THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.40687 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Narendra Chetty, learned counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Tax, and with their consent, the Writ Petition is being disposed of at the stage of admission.

The proceedings under challenge in this Writ Petition is the assessment order dated 12.08.2015 subjecting the petitioner to tax under the Andhra Pradesh Value Added Tax Act, 2005. The assessment order itself records the authorisation given by the Deputy Commissioner (CT) to the Assistant Commissioner in Form-ADM 1B dated 17.06.2014 to conduct audit of the business transactions of the dealer. A separate authorisation was also issued by the Deputy Commissioner to the audit officer in Form ADM1C No.20140917021197 to assess the dealer, in case he detected under declaration. It is on the basis of this authorisation, that audit was conducted on the business of the petitioner firm, and they were assessed to tax.

A Division Bench of this Court, in **M/s Arihanth Automobiles, Adoni v. the Deputy Commercial Tax Officer-I, Adoni and 2 others** (judgment in W.P.No.40638 of 2012 dated 04.02.2013), opined that the order, impugned therein, failed to record the authority's satisfaction as to the relief of assessment, and delegated the satisfaction to the assessing authority; and such an order of authorisation was unsustainable. The consequential assessment order was set aside.

In the present case also, the authorisation delegates the power to the Assistant Commissioner to assess the petitioner to tax, if he detects any under declaration. It is evident that the Deputy Commissioner did not satisfy himself of the need for assessment, before authorising the Assistant Commissioner to assess the petitioner to tax.

The impugned order of assessment must be, and is accordingly, set aside. The Deputy Commissioner shall examine the audit report submitted by the audit officer and, after satisfying himself that an assessment should be made, issue an authorisation to the Assistant Commissioner to assess the petitioner to tax. It is made clear that, as the territorial assessing authority has now been conferred power, under the amended Rule 59, to assess the dealer to tax even without authorisation, this order shall not preclude the territorial assessing authority from passing an order of assessment.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions, if any, pending shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

18th December, 2015
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