THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.15431 of 2007

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

The relief sought for in this writ petition is to direct the Divisional Manager, A.P. Forest Development Corporation (APFDC), 2nd petitioner herein, to refund Rs.61,600/- adjusted towards VAT from the security deposit of the petitioner, and to direct respondents 2 and 3 not to insist on the petitioner registering themselves as a dealer or for payment of tax at 4% of the market value of cashew seed. The petitioner is aggrieved not by any order of assessment passed against him, but by the action of the APFDC in deducting certain amounts from his security deposit towards VAT payable by APFDC to the Government.

In the counter affidavit, filed by the Joint Commissioner, it is stated that APFDC is a dealer and is liable to pay tax on the sale of cashew (usufruct) for the year 2006-07; and, consequently, they were entitled to deduct certain amounts from the security deposit of the petitioner to meet their tax liability.

Both the counter affidavits are silent as to whether or not the APFDC was assessed to tax for the year 2006-07. It is only if the APFDC was assessed to tax would the question of their being held liable for payment of tax arise; and it is only then would their action, in deducting certain amounts from the security deposit of the petitioner, be justified. Neither the counter affidavit of the APFDC nor that of the Joint Commissioner of Commercial Taxes make any reference to any assessment order passed against the APFDC for the year 2006-07. The limitation for passing the assessment order for the aforesaid tax period, under Section 21 of the A.P. Value Added Tax Act, 2005, expired long ago; and it is not now open to the Commercial Taxes Department to assess APFDC to tax for the year 2006-07.

We consider it appropriate, in such circumstances, to direct the 4th respondent to ascertain whether APFDC has been assessed to tax for the year 2006-07; and, if they were so assessed, to adjust their tax dues with the VAT deducted from the petitioner's security deposit. If, on the other hand, the APFDC has not been assessed to tax, the amount deducted from the petitioner's security deposit shall be refunded either by the 1st respondent or by the 4th respondent as the case may be, (depending on whether or not APFDC has remitted the amount deducted from the petitioner's security deposit to the Commercial Taxes Department), to the petitioner herein at the earliest; and, in any event, not later than two months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

30th November, 2016
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.15431 of 2007

Date: 30.11.2016

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