HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.753 of 2017

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

Heard Ms.S.V.Sushma, learned counsel for the petitioner, and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The action of the respondents in re-assessing the petitioner to tax under Section 9 of the Central Sales Tax Act, 1956 read with Section 21(6) of the A.P. Value Added Tax Act, 2005 (for short "the APVAT Act") is under challenge in this writ petition. By proceedings dated 30.03.2013 the assessing authority, on noticing that the "C" Forms issued by the petitioner was for a period in excess of a quarter, disallowed the "C" Forms and called upon the petitioner to pay tax of Rs.2,24,883/-.

Ms.S.V.Sushma, learned counsel for the petitioner, would rely on a Division Bench judgment of this Court in **Jitender Roller Flour Mills, Hyderabad vs. Assistant Commissioner (CT) LTU, Charminar Division, Hyderabad**[1] in support of her submission that a change of opinion would not constitute a ground to re-assess a dealer to tax. In **Jitender Roller Flour Mills**[1] a Division Bench of this Court observed:

> "...In *Giridharlal & Company vs. State of A.P*, this Court relied on the view taken earlier by a Division Bench in *State of Andhra Pradesh vs. Kedia Vanaspati (P) Ltd* wherein it was held that where before the assessing authority the record did not contain the relevant material and such material comes to the notice of the

[1] (2012) 54 APSTJ 252

> authority from other sources after the assessment then it would afford a justifiable ground to exercise power under that section. This Court clarified that for exercise of power under Section 14(4) reliance should be made not on the material on record but on the material *de hors* the record which came to the notice of the assessing authority subsequent to the assessment. Very categorically this Court held that non-application of mind by the assessing authority to the material on record at the time of assessment is not justifiable ground to invoke power under Section 14(4) of the 1957 Act...."

In the said case, the "F" Forms, filed for a period in excess of a calendar month, were rejected during the course of re-assessment and the Division Bench held that, since these Forms were before the assessing authority when he passed the initial order, and were accepted by him, they were not liable to be corrected under Section 14(4) of the A.P. General Sales Tax Act, 1957 (for short "the APGST Act").

Sri M.Govind Reddy, learned Special Standing counsel for Commercial Taxes, would contend that the language employed in Section 14(4) of the APGST Act is at variance with Section 21(6) of the APVAT Act.

A bare reading of Section 14(4) of the APGST Act would show that its ambit was wider than Section 21(6) of the APVAT Act. While Section 14(4) of the APGST Act enabled re-assessment, among others, on the ground that the dealer had been under-assessed, Section 21(6) of the APVAT Act enables re-assessment where the assessment is understated. The word "under-assessed" in Section 14(4) of the APGST Act means "an understated assessment" as provided under Section 21(6) of the APVAT Act. Consequently the Division Bench judgments of this Court, in **Jitender Roller Flour**

Mills[1] and **Giridharlal & Company vs. State of A.P**[2], are squarely applicable to the facts of the present case.

The Writ Petition is, therefore, allowed and the impugned order of re-assessment is set aside. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

14th August, 2018
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[2] (1995) 97 STC 442

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