APHC010524852009

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3529]

FRIDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 25922/2009

Between:

M/s. Ramesh Metals, Krishna Dist. **...PETITIONER**

AND

The Govt Of A P Revenue 2 Others and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. K RAJI REDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

The Court made the following order:-
(per Hon'ble Sri Justice T.C.D. Sekhar)

The present writ petition is filed questioning the order dated 02.09.2009, passed by the 2nd respondent, levying penalty under Section 10(A) of the CST Act, 1956 (in short, the Act).

2. The petitioner is a Registered Dealer on the rolls of the 2nd respondent, bearing TIN No.28790264396, under the provisions of APVAT Act, 2005 and CST Act, 1956. The petitioner is engaged in the business of works contracts. The Deputy Commissioner (CT) No.II Division, Vijayawada, issued authorization to the Deputy Commercial Tax Officer, Krishnalanka Circle, Vijayawada, to conduct audit of the petitioner's accounts for the tax period from August 2005 to February 2007. During the course of audit, the 'C' forms utilized by the petitioner were verified, and it was noticed that the petitioner had purchased goods from outside the state by issuing 'C' declaration forms, though the said items were not included in the CST registration certificate.

3. It was further observed that the petitioner purchased Hydraulic Excavator, Soil Compactor etc., from outside the state

by issuing 'C' declaration forms, though these items were not mentioned in the registration certificate. As the petitioner is engaged in works contract, he is not eligible to purchase capital equipment against 'C' forms, inasmuch as there is no transfer of such goods in the execution of works contract. Furthermore, the Commissioner of Commercial Taxes issued a circular dated 03.01.2008, indicating the same.

4. In furtherance thereof, the 2nd respondent issued show cause notice dated 25.06.2009, under Section 10(A) of CST Act, 1956, calling for objections from the petitioner and proposed to a levy penalty of Rs.48,48,901/-. In response, the petitioner filed objections dated 12.08.2009, contending *inter alia,* that the registration certificate clearly mentioned that the material intended to be purchased against 'C' forms were for execution of works contracts and requested to drop all further proceedings pursuant to the penalty notice issued by the 2nd respondent. It is the further case of the petitioner that the 2nd respondent without considering the objections, passed impugned order dated 02.09.2009, levying penalty.

5. Heard learned counsel for the petitioner and learned Government Pleader for Commercial Taxes.

6. The learned counsel for the petitioner would contend that the Hydraulic Excavator and Soil Compactor were purchased by the petitioner for the purpose of executing works contract and the same should be treated as capital goods, inasmuch as works contract involve civil constructions, earth digging and laying of bunds or roads, involving the usage of usage of Hydraulic Excavator. Therefore, the petitioner is entitled to purchase the said equipment as against 'C' forms since they are put to use in the execution of works contract.

7. He would further contend that, in invoking Section 10(A) of the Act, the burden lies on the revenue to prove that there was an element of *mens rea* on the part of the dealer. In support of his contention, he places reliance on judgment rendered by the Hon'ble Apex Court in *Civil Appeal Nos.2344 & 2347 of 2004*, dated 10.09.2010, wherein it was held that the dealer was under the bona fide belief that the goods were purchased against 'C' forms issued by department without any objection. He further contends that there was no *mens rea* on the part of the dealer

and, therefore, the case does not fall within the purview of Section 10(b) of the Act, and the revenue ought not to have invoked Section 10(A) of the Act.

8. On perusal of the impugned order, it is clear that the petitioner filed 'Nil' returns from April 2007 to February 2008, i.e., till the cancellation of registration. However, the petitioner made purchases of a Hydraulic Excavator on 28.06.2007 and 31.08.2007, indicating that the machinery was not used for the specified purposes. Thereby the case of the petitioner falls under Section 10(d) of the Act, inasmuch as the machinery was used for purposes not specified under clause (b), clause (c), or clause (d) of sub section (3) or sub section (6) of Section 8 of the Act.

9. In the present case, it is clear that the petitioner used the goods for a purpose not specified in CST registration certificate. Therefore, the case on hand falls under Section 10(d) of the Act, inasmuch as the goods were not utilized for the specified purpose incorporated in the registration certificate. Furthermore, the case relied on by the petitioner falls under Section 10(b) of the Act, whereas the present case falls under Section 10(d) of the Act.

Therefore, the judgment relied on by the petitioner is not applicable to the facts of the case.

10. In view of the reasons recorded *supra,* there are no merits in the writ petition, accordingly the same is dismissed.

There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

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HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

W.P.No.25922 of 2009
Dated 28.03.2025

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