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

WRIT PETITION NO.20331 & 20393 OF 2016

COMMMON ORDER: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S.Dwarakanath, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petitions are disposed of at the stage of admission. The proceedings under challenge in these writ petitions are the orders passed by the Appellate Deputy Commissioner (CT), Visakhapatnam rejecting the petitioner's applications for stay, and consequently the appeals.

The petitioner was issued notices fixing the date of hearing of the stay applications as 11.05.2016. It is the petitioner's case that, while they had argued the stay applications on that day and not the main appeals, the Appellate Deputy Commissioner had dismissed the stay applications on 11.05.2016, and later the appeals itself on 25.05.2016 referring to the hearing of the stay applications on 11.05.2016; the orders, dismissing the appeals, were passed without affording the petitioner an opportunity of hearing; and they are liable to be set aside for violation of principles of natural justice.

The orders passed by the Appellate Deputy Commissioner, rejecting the petitioner's applications for stay, are questioned on the ground that the Appellate Deputy Commissioner had relied on a ruling of the Advance Ruling Authority in A.R.No.17 of 2016 dated 07.04.2016, a ruling given after the assessment orders, impugned in the appeals filed before the Appellate Deputy Commissioner, were passed on 29.02.2016; the ruling given by the Advance Ruling Authority dated 07.04.2016 was received by the dealer on 20.04.2016; Section 33(1) of the A.P. Value Added Tax Act, 2005 confers a right of appeal thereagainst to the dealer within 30 days from the date of receipt of a copy of the order; the said dealer preferred an appeal on

17.05.2016 itself; consequently, the ruling would not be applicable till the Tribunal decides the issue; and on this ground alone, the orders of the Appellate Deputy Commissioner, rejecting the stay applications, are liable to be set aside.

While fairly stating that a separate notice should have been issued to the petitioner before the appeals were disposed of, Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the Advance Ruling Authority ought not to have entertained an application for Advance Ruling in as much as no such application could have been entertained after proceedings were initiated for assessment; and the petitioner's applications for grant of stay are required to be decided *de hors* the advance ruling in A.R.No.17 of 2016.

As both the learned counsel would agree that no reliance can be placed on the Advance Ruling Authority's ruling in A.R.No.17 of 2016 dated 07.04.2016 *albeit* for different reasons, and as the orders rejecting the appeals are in violation of principles of natural justice, both the orders of stay and the orders dismissing the appeals are set aside.

Both Sri S.Dwarakanath, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that, after the impugned orders were passed, the appellate jurisdiction is no longer with the 2nd respondent but is now conferred on the 4th respondent. We consider it appropriate, therefore, to direct the 4th respondent to decide the stay applications in accordance with law at the earliest, in any event within three weeks from the date of receipt of a copy of this order.

The Writ Petitions are disposed of accordingly. The 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)

24th June 2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 24.06.2016

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