THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

Writ Petition No.11198 OF 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri P.Vasudeva Reddy, learned counsel for the petitioner, and Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is disposed of at the stage of admission.

The action of the 3rd respondent in passing the assessment order in Form VAT 305 dated 13.02.2016 for the tax period 2013-14 and 2014-15, a copy of which was served on the petitioner on 17.02.2016, is questioned in this writ petition as being illegal and arbitrary.
The petitioner's grievance, in short, is that industrial cables of 1100 volts and above, which fall within the ambit of Entry 38 of Schedule IV of the A.P. Value Added Tax Act, 2005 (for short "the Act"), had been subjected to tax not at the rate of 5%, but at 14.5% treating them as unclassified goods under Schedule V of the Act.

While Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, would vehemently contend that most of these goods are not even cables, but are wires, and do not fall within the ambit of Entry 38 of Schedule IV of the Act, he would also fairly submit that, as the petitioner was not specifically put on notice in this regard in the show cause notice issued earlier, this Court may, instead of keeping the writ petition pending on the file of this Court and granting stay, consider setting aside the impugned order, treating the said assessment order as a show cause notice, and direct the petitioner to submit their objections thereto within a specified time frame. Learned counsel would submit that the Deputy Commissioner has authorised the 3rd respondent not only to conduct audit but also to make assessment, and the petitioner should be called upon to submit their objections to the 3rd respondent and not to their territorial assessing authority i.e the 2nd respondent herein. Sri P.Vasudeva Reddy, learned counsel for the petitioner, would readily agree for such an order being passed.

In such circumstances, it is wholly unnecessary for us to examine the submissions urged by the learned counsel on either side on merits. The impugned order of assessment is set aside. The said order shall be treated as a show cause notice to which the petitioner may submit their reply, to the 3rd respondent, within two weeks from today. On the petitioner submitting their reply, within the aforesaid period of two weeks, the 3rd respondent shall fix a date for personal hearing and, thereafter, pass a fresh order of assessment in accordance with law. The entire exercise, culminating in a fresh order of assessment being passed, shall be completed within two months from the date of receipt of a copy of this order. Needless to state that this order shall not preclude the 3rd respondent from seeking such other information as he may consider necessary to pass an assessment order afresh.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date:26.04.2016
JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT</u>

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