THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.27912 OF 2016

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

Heard Dr. T. Ramesh Babu, learned counsel for the petitioner and Sri J. Anil Kumar, 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 notice of assessment in Form No. VAT 305A dated 21.7.2016 calling upon the petitioner to show cause why the commodities they deal in, i.e., Lyophilizer, should not considered as heat exchanger and be treated as unclassified goods subject to tax under Schedule V of the A.P. VAT Act, 2005 (for short 'the Act'). The petitioner's grievance in this writ petition is that, while the earlier ruling of the Advance Ruling Authority dated 30.11.2007 required Lyophilizers to be subjected to tax at 4% under the IV Schedule, the said ruling was reviewed at the behest of another dealer and the Advance Ruling Authority, by its order dated 12.5.2011, reviewed and revoked the earlier order of the Advance Ruling Authority dated 30.11.2007, questioning which the petitioner filed Writ Petition No. 14786 of 2011 and a Division Bench of this Court, by its order dated 17.6.2011, held that the affected party is required to be given an opportunity of being heard before the power of review under Section 67(5) of the Act is exercised. The Advance Ruling Authority's decision dated 12.5.2011 was set aside while making it clear that the order did not preclude the 1st respondent from complying with Section 67(5) of the Act and, thereafter, reviewing its earlier ruling in accordance with law.

Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes would fairly state that, pursuant to the order of this Court in Writ Petition No. 14786 of 2011 dated 17.6.2011, the Advance Ruling Authority has not reviewed its earlier ruling dated 30.11.2007 till date. The petitioner's grievance in this writ petition is that, since the assessment order for an earlier period was revised by the Commissioner, Commercial Taxes, the Assessing Authority had indicated that he was bound by the order passed by the Commissioner and not by the ruling of the Advance Ruling Authority.

Under Section 67(4)(iii) of the Act, the order of the Advance Ruling Authority is binding on all Officers other than the Commissioner. In view of the aforesaid provision, while the Commissioner was entitled to revise the assessment order in the exercise of his jurisdiction under Section 32 of the Act, despite the ruling of the Advance Ruling Authority to the contrary, the Assessing Authority is, however, bound by the Advance Ruling Authority's ruling. As long as the Advance Ruling Authority's orders dated 30.11.2007 remains in force, and is not reviewed and revoked, the Assessing Authority is bound by the said ruling, more so, as there is nothing in the Act which makes the order of the Commissioner, Commercial Taxes, unlike the ruling of the Advance Ruling Authority, binding on the Assessing Authority.

Sri J. Anil Kumar, learned Standing Counsel for Commercial Taxes, on instructions, would submit that steps are being taken to review the earlier ruling dated 30.11.2007. It is made clear that, while the Assessing Authority may proceed and pass orders pursuant to the show cause notice issued to the petitioner, the ruling of the Advance Ruling Authority dated 30.11.2007 would bind the Assessing Authority unless and until it is reviewed and revoked.

The writ petition is accordingly, disposed of, leaving it open to the Assessing Authority, if he so chooses, to pass an assessment order in accordance with law and in terms of the directions aforementioned. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. SATYANARAYANA MURTHY, J)

24th August 2016

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date: 24.08.2016

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