THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.40166 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri B.Srinivas, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The petitioner was assessed to tax on the sale of lenses implanted in the eyes of patients in the hospital. An assessment order was passed on 27.07.2015 levying VAT on the said turnover. Aggrieved thereby, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner who, by order dated 18.11.2015, followed the judgment of the Allahabad High Court in **M/s. International Hospitals Pvt. Limited**, set aside the assessment order and remanded the matter to the assessing authority directing him to pass orders afresh taking into consideration the judgment of the Allahabad High Court in **M/s. International Hospitals Pvt. Limited**[1]. In the interregnum, the assessing authority, by order dated 12.10.2015, passed an order imposing penalty. This order dated 12.10.2015 is under challenge in this Writ Petition.

Sri B.Srinivas, learned counsel for the petitioner, would submit that when the assessment order was set aside in appeal, the order imposing penalty does not survive, and necessitates being set aside. Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, while fairly stating that the penalty order cannot survive dismissal of the original assessment order, would request this Court to leave it open to the assessing authority to initiate penalty proceedings after an order of assessment is passed afresh.

The order imposing penalty on the petitioner, by proceedings dated 12.10.2015, is consequent upon the earlier assessment order passed on 27.07.2015. As the said assessment order dated 27.07.2015 has been set aside in appeal by the Appellate Deputy Commissioner on 18.11.2015, the consequential penalty order must be, and is accordingly, set aside. It is made clear that this order shall not preclude the assessing authority, if need be, from initiating penalty proceedings after an assessment order is passed afresh.

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

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

10th December 2015

RRB