***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***

***AND***

***THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY***

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**Writ Petition No.36557 of 2015**

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

The jurisdiction of this Court is invoked by the petitioner, a partnership firm, to declare the action of the respondents in not considering the Government Memo dated 17.06.2011, in respect of re-assessment of business of unregistered VAT dealers including the petitioner, and in not permitting the petitioner to make payment of 1% VAT under the Composition Scheme, for the tax period 2005-06, 2006-07 and 2007-08 as mentioned in the subsequent Circular of the Commissioner of Commercial Taxes dated 22.03.2012, as arbitrary and illegal.

The petitioner was assessed to tax, and an assessment order was passed by the Assessing Authority on 19.01.2010, for the years 2005-06, 2006-07 and 2007-08. Aggrieved thereby, the petitioner invoked the jurisdiction of the Appellate Authority, who refused to entertain the appeal on the ground that the petitioner had not deposited 12.5% of the disputed tax. Questioning the order of rejection, the petitioner filed W.P.No.13735 of 2010 which was dismissed by this Court by order dated 11.02.2011. Aggrieved thereby, the petitioner carried the matter in appeal to the Supreme Court in S.L.P.No.16813 of 2015. They, however, sought leave to withdraw the petition and, consequently, the Special Leave Petition was dismissed as withdrawn on 18.09.2015. When the respondents sought to recover the tax dues for the years 2005-06, 2006-07 and 2007-08, by putting the property of a partner of the petitioner to sale, they filed W.P.No.22218 of 2015. A Division Bench of this Court, by its order dated 26.10.2015, dismissed the writ petition as withdrawn.

It is only thereafter on 06.11.2015 was the present writ petition filed placing reliance on the Government Memo dated 17.06.2011. It is the petitioner's case that, since they obtained registration on 13.12.2011 with effect from 01.12.2011, they should be extended the benefit of the Government Memo dated 17.06.2011 whereunder all those apartment dealers, who had not registered and had not applied for composition of tax under

Section 4(7)(d) of the A.P.Value Added Tax Act, 2005 (for short "the Act"), were required to register themselves as VAT dealers, pay tax at 1% of the Composition Scheme, and pay interest as applicable under the Act from the due date till actual payment of the VAT due.

Sri Ganesh Bhujanga Rao, learned counsel for the petitioner, would contend that the petitioner, while seeking registration in the year 2011, had also submitted an application seeking composition in terms of the Government Memo dated 17.062011, no copy of any such representation, has been filed along with the present writ petition.

Learned counsel would submit that, even otherwise, there is no requirement under the Government Memo dated 17.06.2011 to submit any representation. The Government Memo dated 17.06.2011 is a benefit extended to those dealers who had not opted for composition of tax under Section 4(7)(d) of the Act. The said Memo required such apartment builders to register themselves as VAT dealers and pay tax at 1% under the Composition Scheme. They were also required to pay interest applicable under the Act from the due date till the date of actual payment. The Government Memo stipulated that, pending re-assessment of tax at 1% + interest, the Commissioner of Commercial Taxes should not take any coercive action against the concerned builders. It is evident from the Government Memo dated 17.06.2011 that it is only after an apartment builder pays tax at 1% and seeks re-assessment of tax at 1% + interest, is the Department required not to take any coercive action. There is no material on record to show that the petitioner had sought re-assessment of tax, by submitting an application to the concerned officials in this regard.

In any event, the petitioner has filed the present writ petition more than four years after the Government Memo dated 17.06.2011, that too after all their efforts, to avoid payment of tax, failed. Nothing prevented the petitioner to raise these contentions in W.P.No.22218 of 2015 filed by them earlier, which was dismissed as withdrawn on 26.10.2015. It is also necessary to note that the Government Memo dated 17.06.2011 was made inapplicable to subsequent transactions by the Circular of the Commissioner, Commercial Taxes dated 22.03.2012. We see no reason, therefore, to exercise discretion under Article 226 of the Constitution of India, to entertain such a claim four years after the Government Memo dated 17.06.2011 was issued, and more than three and half years after the assessment order was passed on 19.01.2010.

The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**RAMESH RANGANATHAN, J**

**M. SATYANARAYANA MURTHY, J**

Date:24.11.2015.

JSU

***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***

***AND***

***THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY***

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**Date: 24.11.2015**

**JSU**