



[\[2016\] 88 VST 353 \(T&AP\)](#)

[\[IN THE TELANGANA AND ANDHRA PRADESH HIGH COURT\]](#)

Smt. Namita Banka

v.

Commercial Tax Officer, Agapura Circle, Abids Division, Hyderabad and another

RAMESH RANGANATHAN AND SATYANARAYANA MURTHY M. JJ.

December 04,2015

HF ♦ Assessee, including dealer (Registered or Unregistered)

VALUE ADDED TAX — ENTRIES IN SCHEDULE — BIO-TOILETS SOLD TO INDIAN RAILWAYS — WHETHER RAIL COACHES — ASSESSING AUTHORITY WITHOUT RECORDING REASONS HOLDING THEY ARE NOT — ORDER LIABLE TO BE SET ASIDE — ANDHRA PRADESH VALUE ADDED TAX ACT (5 OF 2005), SCH. IV, ENTRY 51, SCH. V.

VALUE ADDED TAX — VALUE ADDED TAX AUTHORITIES — ASSESSING OFFICER — QUASI-JUDICIAL AUTHORITY — BOUND TO RECORD REASONS FOR CONCLUSION.

Where the assessing authority levied tax at 14.5 per cent. on the sale of bio-toilets to the Indian Railways on the ground that the petitioner-dealer had not furnished a declaration in form C or form F or the certificate in form E-II on the finding that bio-toilets do not come under the category of rail coaches, on a writ petition contending, inter alia, that bio-toilets were supplied exclusively to the Indian Railways, and formed a part of the rail coaches and, as they fell under entry 51 of the Fourth Schedule to the Andhra Pradesh Value Added Tax Act, 2005, the goods can be subjected to tax only at five per cent. and not treated as "general goods", under the Fifth Schedule liable to tax at 14.5 per cent.:

Held, allowing the petition, that no reasons were assigned how the assessing authority had come to the conclusion that the bio-toilets did not fall under the category of rail coaches. The assessing authority exercises quasi-judicial powers, and is obligated to assign reasons for arriving at any decision. No order of assessment can be passed on the ipse dixit of the assessing authority. The order being bereft of reasons, it was liable to be set aside. The assessing authority shall, after affording the petitioner an opportunity of a personal hearing, pass a reasoned order afresh and in accordance with law.

Writ Petition No. 39484 of 2015 decided on December 04,2015

Dr. S. R. R. Viswanath for the petitioner.

J. Anil Kumar, Special Standing Counsel for Commercial Taxes, for the respondents.

Cases referred to :

ORDER



The order of the court was made by

RAMESH RANGANATHAN J.—Heard Dr. S. R. R. Viswanath, learned counsel for the petitioner, and Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, and, at their request, the writ petition is being disposed of at the stage of admission.

The order under challenge in this writ petition is the assessment order passed by the assessing authority (first respondent herein) on October 28, 2015, levying tax at 14.5 per cent. on the sale of bio toilets to the Indian Railways, on the ground that the assessee had not furnished a declaration in form C or form F or the certificate in form E-II.

Dr. S. R. R. Viswanath, learned counsel for the petitioner, would submit that the requirement of submitting a declaration in form C is only when the goods are sold to registered dealers under section 8(1) of the Central Sales Tax Act, 1956 (for short, "the CST Act") read with rule 12(1), (6) and (7) of the CST (Registration and Turnover) Rules, 1957; sale of goods to the Government falls within the ambit of section 8(2) of the CST Act for which form C is inapplicable; bio toilets are supplied exclusively to the Indian Railways, and form a part of the rail coaches; and, as the subject goods fall under entry 51 of the Fourth Schedule to the A. P. Value Added Tax Act, 2005 (for short, "the VAT Act"), the goods can be subjected to tax only at five per cent. and not treated as "*general goods*", under the Fifth Schedule which are liable to tax at 14.5 per cent. Entry 51 of the Fourth Schedule to the VAT Act reads as "*Rail coaches, engines and wagons*". The contention of the petitioner is that these bio toilets are supplied exclusively to the Indian Railways; and as they form part of rail coaches, they would fall within the ambit of entry 51 of the Fourth Schedule to the VAT Act and can be subjected to tax only at five per cent.

In the reply to the show-cause notice issued by the first respondent, the petitioner stated that, on these bio toilet tanks, the CST payable, on inter-State sales, is at two per cent., if C form is obtained; otherwise, (i.e., CST sale without C form to Indian Railways, Govt. of India) it would attract the same rate as applicable to the sale of goods within the State, i.e., at five per cent. under entry 51 of the Fourth Schedule to the A. P. VAT Act.

The assessing authority merely holds that bio toilets do not come under the category of rail coaches. No reasons are assigned as to how the assessing authority has come to the conclusion that these bio toilets do not fall

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under the said category. The assessing authority exercises quasi-judicial powers, and is obligated to assign reasons for arriving at any decision. No order of assessment can be passed on the ipse dixit of the assessing authority.

On this short ground, that the impugned order is bereft of reasons, it is set aside. The assessing authority shall, after affording the petitioner an opportunity of a personal hearing, pass a reasoned order afresh and in accordance with law.

The writ petition is disposed of accordingly.

The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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