THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition Nos.2799, 3362 & 3372 of 2016

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

Aggrieved by the order passed by the Appellate Authority dated 27.11.2015, to the limited extent he remanded the matter to the 3rd respondent for passing a de novo order, the petitioner has invoked the jurisdiction of this Court. He also seeks a consequential order to respondents 1 to 3 to refund Rs.13,51,540/- collected from them earlier.

Against the assessment orders dated 09.03.2015, in relation to detention of three vehicles, the petitioner preferred appeals to the Appellate Authority who, after considering the matter, opined that the tax levied in all the three cases, by the Deputy Commercial Tax Officer, was not sustainable in law, since she had not established any sales in the hands of the appellant in the State of Andhra Pradesh so as to attract the provisions of Section 4(1) of the A.P.Value Added Tax Act, 2005 (for short "the Act"); and that the grounds on which tax was levied were not valid grounds under the provisions of the Act.

Despite having found that the order of the Deputy Commercial Tax Officer was not sustainable in law, as she had not established any sales in the hands of the appellant within the State of Andhra Pradesh, the Appellate Authority considered it just and proper, while setting aside the assessment orders, to remit the matter to the jurisdictional authority with a direction to examine the case laws along with the provisions of the Act and the Rules made thereunder thoroughly and to give the petitioner an opportunity of personal hearing and then to pass de novo order as per the provisions of the Act and the Rules made thereunder.

Having recorded a finding that the tax levied in all the three cases by the Deputy Commercial Tax Officer was not sustainable in law, since she has not established any sales in the hands of the appellant, there was no justification for the Appellate Authority to remand the matter to the Assessing Authority directing him to again consider whether the provisions of the Act were applicable or not. To the limited extent the Appellate Authority remanded the matter to the assessing authority, the impugned order is set aside.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the Revisional Authority has initiated steps to revise the order passed by the Appellate Deputy Commissioner, Commercial Taxes, and a notice of the proposed revision was already issued to the petitioner on 06.02.2016. He has placed before us a copy of the pre-revision show cause notice issued in this regard. He would also submit that their attempts to serve a copy of the pre-revision show cause notice was unsuccessful, as the petitioner was not available at the address. Sri Vedula Srinivas, learned counsel for the petitioner, would express ignorance of any such notice having been issued.

Be that as it may, the mere fact that we have set aside the order of the Appellate Authority, to the limited extent he had remitted the matter to the Assessing Authority, does not preclude the Revisional Authority from revising the order passed by the Appellate Authority. It is made clear that, notwithstanding the order now passed by us, it is open to the Revisional Authority to proceed and decide the revision in accordance with law.

Sri Vedula Srinivas, learned counsel for the petitioner, would submit that as a natural consequence, of the last paragraph of the order being set aside by this Court, the petitioner is entitled for refund. As the

Revisional Authority has initiated revision proceedings, it would suffice to observe that this order shall not preclude the petitioner from making an application for refund, and for the competent authority to consider the same in accordance with law.

The writ petitions are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 11.02.2016
JSU

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Date: 11.02.2016

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