

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.30818 of 2016

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The proceedings, under challenge in this writ petition, is the assessment order passed by the assessing authority on 03.08.2016, for the tax period 2012-13 and 2013-14, holding that the subject transactions are amenable to tax under Section 4(8) of the Telangana Value Added Tax Act, 2005 (for short "the Act") on the ground that the petitioner has transferred the right to use tippers and excavators in favour of M/s.Orient Cement.

While Sri S.Krishna Murthy, learned counsel for the petitioner, would contend that the clauses in the agreement would disclose that the petitioner had only rendered services, and there was no transfer of the right to use the goods, Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that the contract required the petitioner to supply tippers and excavators to M/s.Orient Cement for a period of three years; and, therefore, there is a transfer of the right to use these goods.

These questions of fact, which also involve interpretation of the terms and conditions of the agreement between the petitioner and M/s.Orient Cement, can be more conveniently examined in an appeal before the appellate authority. As the petitioner has an effective and efficacious alternative remedy of an appeal under the Act, we see no reason to exercise discretion under Article 226 of the Constitution of India to interfere.

Leaving it open to the petitioner to avail the remedy of an appeal under the Act, the writ petition is dismissed. The

miscellaneous petitions pending, if any, shall also stand dismissed.

There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

17th September 2016
JSU



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Date: 17.09.2016

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