**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION No.22727 of 2017**

**27.11.2017**

Between:

Telangana State Pollution Control Board

..Petitioner

And

The Commissioner of Income-tax (Exemptions),
Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.Y.Ratnakar

Counsel for the respondents: Mr.J.V.Prasad,
senior standing counsel for Income Tax Department

The Court made the following:

**<u>ORDER</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This writ petition is filed for a *mandamus* to set aside order in F.No.CIT(E)/Hyd/10(23C)(iv)/2016-17, dated 07.03.2017, of respondent No.1 – the Commissioner of Income Tax (Exemptions), Hyderabad. The petitioner has also sought for a consequential direction to respondent No.1 to grant approval under Section 10(23C)(iv) of the Income Tax Act, 1961 (for short 'the Act') in pursuance of its application, dated 30.09.2015.

2. We have heard Mr.Y.Ratnakar, learned counsel for the petitioner, and Mr.J.V.Prasad, learned senior standing counsel for Income Tax Department appearing for the respondents.

3. The admitted facts are that the Andhra Pradesh Pollution Control Board (APPCB) was constituted in the composite State of Andhra Pradesh under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and it was granted approval under Section 10(23C)(iv) of the Act by the Chief Commissioner, Exemptions-III, Hyderabad, *vide* his order, dated 29.09.2010, as a result of which, APPCB was not liable to pay tax from the assessment year 2009-10. Consequent on bifurcation of the composite State of Andhra Pradesh on formation of the State of Telangana, the latter has constituted the petitioner – Telangana State Pollution Control Board, for the State of Telangana under G.O.Ms.No.2, Environment, Forests, Science & Technology (Env.) Department, dated 07.07.2014, under the provisions of Section 4 of the

Water Act. The newly constituted Board (the petitioner) has subsequently adopted the Air (Prevention and Control of Pollution) Act, 1981.

4. The petitioner has pleaded, with reference to which there is no dispute, that the purposes and objects for which it was constituted are identical to that of APPCB. In respect of the financial year 2014-15 (assessment year 2015-16), the petitioner has made an application in Form No.56 along with the enclosures, for exemption under Section 10(23C)(iv) of the Act on 30.09.2015 in the Office of the Income Tax Exemption Circle. The case was posted to 11.12.2015 by the Exemption Circle for enquiry and hearing as required under the second proviso to Section 10(23C)(iv) of the Act. On that day at 11.30 a.m., the executives looking after the accounts of the petitioner along with its Chartered Accountant appeared before respondent No.4. – the Assistant Commissioner of Income-tax (Exemptions), Hyderabad. The said functionary directed the petitioner to file audited accounts for the financial year 2014-15 and the said papers were filed in the inward counter on the same day under acknowledgement. The petitioner has further pleaded that thereafter, its officers made periodical enquiries, which revealed that the matter is pending consideration. After waiting for more than one year, the Principal Secretary of the petitioner has addressed letter/representation, dated 22.02.2017, to respondent No.1 referring to the facts narrated above. In paragraph 5 of the said letter, it is stated by the petitioner that as per the ninth proviso to Section 10(23C) (iv) of the Act, an order of rejection has to be passed within

twelve months from the end of the month in which the application in Form No.56 was received and that since such an application was received on 30.09.2015 and no order was passed rejecting the said application, an order is deemed to have been passed granting the petitioner exemption under Sub-Clause (iv) to Section 10(23C) of the Act. On receipt of this letter, respondent No.1, by order, dated 07.03.2017, has informed the petitioner that its application in Form No.56 along with the enclosures was taken on file by respondent No.4 and the said officer has inadvertently issued notice calling for details without the knowledge of the undersigned (respondent No.1); that the time limit prescribed for grant of approval/rejection of exemption is twelve months from the end of the month in which the application in Form No.56 was filed and that as neither the application was filed by the petitioner before the competent authority nor the *factum* of filing of such application before respondent No.4 was brought to the knowledge of the competent authority within the stipulated time, there cannot be a deemed approval of the application. In the light of the said reasons, respondent No.1 has held that the application filed by the petitioner on 30.09.2015 is not maintainable. Feeling aggrieved by this order, the petitioner has filed this writ petition.

5. It is not in dispute that respondent No.1 is the competent authority to receive the applications for exemption. However, when the application for exemption in Form No.56 was filed by the petitioner on 30.09.2015 before respondent No.4, the said functionary has not returned the same. On the contrary, he has sent a notice of enquiry,

in pursuance of which, he has held an enquiry and directed the petitioner to submit the audited accounts, which was complied with by the petitioner. Even thereafter, the application was not returned by any of the respondents on the ground that it was not maintainable. It is only when after the petitioner has addressed letter, dated 22.02.2017, that respondent No.1 has rejected the petitioner's application.

6. It is not the pleaded case of the respondents, as reflected in the counter-affidavit, that the petitioner has filed the application for exemption before a wrong authority, deliberately. The pleadings in the counter-affidavit are not suggestive of any *mal* intention on the part of the petitioner to file the application before the wrong authority. Therefore, we have no reason to reject to the plea of the petitioner that inadvertently, the application was filed before respondent No.4. When the petitioner filed the application before the wrong authority, the same should have been returned. As noted hereinbefore, instead of returning the petitioner's application, an enquiry was held and additional material was sought for, obviously making the petitioner to believe that its application is pending consideration. Therefore, on the facts of the case, the blame is equally apportionable to both the parties. If the petitioner is entitled to exemption on merits, it would be iniquitous to deny consideration of its application, merely because it was not addressed to the correct authority. Therefore, we are of the opinion that it would be in the fitness of things, if application, dated 30.09.2015, filed by the petitioner is treated as the one filed before the competent authority i.e., respondent No.1.

7. Accordingly, respondent No.4 is directed to forward the application filed by the petitioner for exemption in Form No.56 along with the enclosures to respondent No.1 within two weeks from the date of receipt of a copy of this order. Within two months thereafter, respondent No.1 shall hold an enquiry, pass an appropriate order and communicate the same to the petitioner.

8. Subject to the above directions, the Writ Petition is disposed of.

9. As a sequel to disposal of the Writ Petition, W.P.M.P.No.27988 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.

**C.V.NAGARJUNA REDDY, J**

**T.AMARNATH GOUD, J**

**27th November, 2017**
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