THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.26256 of 2015

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

Heard Sri M.V.J.K.Kumar, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission.

Sri M.V.J.K.Kumar, learned counsel for the petitioner, would fairly state that, while the petitioner has questioned the action of the respondents in subjecting them to tax, in terms of Rule 17(1)(e) of the A.P.Value Added Tax Rules, 2005, this contention is no longer available to be urged in these proceedings, in view of the law declared by this Court in ***M/s.GVPR Engineers Limited vs. The State of Telangana and others*** (judgment in W.P.Nos.17911 and 17932 of 2015 dated 21.04.2016).

Learned counsel would, however, draw our attention to the show cause notice wherein the petitioner was given deduction towards other administrative expression proportionate to labour @ 0.91% of Rs.14,93,25,110/-, and to the objections filed by the petitioner thereto in their letter dated 08.04.2015, to contend that their objections have not even been dealt with in the assessment order passed by the assessing authority.

It is only if the jurisdictional facts are indicated in the show cause notice, would a dealer have the opportunity to submit his objections in reply. As a corollary thereto, an order of assessment cannot travel beyond the facts referred to in the show cause notice. In their letter of objections dated 08.04.2015, the petitioner contended that there was no explanation or basis provided in the notice to determine whether expenses such as finance charges, mess charges, staff welfare etc, were allowed exemption; even if it was presumed that these expenses were allowed as deductions, it was unclear whether the same were allowed fully or proportionately; the notice only mentioned a specified amount as administrative expenses allowed; it was silent regarding how the amount was determined, and what assumptions/presumptions were made for the purpose of arriving at this amount; and the basis of calculation of the percentage of labour component, and gross profit, was also not indicated in the notice.

The petitioner's reply, to the show cause notice, dated 08.04.2015 is regarding absence of details of how the assessing authority had arrived at the deductions to be made towards administrative expenses proportionate to labour i.e @ 0.91% of Rs.14,93,25,110/-. As the petitioner claimed that these details were not furnished in the show cause notice, the assessing authority was required either to furnish these details, and thereafter give the petitioner an opportunity of submitting their objections thereto or, in case such information was detailed in the show cause notice, to deal with the objections, raised by the petitioner in his reply letter dated 08.04.2015, in the order of assessment. The assessing authority has done neither.

The impugned order of assessment, to the extent indicated hereinabove, must therefore be set aside. The assessing authority shall issue a notice afresh furnishing details of the administrative expenses proportionate to labour and the basis on which he determined the total quantum as Rs.14,93,25,110/-, give the petitioner an opportunity of submitting their objections thereto, provide them an opportunity of a personal hearing, and thereafter pass a fresh assessment order in accordance with law. It is open to the petitioner to file additional objections, if they so choose. If, on the other hand, he is satisfied that the information sought for by the petitioner, in their letter dated 08.04.2015, has already been referred to in the show-cause notice, it is open to the assessing authority to deal with the objections and pass a reasoned assessment order afresh in accordance with law. In either event the entire exercise, culminating in a fresh assessment order being passed, shall be completed within two months from the date of receipt of a copy of this order.

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, ACJ)

(U.DURGA PRASAD RAO, J)

31st August 2016

Note: Issue C.C. in two days.

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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Date: 31.08.2016

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