4. The contention that the dealer imported goods on the basis of the DEPB licences, does not appear to have been seriously disputed even by the revisional authority. Once there is no suspicion that the dealer created fake bills of entries, the DEPB licences cannot be

taxed, as they would have been utilized for the import. Therefore, the non-production of the originals cannot strictly be put against the petitioner.

5. However, the petitioner has a duty to demonstrate that the entries contained in the bills of entries relate to the very same DEPB licences. Once this is established, then there can be no tax levied. If this cannot be established, the revisional authority is entitled to proceed further.

6. In view of the above, the Writ Petition is allowed, the impugned order is set aside, and the matter remitted back to the revisional authority. The revisional authority shall give an opportunity of hearing to the petitioner to demonstrate as to how the bills of entries correlate to the DEPB licences. If the bills of entries correlate to the DEPB licences, then the revisional authority may have to drop further proceedings. Accordingly, the revisional authority may pass orders afresh.

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.

20th January, 2017
cbs

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