HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.18395 of 2018

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

Challenging an order of assessment passed by the original authority and confirmed by the first appellate authority, as having been passed without jurisdiction, the dealer under the Telangana Value Added Tax Act, 2005, has come up with the above Writ Petition.

Heard Mr.G.Narendra Chetty, learned Counsel for the petitioner, and Mr.J.Anil Kumar, learned Special Standing Counsel appearing for the respondents.

It is claimed by the petitioner that he is the owner of two trucks, which are operated under a work order with the Indian Oil Corporation Limited for transportation of LPG cylinders, to various places within and outside the State. The petitioner is collecting charges per cylinder per K.M. at one rate within the State and at a different rate outside the State. An order of assessment was passed for the tax period 2012-13 and 2013-14 in respect of the transportation charges under Section 4 (8) of the Act, by treating as though there was a 'transfer of right to use'. An appeal filed by the petitioner also got dismissed. Therefore, the petitioner is before us.

The main grievance of the petitioner is that under Section 2 (43) read with Section 17 (2) of the Act, a VAT dealer whose total turnover in any twelve consecutive months exceeds Rs.50,00,000/- alone becomes a VAT dealer. But, since the petitioner's total turnover has not exceeded the said amount, he is not a dealer. In any case, it is his contention that even if Section 4 (8) of the Act applies, TOT dealers are liable to pay tax only at the rate of 1% and not 14.5%.

In other words, the levy is challenged in the first instance and as an alternative the petitioner is prepared to pay the tax at the rate of 1%, as he is a TOT dealer.

A TOT dealer is one who is prepared to declare the turnover which is below the limit prescribed, and who is prepared to pay 1% of the tax. Since the petitioner is prepared to pay the same, the respondents ought to have considered the same. As the respondents have not considered the same, the matter requires reconsideration at the hands of the original authority.

Therefore, the Writ Petition is allowed. The impugned orders are set aside and the matter remanded back to the 2nd respondent for fresh consideration in accordance with law. No order as to costs.

Consequently, miscellaneous petitions, if any pending, in the Writ Petition shall stand closed.

V.RAMASUBRAMANIAN, J

Dr.SHAMEEM AKTHER, J

25.02.2019
Gsn.