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

<u>WRIT PETITION No.14089 of 2016</u>

<u>ORDER</u>: (Per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Dr. S.R.R. Viswanath, learned counsel for the petitioner, and Sri S. Suribabu, leaned Special Standing Counsel for Commercial Taxes (AP) and, with their consent, the writ petition is disposed of at the stage of admission.

For the tax period July, 2014 to September, 2015, an assessment order was passed by the Commercial Tax Officer, Gudur on 30.01.2016. On receipt of a copy thereof on 16.02.2016, the petitioner preferred an appeal to the Appellate Deputy Commissioner on 04.03.2016. During the pendency of the appeal before the Appellate Deputy Commissioner, an order of penalty came to be passed on 31.03.2016. Soon thereafter, the appeal was allowed on 13.04.2016, the levy was set aside, and the matter was remanded to the assessing authority to work out the turnover pertaining to own materials of the petitioner i.e., aggregate of sand and admixture transferred with reference to the quantities used, and to levy tax at the rate of tax applicable to those goods.

As an order of penalty is passed as a consequence of an order of assessment, and as the assessment order has been set aside by the Appellate Deputy Commissioner in appeal, the impugned order of penalty must be, and is accordingly, set aside. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings, if need be, after a fresh order of assessment is passed.

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

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date: 27.04.2016

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