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

WRIT PETITION No.21986 of 2016

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

In this Writ Petition the petitioners are the owners of buses which they gave on hire to the APSRTC. The petitioners' case, in short, is that Section 4 (8) (b) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act') is not applicable as there is no transfer of the right to use the goods.

Sri S.M.Subhan, learned counsel for the petitioners, would submit that the ownership and control of the vehicles remain at all times with the petitioners herein; they only gave the vehicles on hire to the APSRTC; and, as there is no transfer of the right to use the goods, they cannot be subjected to tax under Section 4 (8) (b) of the Act; and, consequently, deduction of tax at source is illegal. Learned Counsel for the petitioners would draw attention of this Court to the circular issued by the Commissioner (CT) dated 18.03.2016, whereby a similar levy of tax, on the lease of oil tankers/LPG trucks, resulted in the A.P.Petrol Truck Operators' Association submitting a representation on 18.03.2016; and, on considering the said representation, the Commissioner (CT) had issued proceedings dated 18.03.2016 directing his subordinates to deduct TDS at 5% on both registered and unregistered dealers and operators dealing in oil tankers and LPG trucks carrying petroleum products. Learned counsel for the petitioners would submit that, since the petitioners who are bus owners are similarly situated to owners of petrol tankers and LPG trucks, the respondent authorities had discriminated against them in deducting tax at source at 7.25/14½% for registered/unregistered dealers i.e., bus owners.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that, in case the petitioners were to submit a representation in this regard, the Commissioner (CT) would consider their request to be treated on par with the A.P. Petrol Tank Operators' Association, Vijayawada; and issue necessary instructions, in accordance with law, thereafter.

In the light of the submission made by Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, we consider it appropriate to permit the petitioners to submit a representation either individually or as an Association to the Commissioner (CT), regarding their claim of parity with the A.P.Petrol Tankers Truck Operators' Association, within two weeks from today. The Commissioner (CT) shall, within two weeks from the date of receipt of such a representation, consider the same and pass orders thereupon in accordance with law. The Commissioner (CT) shall communicate his decision both to the representationists and to the APSRTC. Till the Commissioner (CT) passes orders on the petitioners' representation, and communicates his decision to them, the APSRTC shall retain the amounts deducted at source from the petitioners bill, and refrain from remitting the said amount to the Government. It is made clear that, after the decision of the Commissioner (CT) is intimated to them, it is open to the APSRTC to take action in accordance with law on the aforesaid amounts retained by them.

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, J

M.SATYANARAYANA MURTHY, J

08th July, 2016.

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