HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

Writ Petition No.4876 of 2019

ORDER: *(per V. Ramasubramanian, J)*

Challenging an order of assessment passed pursuant to an audit conducted for the period January, 2017 to March, 2017; and April, 2017 to June, 2017, the Dealer under the Telangana Value Added Tax Act, 2005, has come up with the above Writ Petition.

2. Heard Mr.Bhaskar Reddy, learned Counsel for the petitioner, and Mr.Govind Reddy, learned Special Standing Counsel for the Department.

3. It is seen from the impugned order that admittedly the petitioner is trading in a lot of items, some of which are chargeable to tax at 5%, and some chargeable to tax at 14.5%. Some of them are also exempted sale. The assessee claimed input tax credit by applying the formula of A x B/C unit wise. This was under Rule 20(6) of the Telangana Value Added Tax Rules, 2005. The breakup figures were also given by the petitioner along with invoice copies.

4. Though the contention of the Dealer regarding the computation of eligibility of ITC for each line of business separately was accepted by the Assessing Officer, it was not carried into effect in the order. Therefore, *prima facie,* the order appears to suffer from non-application of mind to a finding of fact that was arrived at in favour of the petitioner but not carried into effect while computing.

5. Another contention raised by the petitioner that in the case of another dealer by name Ultratech Cement Limited, the very same Officer has come to a different conclusion, was taken note of by the Assessing Officer, but was not dealt with. Two other contentions, according to the learned Counsel for the petitioner, raised in the course of hearing, were also not considered.

6. In the light of the above, the matter requires to be remitted back to the Assessing Officer for fresh consideration. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The matter is remitted back to the 2nd respondent for fresh consideration. The 2nd respondent may fix a date for personal hearing. Thereafter he may pass orders in accordance with law.

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

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 27, 2019

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