**(2015) 02 AP CK 0049**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 32581 of 2012

Standard Electronics — APPELLANT

Vs

Deputy Commissioner (CT), No. II Division and Others — RESPONDENT

**Date of Decision :** 09-02-2015

**Acts Referred:**

**Citation :** (2015) 60 APSTJ 102

**Hon'ble Judges :** R. Subhash Reddy, J;B. Siva Sankara Rao, J

**Bench :** Division Bench

**Advocate :** G. Narendra Chetty, for the Appellant; S. Suribabu, Special SC, Advocates for the Respondent

## Judgement

R. Subhash Reddy, J—Though the matter is listed under the caption ''Interlocutory'', at the request of learned counsel for parties, the Writ Petition is heard finally and is being disposed of by this order. The Writ Petition is filed seeking to declare the revision orders, dated 29.08.2012, passed by the Deputy Commissioner (Commercial Taxes), No. II Division, Vijayawada - respondent No. 1, levying turnover tax under Section 5A of the Andhra Pradesh General Sales Tax Act, 1957 (for short, ''the Act''), for the assessment years 2002-03, 2003-04 and 2004-05 as illegal and contrary to G.O. Ms. No. 540, dated 02.08.2000, issued by the Government in exercise of powers conferred under Section 9(1) of the Act, and to set aside the same.

2. Petitioner is a proprietary concern carrying on business in sale of public address systems i.e., amplifiers, loud speakers, spare parts etc., having purchased such items from a dealer registered under the provisions of the Act within the State. For the assessment years 2002-03, 2003-04 and 2004-05, it has submitted tax returns and the primary authority i.e., Commercial Tax Officer has passed different assessment orders for the aforesaid assessment years accepting the exemption claimed by the petitioner on second sales, as the goods dealt with by the petitioner fall under Entry 38B of First Schedule to the Act and in view of the orders passed by the Government in G.O. Ms. No. 540, Revenue

(CT. II) Dept., dated 02.08.2000, exempting payment of turnover tax under Section 5A of the Act in respect of second and subsequent sales of electronic goods covered by Entry 388 of First Schedule to the Act. However, respondent No. 1 has initiated revisional proceedings for the aforesaid assessment years, and issued show-cause notices stating that on examination of records, it was found that the goods dealt with by the petitioner fall under Item 11 of First schedule to the Act and as such, it attracts tax under Section 5A of the Act and asked the petitioner to file objections, if any. Pursuant to the same, petitioner has filed objections reiterating the stand that the goods dealt with by it fall under Entry 38B of First schedule to the Act and in view of the orders passed by the Government in G.O. Ms. No. 540, dated 02.08.2000, turnover tax is exempted on second sales. In spite of the same, respondent No. 1 has passed the impugned orders mainly by relying on the findings recorded by the Sales Tax Appellate Tribunal, Andhra Pradesh, Visakhapatnam Bench, in T.A. No. 480 of 2002, dated 06.09.2011, by which, the appellate Tribunal has held that public address systems would fall under Entry 38D of First Schedule to the Act.

3. In this Writ Petition, it is the case of the petitioner that the goods dealt with by it i.e., amplifiers, loud speakers, spare parts etc., fall under Entry 38B of First Schedule to the Act and as such, turnover tax is not leviable on such goods, and the impugned orders passed by respondent No. 1 were contrary to the orders passed by the Government in G.O. Ms. No. 540, dated 02.08.2000.

4. It is submitted by the learned counsel for petitioner that though the primary authority has dropped the proceedings accepting the explanation offered by the petitioner, respondent No. 1 has initiated revisional proceedings on false premise that the goods dealt with by the petitioner fall under Entry 11 of First Schedule to the Act. It is further submitted that in view of the orders passed by the Government in G.O. Ms. No. 540, dated 02.08.2000, as second sales are exempted from turnover tax, petitioner is not liable to pay tax on such goods. It is further submitted that, in any event, having issued show-cause notices alleging that the goods dealt with by the petitioner fall under Entry 11 of First Schedule to the Act, it is not open to respondent No. 1 to pass final orders on the ground that the goods dealt with by the petitioner fall under Entry 38D of First Schedule to the Act, based on the findings recorded by the appellate Tribunal in T.A. No. 480 of 2002.

5. On the other hand, it is submitted by the learned Special Standing Counsel for Commercial Taxes appearing for respondents that for earlier tax periods, tax was levied at 12% on the ground that the goods dealt with by the petitioner fall under Entry 38B of First Schedule to the Act, but the petitioner has contested the same on the ground that the goods dealt with by it fall under Entry 38D of First Schedule to the Act, which attract 8% tax, and in spite of the same, the petitioner has taken a contra stand in the present case that the goods dealt with by it do not fall under Entry 38D of First Schedule to the Act.

6. Having heard the learned counsel appearing for petitioner and also learned

 

Special Standing Counsel for Commercial Taxes appearing for respondents, we have perused the material on record.

7. In the first instance, during assessment proceedings, as it is submitted by the petitioner that the goods dealt with by it fall under Entry 38B of First Schedule to the Act, in view of the undisputed fact that the goods in question are second sales and in view of the orders passed by the Government in G.O. Ms. No. 540, the assessment proceedings for the aforesaid assessment years in respect of second sales were dropped. However, revisional proceedings were initiated mainly on one ground that the goods dealt with by the petitioner fall under Entry 11 of First Schedule to the Act, but not under Entry 38B. Though the show-cause notices were issued alleging that the goods dealt with by the petitioner fall under Entry 11 of First Schedule to the Act, for which objections were filed by the petitioner stating that the goods dealt with by it fall under Entry 38B of First Schedule to the Act, while passing final orders, respondent No. 1 has recorded a finding that the goods in question fall under Entry 38D of First Schedule to the Act, traversing beyond the allegations made in the show-cause notices and levied turnover tax. Further, from a perusal of the order passed by the appellate Tribunal, it is clear that for earlier assessment years with regard to first sales, the Deputy Commissioner (Commercial Taxes) has passed orders keeping in view that the public address systems i.e., amplifiers, speakers, mikes etc., fall under Entry 38B of First Schedule to the Act. In view of the reasons indicated above, we are of the view that having issued show cause notices alleging that the goods dealt with by the petitioner fall under Entry 11 of First Schedule to the Act, respondent No. 1 ought to have confined his consideration within the scope of show-cause notices, and in the facts and circumstances of the case, he ought not to have passed orders merely basing on the orders of the Tribunal for the previous tax periods. Inasmuch as it is not in dispute that the goods in question are second sales and as we are also satisfied that the goods dealt with by the petitioner fall under Entry 38B of First Schedule to the Act, the impugned orders cannot be sustained.

8. For the aforesaid reasons, the Writ Petition is allowed and the impugned orders, revising the orders of the assessing authority, are set aside. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

 