HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.11878 OF 2019

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioner, who is a dealer under the Telangana Value Added Tax (VAT) Act, 2005 and the Central Sales Tax (CST) Act, 1956, has come up with the above writ petition challenging an order of assessment passed under the CST Act, 1956, for the year 2014-15.

2. Heard Mr. S. Dwarakanath, learned counsel for the petitioner. Mr. M. Govind Reddy, learned Special Standing Counsel, takes notice for the respondents.

3. The grievance of the petitioner as against the impugned order of assessment is that the petitioner was unable to obtain 'F' Forms for part of the turn over, from four different States, on account of certain issues and that these Forms cannot be generated now on-line, as the Forms related to the assessment year 2014-15. It is the contention of the petitioner that whenever an Assessee is unable to produce 'F' Forms, it is always open to the Assessing Officer to look into other evidence. A Judgment of the Supreme Court in **Ambica Steels Limited v. State of Uttar Pradesh**[1] is relied upon.

---

[1]. (2009) 14 SCC 309

4. As rightly pointed out by Mr. M. Govind Reddy, learned Special Standing Counsel, the question whether the petitioner has been totally paralyzed, for no fault of theirs, in the matter of procuring 'F' Forms, is something that should be pleaded and looked into by the Assessing Officer, before deciding to condone the non-filing of Form 'F'. Otherwise, there is a danger of Assessees coming up as a matter of routine, with other evidence than statutory forms. The facility of looking into other evidence in the absence of statutory forms, should be an exception and not a rule. Therefore, the fact that a case would fall under exception, should be pleaded and established before the Assessing Officer or before the Appellate Authority.

5. In view of the above, we are of the considered view that the petitioner should first go before the Appellate Deputy Commissioner by way of a statutory appeal. The impugned order though dated 30.03.2019, was received on 28.05.2019 and the limitation for filing a statutory appeal has not expired.

6. Therefore, leaving it open to the petitioner to file a regular appeal and directing the 1st respondent not to enforce the impugned order till the appeal is decided, this Writ Petition is disposed of. In the light of the special pleading, the Appellate Authority may examine whether it is a fit case for accepting other evidence as indicated by the Supreme Court in **Ambica Steels Limited**. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

June 17, 2019

<u>Note</u>:

Registry is directed to return the original impugned order to enable the petitioner to file an appeal.
(B/O.) Mgr