THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.7072 of 2016

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

Heard Sri Vedula Srinivas, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the assessment order passed by the 2nd respondent dated 18.02.2016 calling upon the petitioner to pay Rs.12,36,364/- towards arrears of tax, under the A.P. Entertainment Tax Act, within 30 days.

Sri Vedula Srininvas, learned counsel for the petitioner, would question the assessment order mainly on the ground of violation of principles of natural justice. Learned counsel would point out that, while the petitioner was informed by the impugned show cause notice that the assessing authority had obtained information from M/s.Sun Distribution Services Private Limited and that the information so furnished showed the number of connections and the rate per connection based on which the entertainment tax due was determined as Rs.13,05,364/-, the petitioner had subsequently obtained information from M/s.Sun Distribution Services Private Limited which only discloses the connectivity and the billing value; "connectivity" is distinct from "connections"; while "connectivity" refers to the number of channels subscribed, "connection" refers to the number of subscribers irrespective of the number of channels they have subscribed; and, as the show cause notice refers to the number of "connections" as having been furnished by M/s. Sun Distribution Services Private Limited, when in fact the information so provided related to "connectivity" and not connections, the impugned assessment order must be set aside for violation of principles of natural justice.

While pointing out that the petitioner had not sought for a copy of the information received from M/s. Sun Distribution Services Private Limited, in the reply submitted by them to the show cause notice, Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that “connectivity” is distinct from “connections”, and the reply submitted to the show cause notice by the petitioner was under the belief that the information furnished by M/s. Sun Distribution Services Private Limited related to “connections” and not “connectivity”.

As it now transpires that the information furnished by M/s. Sun Distribution Services Private Limited related to “connectivity”, and not connections, failure on the part of the assessing authority to furnish the information, received by him from Sun Distribution Services Private Limited, to the petitioner and, in erroneously referring to “connectivity” as “connections” in the impugned show cause notice and assessment order, has resulted in violation of principles of natural justice denying the petitioner an opportunity of being heard.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that all cable network distributors enter into agreements with DTH operators, who raise invoices on the distributors periodically; and, if the petitioner is directed to produce these documents, it would enable the assessing authority to determine their actual liability towards entertainment tax.

Ends of justice would be met if the assessing authority is permitted to issue show cause notice afresh to the petitioner within two weeks from today, calling for the information which he requires the assessee to produce before him. The petitioner shall, within two weeks from the date of receipt of the notice from the assessing authority, submit their objections to the show cause notice. The assessing authority shall, within six weeks of receipt of the petitioner’s reply to the show cause notice, pass a fresh order of assessment in accordance with law.

The writ petition is disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 15.03.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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