THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
Writ Petition Nos.4886, 7730, 7731, 7732, 7734 & 7781 of 2006

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

Sri Durga Malleswara Swamy Varla Devasthanam, represented by its Executive Officer, has invoked the jurisdiction of this Court questioning the orders passed by the Appellate Deputy Commissioner rejecting the petitioner's appeals preferred against the assessment orders whereby tax was levied on the ground that the petitioner was the first seller of broken coconuts within the State.

Before the assessing authority, the petitioner herein had contended that they had not sold coconut halves, but had only auctioned the right to collect and sell broken coconuts; and auction of such rights does not constitute "sale" under the A.P. General Sales Tax Act, 1957 (for short "the Act').

Sri S.Dwarakanath, learned counsel for the petitioner, would submit that the assessing authority had passed the assessment order erroneously holding the petitioner to be a dealer under Clause (k) of Explanation IV to Section 2(e) of the Act though they did not fall within the ambit of the said provision.

In the appeals preferred against the assessment orders, the petitioner herein specifically contended that the Deity is an artificial juridical person; "Devasthanam" means the place of the Deity; it cannot be considered as a body or authority under the administrative control of the State Government under clause (k) of Explanation IV to Section 2(e) of the Act; and a body or authority under the administrative control of State Government cannot, by any stretch of imagination, be said to include a Devasthanam.

The Appellate Deputy Commissioner passed the impugned orders even without recording any finding on the petitioner's contention, merely observing that the definition of "dealer" was amended later to include Corporations/authorities under the administrative control of the

State/Central Governments.

Section 2(e) of the Act defines “dealer” to mean any person who carries on the business of buying, selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments, or carries on or executes any works contract involving supply or use of material directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and to include those who fall under Clauses (i) to (iv) thereunder. Explanation IV to Section 2(e) of the Act stipulates that for the purpose of Section 2(e) each of the following persons or bodies, who sell or dispose of any goods including unclaimed or confiscated or unserviceable goods or scrap, surplus etc, shall be deemed to be a dealer to the extent of such disposals or sales viz, (k) any other corporation, company, body or authority owned or set up by or subject to the administrative control of the Central Government or any State Government. It is only if the petitioner is held to be a body or authority, subject to the administrative control of the State Government, can it be held to be a dealer liable to tax under the Act.

While the submission of Sri Suribabu, learned Special Standing Counsel for Commercial Taxes, that the petitioner is under the administrative control of the State Government, as its Executive Officer and Trustees are appointed by the State Government, cannot be brushed aside, the fact remains that this contention ought to have been considered by the Appellate Deputy Commissioner. In the absence of any finding having been recorded by the Appellate Deputy Commissioner in this regard, it would be wholly inappropriate for this Court to undertake any such exercise in a writ petition questioning the validity of the appellate order passed by him.

It is also evident that the other contention that the petitioner does not sell broken coconuts, but has merely auctioned the right to collect and sell broken coconuts, which cannot be equated to the sale of goods, has also not been examined by the Appellate Deputy Commissioner.

We consider it appropriate, in such circumstances, to set aside the impugned orders passed by the Appellate Deputy Commissioner, and remand the matter for his consideration afresh and in accordance with law. The Appellate Deputy Commissioner shall, after putting the petitioner on notice and affording them an opportunity of a personal hearing, pass an order afresh in accordance with law with utmost expedition and, in any event, not later than three months from the date of receipt of a copy of this order. Till orders are passed afresh, and are communicated to the petitioner, the interim order passed by this Court earlier shall continue to remain in force.

All 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

SURESH KUMAR KAIT, J

Date:20.04.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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