THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.44798 of 2016

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri V. Bhaskar Reddy, 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, in Form VAT 305 dated 14.10.2016, levying tax on the petitioner for Rs. 10,71,820/-.

Sri V. Bhaskar Reddy, learned counsel for the petitioner, would draw our attention to the table, in the assessment order for the period from 2.6.2014 to 31.5.2016, which shows that the returns for the period November 2014 to March, 2016 were all filed on the same day, i.e. 18.4.2016 reflecting 'nil' returns. The return for the month of April, 2016 dated 10.5.2016 reflects purchases of Rs.73,17,200/- and sales for an identical sum, which, according to the Learned Counsel, would mean that there is no liability on the petitioner to pay tax under the Act.

Learned Counsel would also draw our attention to the enquiry report of the Assistant Commissioner(CT) Audit, Narsaraopet, dated 30.7.2016 addressed to the Deputy Commissioner(CT), Narsaraopet informing him that he had an audio recording which showed that one Sri Subbareddy had called the petitioner, and had informed him that no transactions were made since the e-way bills were not checked at any check post; Sri Subba Reddy had promised to return the way bills to the petitioner so as to submit it to the department; Sri Subba Reddy had informed the petitioner that he would be free from departmental action; the petitioner had repeatedly asked Mr. Subba Reddy to settle the issue by paying the tax involved; and Sri Subba Reddy had threatened the petitioner informing him that Muvvala Brahmam would file a police complaint alleging that the petitioner himself had issued the said bills;

Sri Subba Reddy of Proddaturu had disclosed that the Special ACTO, Sri S.V. Ratnam had opened the system; it could, therefore, be inferred that Sri S.V. Ratnam, Special ACTO had made changes misusing the I.D. of the petitioner; Sri Subba Reddy had also mentioned the names of Muvvala Brahmam and Chenna Lakshmai of Narsaraopet as having indulged in this affair along with Sri S.V. Ratnam, the then ACTO, Narsaraopet CT Circle; the Commercial Tax Officer, Narsaraopet had informed that, during the period from 25.4.2016 to 28.5.2016, Sri S.V Ratnam was the VAT registering authority in the circle; the audio C.D. seemed to be genuine, and it implicated the involvement of Sri Subba Reddy of Proddatur along with other agents Muvvala Brahmam and Chenna Lakshmai of Narsaraopet with the help of Sri S.V. Ratnam, the then Special A.C.T.O. and VAT registering authority; and they had indulged in misusing the user I.D. of the petitioner.

The submission of Sri V. Bhaskar Reddy, learned counsel for the petitioner, is that, since the assessment period is April, 2015 to March, 2016, and the limitation prescribed for completion of assessment is four years, the assessing authority had time till March, 2019 to pass an assessment order; in the present fact situation, where the involvement of an Officer of the Commercial Tax Department is acknowledged by the Assistant Commissioner (CT), Audit, Narsaraopet himself, it is evident that the petitioner has been subjected to tax on the basis of fictitious way bills recorded by officers of the commercial tax department after hacking into his web portal; and the impugned assessment order necessitates being set aside on the ground of fraud. He would further submit that he had arrayed Sri S.V. Ratnam as a respondent eo-nominee in the writ petition.

While fairly stating that there was a cloud of suspicion on Sri S.V. Ratnam, and his involvement in creating the fictitious way bills could not be ruled out, Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that, from the information now available with the department, it does appear that the petitioner is not free from blame. He would submit that the assessing authority has received information to show that a substantial number of way bills, if not all of them, are supported by invoices raised by the petitioner on third parties within the State of Andhra Pradesh. When we asked whether these documents were furnished to the petitioner, Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that they were not.

While the assessing authority, undoubtedly, has the power to wait till March, 2019, to pass an assessment order for the aforesaid tax period, there is nothing in the Act which obligates him to wait till that date before passing an assessment order.

In the light of the serious allegations of involvement of an Officer of the Department, though the burden is on the assessee to adduce proof under Section 16 of the VAT Act, we consider it appropriate to permit the assessing authority to issue notice afresh to the petitioner, enclosing copies of the invoices which, according to them, show that the way bills generated are not fictitious; and thereby call upon the petitioner to show cause why they should not be subjected to tax for the turnover represented by these invoices. The impugned assessment order is set aside. On a notice being issued, calling upon them to show cause, the petitioner shall submit their reply thereto within four weeks from the date of receipt of the show cause notice. The assessing authority shall, after giving the petitioner an opportunity of a personal hearing, pass an assessment order afresh and in accordance with law.

It is made clear that it is open to the petitioner to furnish all such information, as is available with them, to the department, including a copy of the enquiry report submitted by the Assistant Commissioner to the Deputy Commissioner. While the assessing authority shall pass an assessment order afresh, and in accordance with law, as directed hereinabove, respondents 3 and 4 shall ensure that the enquiry regarding the petitioner's account being hacked, that too by officials working in the Commercial Tax Department, is completed with utmost expedition and, in any event, not later than three months from the date of receipt of a copy of this order.

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, ACJ)

(A. SHANKAR NARAYANA, J)

28th December, 2016

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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Date: 28.12.2016

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