THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.7885 of 2011

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

The Commercial Tax Officer has invoked the jurisdiction of this Court questioning the action of ING Vysya bank in proceeding with the sale as per their notification, ignoring the first charge of the State of Andhra Pradesh, as arbitrary and illegal. Placing reliance on the judgment of the Supreme Court in ***Central Bank of India v. State of Kerala and Others***[1], Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would contend that, in view of Section 26 of the Andhra Pradesh Value Added Tax Act, 2005, the State Government has a statutory first charge, on the assets of the third respondent-assessee, for recovery of tax arrears.

Sri K.Raji Reddy, learned counsel appearing on behalf of the third respondent, would submit that an assessment order was passed on 15.02.2010 for the period November, 2007 to November, 2009; pursuant to the order of the STAT dated 20.02.2008, holding that the second sale of liquor and beer bottles did not attract tax under the Act, the third respondent did not pay tax; the order of the Tribunal was reversed by this Court in its orders in W.P.No.12684 of 2009 dated 08.10.2009; the Government had subsequently, by proceedings dated 10.07.2013, waived payment of tax for the period from 20.02.2008 to 08.10.2009 as the third respondent had not collected tax; and as this amount is not due from the third respondent to the Government, the petitioner herein cannot contend that respondents 1 and 2 should repay the said amount to them.

The assessment order, passed for the period November, 2007 to November, 2009 on 15.02.2010, has attained finality. It is not in dispute that the Government had, by its proceedings dated 10.07.2013, waived its right to recover the tax due for the period 20.02.2008 to 08.10.2009. Sri

S.Suri Babu, Learned Special Standing Counsel for Commercial Taxes would, however, contend that there are other dues still to be recovered from the third respondent in terms of the assessment order. It is wholly unnecessary for us to dwell on this aspect any further as the representation, dated 21.10.2013, submitted by the third respondent, is still pending before the petitioner herein.

Ends of justice would be met if the petitioner is directed to afford the third respondent an opportunity of hearing, consider their representation dated 21.10.2013, and pass an order on the said representation in accordance with law. For the amount, if any, determined, on completion of the aforesaid exercise, it is open to the petitioner, in view of Section 26 of the VAT Act and the judgment of the Supreme Court in ***Central Bank of India v. State of Kerala and Others***[1], to recover the said amount from respondents 1 and 2 herein. The entire exercise, culminating in an order being passed afresh, shall be completed within a period of two months from today. The interim order passed earlier on 28.03.2011 shall continue to remain in force for a period of three months from today.

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

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

22nd March, 2016.
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[1] (2009) 4 SCC 94