THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION NO.43590 OF 2016

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

Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The proceedings, under challenge in this Writ Petition, is the assessment order dated 17.11.2016 subjecting the petitioner to tax for a sum of Rs.18,38,405/-. The petitioner claimed the benefit of input tax credit, for the aforesaid sum, which the assessing authority denied on the ground that the petitioner had registered themselves under Rule 5(2) read with Section 17(5) of the Andhra Pradesh Value Added Tax Act ("the Act" for brevity) more than 45 days prior to the first anticipated sale.

While elaborate submissions have been put forth both by Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, on the scope and purport of Rule 5(2) read with Rule 5(4) and Sections 17(5) and 17(6) of the Act, regarding the entitlement or otherwise of the petitioner for being extended the benefit of input tax credit, the assessing authority has not, in the present case, rested with denial of input tax credit to the petitioner. He has, in addition, mulcted them with tax liability of Rs.18,38,405/-.

When we asked Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, as to how the assessing authority could have demanded payment of tax in the absence of any sale transaction within the State of Telangana, either under the VAT Act or the CST Act, Learned Standing Counsel would submit that the intention of the assessing authority was only to deny the petitioner the benefit of input tax credit.

Intention or otherwise of the assessing authority notwithstanding, the assessment order obligates the petitioner to pay a sum of Rs.18,38,405/-. Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would contend that the assessing authority cannot even deny the petitioner the benefit of input tax credit. It is not in dispute that the assessing authority could not have directed the petitioner to pay Rs.18,38,405/- for, even according to Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, the assessing authority was only entitled to disallow the petitioner the benefit of input tax credit. We consider it appropriate, therefore, to set aside the impugned order of assessment.

The impugned order dated 17.11.2016 is set aside, and the Writ Petition stands disposed of accordingly. It is made clear that this order shall not preclude the assessing authority from passing an order afresh on the question of disallowance of input tax credit to the petitioner. In case the assessing authority intends to do so, he shall put the petitioner on notice, give them an opportunity of filing additional objections, afford them an opportunity of a personal hearing and, thereafter, pass an assessment order afresh in accordance with law. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

19th December 2016
RRB