THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition Nos.4338 of 2007; 18257 of 2006; 4053 of 2008; 7354, 10812 and 10893 of 2009

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

The proceedings, under challenge in these writ petitions, are the orders of assessment whereby the petitioner was subjected to tax on the transfer of the right to use computers either under Section 5-E of the A.P.G.S.T. Act or under Section 4(8) of the A.P.VAT Act.

Among the contentions urged by the petitioner, in support of their claim that there was no transfer of the right to use the goods, are those referred hereunder.

7.1 The above clauses in para 4.1, 5.2 and 10.1 & 2 does not contemplate physical transfer of the goods kept in the room provided by the Department. It is not uncommon to find the transfer of goods in possession while transferor is having custody. When a taxi cab is hired under 'Rent-a-car' scheme and cab is provided, usually driver accompanies the cab; there the driver will be in custody of the car though the hirer will have the possession and effective control of the cab. What is provided is service on hire but not lease of the car.

8) The contract also provide two faculty members for each school to provide computer science education to Class VI to X as per the syllabus prescribed and as amended from time to time by Govt. of Andhra Pradesh. (para 8.1)

9) The contractor shall maintain a separate attendance register for each and every class/section for recording attendance of the students. The contractor shall also maintain a logbook for recording down time of the computer and other accessories. The same should be submitted to the head of the institution at the end of the every week for counter signature. (para 11.1)

10) The Contract shall fix a sub-meter for the Computer Centre. The Electricity charges for running the centres during and after the school hours shall be borne by the contractor. Similarly payment of telephone charges for use by the students for browsing the Internet during their Computer education programmes and by the Contractor for Post-School programs will be responsibility of the Contractor. (para 16.1)

11) All statutory obligations/liabilities like Salary, ESI, PF as per Labour Laws for the manpower employed by the contractor will be the responsibility of the contractor. (para 18.0)

On the basis of the aforesaid clauses in the agreement, the petitioner contended that there was no transfer of the right to use the goods. The assessing authority, however, failed to examine these contentions while passing the order of assessment.

Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that there is a transfer of the right to use the goods attracting levy of tax under Section 5-E of the A.P.G.S.T. Act and Section 4(8) of the A.P.VAT Act. The fact, however, remains that this Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, would not undertake the task of assessment or substitute its view for that of the assessing authority. The contentions put forth by the petitioner, in their reply to the show cause notice, ought to have been considered by the assessing authority before passing the order of assessment. While the question whether such contentions, urged in the reply, necessitates acceptance or not is for the assessing authority to decide, he ought to have dealt with the said contentions, and should have recorded his conclusion on whether the aforesaid clauses justified the petitioner's contention that there was no transfer of the right to use the goods. As the assessing authority has failed to examine the aforesaid clauses in the agreement, and to deal with the petitioner's contention that these clauses show that there is no transfer of the right to use the goods, we are satisfied that the assessment order necessitates being set aside, and the assessing authority should be directed to re-do the assessment after dealing with the aforesaid contentions urged by the petitioner.

The impugned assessment order is, accordingly, set aside. Sri Shaik Jeelani Basha, learned counsel for the petitioner, would seek indulgence of this Court to be granted an opportunity to file additional objections to the show cause notice. As the impugned assessment order is being set aside on the aforesaid ground, we see no reason to deny the petitioner an opportunity to file additional objections, if any. In case the petitioner files their additional objections within two weeks from today, the assessing authority shall take the earlier objections and the fresh objections into consideration, afford the petitioner an opportunity of a personal hearing and, thereafter, pass an assessment order afresh in accordance with law at the earliest and, in any event, not later than two months from the date of receipt of a copy of this order. In case the petitioner fails to avail the opportunity to file their additional objections within the stipulated time of two weeks, it is open to the assessing authority to pass an assessment order based on the earlier objections filed by them.

The writ petitions are, accordingly, disposed of. 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)

21st December, 2016

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Date: 21.12.2016

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