THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

<u>Writ Petition No.20671 of 2016</u>

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

Heard Sri G.Narendra Chetty, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of.

The petitioner, a dealer carrying on business in Minerals, was assessed to tax for the tax period 2005-06, 2006-07 and 2007-08 (upto December 2007) by way of an assessment order dated 29.04.2008. Aggrieved thereby, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner who, by order dated 11.12.2008, set aside the assessment order to the extent the assessing authority levied tax on freight charges. The matter was remanded to the assessing authority to verify the books of accounts and sale bills to determine whether the price charged and received in the sale bills are inclusive of VAT; if so, to re-determine the value of the goods by applying the prescribed formula; and to levy tax on the value of the goods so determined as per the provisions of the A.P. Value Added Tax Act, 2005. The Commercial Tax Officer passed a consequential order of assessment on 26.07.2012 giving the petitioner the benefit of Rs.5,41,495/- representing the tax levied on freight charges.

The Deputy Commissioner (CT) (the revisional authority), by order dated 12.12.2016, sought to revise the order passed by the Commercial Tax Officer dated 26.07.2012 (the consequential order of assessment) on several grounds including that the tax which the petitioner had paid on freight charges was only Rs.2,73,843/-, and they could not have been extended the benefit of tax adjustment for Rs.5,41,495/- towards freight. The revisional authority proposed to revise the said order, and to levy tax of Rs.5,37,195/-.

In the additional affidavit filed by the petitioner it is stated that the tax on freight comes to Rs.3,99,036/-. Even if this figure were to represent the actual amount paid by the petitioner as tax on freight, it is evident that the assessing authority had erred in extending them the benefit of tax adjustment for Rs.5,41,495/- as representing the tax on freight. It does appear that the petitioner has been erroneously extended the benefit, of an excess amount of Rs.1,42,459/-, by the assessing authority while passing the consequential order of assessment. Sri G.Narendra Chetty, learned counsel for the petitioner, would request ten days time from today to pay the differential amount of Rs.1,42,459/-.

The impugned order of revision is set aside. On the petitioner furnishing proof of payment of the aforesaid sum of Rs.1,42,459/-, the revisional authority shall, within two weeks from today, undertake the exercise of revision afresh, and pass a reasoned revisional order in accordance with law.

As the impugned order of revision is being set aside by this Court, we see no reason to undertake an examination on the merits of the other submissions put forth by Sri G.Narendra Chetty. Needless to state that all these questions can be urged by the petitioner before the revisional authority. Failure on the part of the petitioner to pay the aforesaid amount, within the time stipulated hereinabove, would enable the revisional authority to recover the amounts due in terms of the earlier order of revision.

The Writ Petition is 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)

07th December, 2016
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<u>Date: 07.12.2016</u>

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