THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

<u>Writ Petition No.22551 of 2016</u>

<u>ORDER:</u> (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The proceedings, under challenge in this writ petition, is the assessment order in Form VAT 305 dated 30.03.2016 levying tax on goods, which the petitioner claims to be "medical equipment", treating them as "furniture". The assessment order is based solely on the clarification issued by the Commissioner of Commercial Taxes dated 16.11.2010 that these goods do not fall under Schedule IV to the A.P. Value Added Tax Act, 2005 (for short "the Act").

While the petitioner was, no doubt, afforded an opportunity of submitting their reply to the show cause notice, and of a personal hearing, they had, by their letter dated 05.03.2016, requested the assessing authority to keep the assessment proceedings pending, as the question whether the subject goods were "medical equipment" or "furniture" was pending before the Telangana VAT Appellate Tribunal. They also stated that they had submitted a representation to the State Government seeking necessary clarifications in the matter.

While Sri V.Bhaskar Reddy, learned counsel for the petitioner, would contend that the assessing authority ought to have kept the assessing proceedings in abeyance till the matter was finally adjudicated by the Telangana VAT Appellate Tribunal, Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that no power is conferred by the Act, on the assessing authority, to keep an assessment order in abeyance; such a power is conferred exclusively on the Commissioner under Section 32 (5) & (7) of the Telangana Value Added Tax Act, 2005; and the mere fact that the petitioner had submitted a representation to the Government did not obligate the assessing authority to wait till the representation was examined by the Government, before he passed the assessment order.

While we find considerable force in the submission of Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, that the assessing authority could not have kept the assessment proceedings pending till the issue is decided by the Tribunal, as such a power appears to have been conferred only on the Commissioner under Section 32(5) & (7) of the Act, the fact remains that the assessing authority relied solely on the Circular issued by the Commissioner in subjecting the petitioner to tax under the Act.

In his Circular dated 16.11.2010 the Commissioner of Commercial Taxes has held that "hospital equipment" cannot be equated to "medical equipment"; the expression "medical equipment" in Entry 111 of Schedule IV to the Act should be read together with the words "medical devices and medical implants"; and, applying the principle of "noscitur a sociis", "medical equipment" would only mean goods akin to medical devices and implants, and not other equipment or furniture used in the hospitals.

Reliance is placed by Sri V.Bhaskar Reddy, learned counsel for the petitioner, on the judgment of a Division Bench of Allahabad High Court in ***Imperial Surgico Industries vs. Commissioner, Sales Tax***[1] to contend that hospital beds and bedside lockers, used in hospitals and in operation theatres, cannot be classified as "furniture". He would also draw attention of this Court to ***A.Nagaraju Bros. vs. State of A.P.***[2], to contend that the common parlance test should be applied; and, as these goods are understood in the trade to be "medical equipment", it should be treated as falling under Entry 111 of the IV Schedule to the Act.

It is wholly unnecessary for us to examine the scope of Section 77 of the Act, and whether the Commissioner could have issued a Circular

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[1] (1969) 23 STC 201
[2] 1994 Supp. (3) SCC 122

restricting the power of the assessing authority to interpret Entries in the Schedule to the Act, as Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would fairly state that it would suffice if the assessing authority were permitted to re-assess the petitioner to tax without being influenced by the Commissioner's Circular.

We consider it appropriate, in such circumstances, to set aside the impugned order, and remand the matter to the assessing authority to pass an assessment order afresh in accordance with law. The assessing authority shall issue a show cause notice afresh, give the petitioner an opportunity of submitting their objections thereto and of a personal hearing, and thereafter pass a fresh order of assessment uninfluenced by the Circular of the Commissioner dated 16.11.2010. The entire exercise, culminating in a fresh order of assessment being passed, shall be completed within three 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 also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

07th December, 2016
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Date: 07.12.2016

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