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

WRIT PETITION No.41720 of 2015

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

Heard Sri Karthik Ramana, learned counsel appearing on behalf of the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Tax, and with their consent the Writ Petition is being disposed of at the stage of admission.

Aggrieved by the assessment order, the petitioner carried the matter in appeal to the second respondent, and paid 12.5% of the disputed tax as pre-deposit. They also filed an application seeking stay of the order of the assessing authority. The second respondent rejected the stay application by order dated 13.07.2015 which was signed by him on 17.07.2015. A copy thereof is said to have been served on the petitioner on 07.08.2015. The petitioner preferred a revision to the third respondent, under Section 31 (3) (b) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act') on 22.08.2015 within thirty days from the date of communication of the order by the second respondent.

Curiously the third respondent passed the impugned order dated 17.11.2015, rejecting the contention of the authorised representative of the petitioner that, for the purpose of reckoning time of thirty days specified in Section 31 (3) (b) of the Act, the period, between the date of the order and the date of their service, should be excluded. The third respondent held that, as seen from the language used in the said provision, it was not permissible to accept this contention of the dealer, however harsh the same may be; and that he had no other go but to reject the revision on this ground.

Section 31 (3) (b) of the Act stipulates that, against an order passed by the appellate authority refusing to order stay under Section 31 (3) (a) of the Act, the appellant may prefer a revision petition within thirty days from the date of the order of such refusal, to the Additional Commissioner or the Joint Commissioner who may, subject to such terms and conditions as he may think fit, order stay of collection of the balance of the tax under dispute pending disposal of the appeal by the appellate authority. The words "within thirty days from the date of the order of such refusal" can only mean thirty days from the date of receipt by the appellant of a copy of the order refusing to grant stay. Any other construction of the provision would result in absurdity for, if the appellate authority were not to communicate the order rejecting stay for a period of thirty days after passing the order, the dealer would then be denied his statutory remedy of a revision under Section 31 (3) (b) of the Act.

In this context it is also necessary to note that Rule 41 of the Andhra Pradesh Value Added Tax Rules requires every order of the appellate authority, passed under Section 31 of the Act, to be communicated to the appellant. The words "within thirty days from the date of the order of such refusal" in Section 31 (3) (b) of the Act can only mean thirty days from the date of receipt by the appellant of a copy of the order of the Appellate Deputy Commissioner.

A similar provision fell for consideration before the Supreme Court, in **Housing Board, Haryana v. Housing Board Colony Welfare Association and Others**[1], and the Supreme Court held that, in the absence of the communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same, and get it set aside by the appellate authority or the higher forum.

The impugned order dated 17.11.2015 is set aside. As the revision was admittedly preferred within thirty days, from the date of receipt by the appellant of a copy of the order of the Appellate Deputy Commissioner, the third respondent shall entertain the revision, and pass an order afresh in accordance with law within one month from the date of receipt of a copy of this order.

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

28th December, 2015
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[1] (1995) 5 SCC 672