***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***
***AND***
***THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT***

**W.P.No.10263 of 2016**

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

The proceedings under challenge in this writ petition is the revisional order passed by the Deputy Commissioner, Guntur dated 19.02.2016 whereby the assessment order passed by the assessing authority, for the years 2011-12 to 2013-14 (upto December 2013), on 10.07.2014 was revised under Section 32(2) of the A.P. Value Added Tax Act, 2005 (for short "the Act"); and the petitioner was assessed to tax for having failed to deduct tax at source, from the bills paid by them to the contractor who executed the works contract.

The order passed by the revisional authority is questioned on several grounds, including that the revisional authority ought to have taken into consideration the fact that there was a prior agreement between the petitioner and the land owners, as also a subsequent agreement between the petitioner and the sub-contractor; the petitioner was merely a contractor; the provisions of Section 22(3) of the Act were not attracted to the facts of the present case; and it was the proviso thereto which was applicable.

On a bare reading of the objections submitted by the petitioner, in reply to the show cause notice, it is clear that no reference has been made therein to any prior agreement between the petitioner and the land owners. While facts, not even urged before the revisional authority, cannot be examined in proceedings under Article 226 of the Constitution of India, all these contentions can be raised before the Tribunal, in an application under Section 33(1) of the Act, as the Appellate Tribunal is not only a Court of law but also a Court of fact.

Sri A.V.Krishna Kowndinya, learned Senior Counsel appearing on behalf of the petitioner, would submit that the assessing authority, while passing a consequential order pursuant to the order passed by the revisional authority, has included the entire cost of the project as the amount on which tax ought to have been deducted at source, and did not restrict such liability only to the amounts paid by the petitioner to M/s.IJM India Infrastructure Limited (the contractor who executed the work); and an application under Rule 60 of the A.P.Value Added Tax Rules, 2005 (for short "the Rules"), seeking rectification of the consequential order passed by the assessing authority was therefore filed before him on 14.03.2016.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that the application, filed by the petitioner under Rule 60 of the Rules, would be considered, and an order would be passed thereon, by the assessing authority, within two weeks from today.

Recording the submission of the learned Special Standing Counsel, that the petitioner's application for rectification would be examined and considered within two weeks from today, and as the petitioner has an effective alternative statutory remedy of an appeal under Section 33 of the Act, we see no reason to exercise jurisdiction under Article 226 of the Constitution of India to interfere. Leaving it open to the petitioner to avail the remedy of an appeal to the Tribunal under Section 33 of the Act, the writ petition fails and is, accordingly, dismissed.

Registry to return forthwith the original order passed by the revisional authority, and the consequential order passed by the assessing authority to the learned counsel for the petitioner, after photostat copies thereof are made available by him.

The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**RAMESH RANGANATHAN, J**

**SURESH KUMAR KAIT, J**

Date: 13.04.2016

JSU

***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***

***AND***

***THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT***

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**Date:13.04.2016**

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