HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.35776 of 2018

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

Heard Sri P.Karthik Ramana, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission. The proceedings under challenge in this writ petition is the assessment order passed in Form Vat 305 by the Commercial Tax Officer (Audit), Visakhapatnam on 31.08.2018 for the tax period June, 2014 to March, 2015 levying tax on the petitioner for a total sum of Rs.3,31,08,537/-.

While stating that, in respect of all other contentions, the petitioner would avail the remedy of an appeal to the Appellate Deputy Commissioner, Sri P.Karthik Ramana, learned counsel for the petitioner, would, however, question the assessment order to the limited extent the petitioner's alternative plea, of the subject transactions being in the nature of an inter-state sale exempt from tax under Section 3(a) of the Central Sales Tax Act, 1956 (for short "the CST Act"), was not considered by the assessing authority.

In the assessment order, the assessing authority records that the documents of title to the goods had not passed on to the buyer, as the goods were directly booked in the name of the ultimate buyer; hence, the transfer of title to the goods did not arise, as the LR was raised in the name of the ultimate buyer to the account of the assessee, and also directly in the name of the ultimate buyer; and, since the transactions on which the assessee claimed exemption are pre-determined sales and were not sales made after commencement of the journey of the goods, it was a clear case of the petitioner having a pre-existing purchase order, and of having despatched the material from outside the state to their customers directly from their purchasers with an intention to come out from the purview of taxation.

Sri P.Karthik Ramana, learned counsel for the petitioner, would submit that, while rejecting the petitioner's claim of the transactions being a transit sale falling within the ambit of Section 6(2) of the CST Act, the assessing authority, however, failed to examine the alternative contention, urged on behalf of the petitioner, that, even if it was not a transit sale, the subject transaction would fall within the ambit of an inter-state sale exempt from tax under Section 3(a) of the CST Act. Learned counsel would rely on a Division Bench judgment of this Court in **Larsen and Tourbo Ltd. vs. State of Andhra Pradesh**[1].

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial taxes, would, however, point out that even if, in terms of the judgment of the Division Bench of this Court in **Larsen and Tourbo Ltd**, the subject transaction is held to be an inter-state sale, the petitioner had claimed exemption on a turnover of Rs.21,60,77,097/-, but had submitted 'C' forms only for a turnover of Rs.15,79,64,764/-; and the petitioner-dealer had failed to produce 'C' forms for the entire turnover.

While we find considerable force in the submission of Sri Shaik Jeelani Basha that, even if the transaction is held to be an inter-state sale, the petitioner is entitled to the concessional rate of tax only on production of 'C' forms, and tax at the local rate would be applicable with respect to the turnover not covered by 'C' forms, it does appear that the petitioner has not been granted concessional rate of tax even for the turnover of Rs.15,79,64,764/- covered by 'C' forms.

Suffice it, therefore, to set aside the impugned assessment order to the extent the petitioner's alternative contention of the subject transaction, falling within the ambit of Section 3(a) of the CST Act, has not been examined by the assessing authority. The matter is remanded to the assessing authority for his consideration afresh, and in

[1] (2016) 88 VST 422(T&AP)

accordance with law. The assessing authority shall, after giving the petitioner an opportunity of an oral hearing, pass a fresh assessment order to the extent indicated hereinabove. On all other issues, on which the assessing authority has held the petitioner liable to tax, we see no reason to exercise discretion to interfere. It is always open to the petitioner to avail their appellate remedy under the A.P.Value Added Tax Act, 2005, and prefer an appeal to the Appellate Deputy Commissioner.

Sri P.Karthik Ramana, learned counsel for the petitioner, would contend that the impugned assessment order is barred by limitation even with respect to transit sales for a period of two months. While Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would dispute this contention, it is wholly unnecessary for us to examine the rival contentions in this regard in the present writ proceedings. Suffice it to leave it open to the petitioner to raise this contention also before the assessing authority.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

12th October, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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Writ Petition No.35776 of 2018

Date: 12.10.2018

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