THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

Writ Petition.No.22536 of 2019

O R D E R: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard Sri C.V.Narasimham, counsel for Sri Y.Sreenivasa Reddy, counsel for petitioner and the Special Standing Counsel for Commercial Taxes appearing for respondents 1 to 3.

2. Petitioner had filed this Writ Petition challenging the Final Assessment Order dt.30.03.2019 passed by the 2nd respondent.

3. Under the said assessment order, the 1st respondent had determined that the goods being dealt with by the assessee/petitioner would be subject to tax at 14.5% pa.

4. According to the petitioner, it is actually dealing in parts of transmission towers, which fall under entry 64 of Schedule IV to the GST Act, 1956, that since the turnover of the petitioner relates to transit sale, he would be entitled to exemption, and that he had filed declarations in forms 'C' and forms 'E1'.

5. It is also the contention of the petitioner that it had only received the show-cause Notice dt.15.07.2017 referred to in the impugned order but not the Notice dt.19.01.2018 also referred in the impugned order; that it had filed Forms C and E1, in relation to the transactions done by the petitioner on 28.02.2018; and though the petitioner was not asked to produce any other documentary evidence, the impugned order finds fault with the petitioner for not producing other documentary evidence, such as

LR copies, sale invoices, purchase orders placed by the petitioner, as to the making of sale-in-transit; and that without demanding such documentary evidence from the petitioner, it is not open to the 1st respondent to find fault with the petitioner for not producing the said documents. It is also contended that the assessment order merely states that there is a huge variation in values in 'C' Forms and 'E1' Forms, but how this conclusion is arrived at is not supported by any reasons. It is also contended that even if petitioner's transactions are not exempted, it would have to pay tax only at 5% and not 14.5%.

6. The Special Standing Counsel appearing for Commercial Taxes appearing for respondents suggests that the matter be remanded back to the 1st respondent to reconsider the issue, so that the petitioner gets an opportunity to produce all documentary evidence, including LR copies, sale invoices, purchase orders, etc., in support of the petitioner's pleas.

7. This being a fair offer and since *prima facie* the impugned order seems to be passed in violation of principles of natural justice for finding fault with the petitioner for not producing other documentary evidence such as LR copies, sale invoices, purchase orders, etc., which the petitioner was never asked to produce by the 1st respondent, the *Writ Petition is allowed;* the impugned order is set aside; and the matter is remanded back to the 1st respondent; the petitioner is directed to produce all the materials available with the petitioner in support of its claim for exemption

within a period of two (02) weeks from the date of receipt of a copy of this order; and the 1st respondent shall decide the matter afresh in accordance with law. No order as to costs.

8. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

16th October, 2019.

Note: Issue CC in three days.
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