(2000) 06 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11065 of 2000

Indian Railway Constructions International Ltd. APPELLANT

Vs

Commercial Tax Officer-II and Others RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Citation : (2001) 121 STC 448

Hon'ble Judges : S.R. Nayak, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : S. Krishna Murthy, for the Appellant; Special Govt. Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, J.

1.Heard both the counsel at the stage of admission.

2. In this writ petition, the petitioner questions the "revised notice" dated April 10, 2000 issued by the first respondent proposing to make reassessment for the year 1997-98 on the turnover of stone ballast by applying Section 5 of the A.P. General Sales Tax Act, 1957. While conceding that the petitioner has a right to file objections and it has the remedy of filing appeal in case an adverse order is passed, the learned counsel for the petitioner seeks justification in filing this writ petition questioning the show cause notice by referring to the communication dated May 5, 2000 sent by the second respondent to the first respondent. By the communication, the second respondent, after having referred to the objection raised by the Accountant-General''s office regarding the short levy of tax on cement and irregular exemption allowed on sand ballast, instructed the first respondent to revise the assessments u/s 14(4) of the said Act and to adjust the tax demand against the amount refundable as per the original assessment orders. It is contended by the learned counsel for the petitioner that in the face of this positive direction issued by the second respondent, no useful purpose will be served in filing the objections and in the very nature of things, there could be

no objective consideration by the assessing authority, We do find some substance in the contention of the petitioner that the assessing authority is fettered by the directives issued by the superior authority in the matter of discharge of quasi-judicial functions. A positive direction that has been given by the second respondent would certainly fetter the discretion of the assessing authority in considering the issues dispassionately and objectively. At the same time, the assessing authority is not precluded or barred from initiating the reassessment proceedings pursuant to the information that is given in his notice.

3. In the circumstances, ends of justice would be met by directing the first respondent to proceed with the assessment strictly in accordance with law without in any way being influenced by the directives given by the Deputy Commissioner. It is further made clear that irrespective of the objection raised by the Accountant-General, the relevant issues should receive independent consideration in the hands of the assessing authority, which is a statutory quasi-judicial functionary. This clarification will be sufficient to safeguard the interests of the petitioner. The assessing authority is directed to act in accordance with the above clarification and to decide the matter objectively and independently. Two weeks'' time is granted to file objections.

4. The writ petition is disposed of with the above observations and directions.