HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.8565 of 2019

ORDER: (per the Honourable Sri Justice V. Ramasubramanian)

Challenging an order of assessment filed under the Telangana VAT Act, 2005, the dealer has come up with the above writ petition.

Heard Mr. Narendra Chetty, learned counsel for the petitioner and Mr. J. Anil Kumar, learned special Standing counsel for the respondents.

The main grievance of the petitioner is that even according to the Assessing Officer, the returns did not disclose the correct sales turnover and purchase turnover. The Assessing Officer arrived at the correct sales turnover on the basis of the profit and loss account. But, he did not arrive at the correct purchase turnover correspondingly.

It is contended by Mr. Anil Kumar, learned special Standing counsel, that whatever was the ITC claimed by the petitioner in the returns has been granted to him and that therefore what is not claimed cannot be granted.

But, once the return filed by the petitioner is rejected for containing incorrect particulars, either it is rejected in full or accepted in full and the Assessing Officer should take into account the corresponding purchase turnover.

It is true that a claim for ITC is subject to the conditions prescribed under Section 13 of the Telangana VAT Act, 2005. The question whether the petitioner has complied with those conditions or not has not been gone into by the Assessing Officer.

Mr. Anil Kumar, learned special Standing counsel, relied upon the judgment of the Karnataka High Court in **State of Karnataka vs. centum Industries (P.) Limited** decided on 31.07.2014. It was held therein by the Karnataka High Court that if the assessee had not put-forth a claim for ITC either in the original return or in the revised return, he cannot put-forth the claim thereafter.

But, the case on hand is little different. In the case before the Karnataka High Court, the assessee himself made a claim after the expiry of the period stipulated. But, in this case, the Assessing Officer found out the turnover by undertaking a best of judgment assessment. Therefore, while doing so, one portion of the profit and loss account alone cannot be taken into account.

Therefore, the writ petition is allowed. The impugned order is set aside and the matter is remanded back to the respondents. The Assessing Officer may now look into the purchase turnover also as reflected in the profit and loss account and also find out whether the petitioner satisfies the conditions for making a claim for ITC. If the petitioner satisfies the conditions for making a claim for ITC, the Assessing Officer may pass orders afresh in accordance with law. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

Date: 29.04.2019.
ES/CCM