THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition Nos.3236, 1262, 1263 & 1075 of 2016

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

A peculiar case where the Assistant Commissioner, while discharging his duties as the In-charge Deputy Commissioner, authorised himself to conduct the audit, submitted an audit report to himself, later authorised himself to make an assessment, and thereafter passed an assessment order.

In the writ petition the Assistant Commissioner was arrayed as a respondent eo nominee. Sri M.V.J.K.Kumar, learned counsel for the petitioners, would contend that such acts on his part constitute bias, necessitating the impugned assessment orders being set aside solely on this ground. Learned counsel would also question the assessment orders on merits contending that the Assessing Authority had erred in denying the petitioners the benefit of set off under Section 15(c) of the Central Sales Act, 1956 (for short 'the Act'), and in some of the cases the benefit of input tax credit has been denied.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would fairly state that, in view of the law declared by this Court in ***K.G.F.Cottons (P) Limited vs. The Assistant Commissioner (CT) LTU, Adilabad***[1], the petitioners are entitled for the benefit of set off under Section 15(c) of the Act but, in so far as the petitioners claim for input tax credit is concerned, this Court, in ***K.G.F.Cottons (P) Limited***[1], held that the question, whether computation of input tax credit in terms of Rule 20 is in violation of Sections 14 and 15 of the Act, must be answered in the facts and circumstances of each case and, therefore, this question, which necessitates examination on facts, could have been agitated by way of an appeal before the Appellate Deputy Commissioner.

It is wholly unnecessary for us to examine whether or not the petitioners could have preferred appeals against the orders passed by the Assessing Authority denying them the benefit of input tax credit, as it is not in dispute that, while assessing the petitioners to tax, the Assessing Authority has not extended them the benefit of set off under Section15(c) of the Act. The impugned orders must be and are, accordingly, set aside to the limited extent the Assessing Authority denied the petitioners the benefit of set off under Section15(c) of the Act, and the benefit of input tax credit. The Assessing Authority shall pass orders afresh, in accordance with law, extending the petitioners the benefit of set off under Section 15(c) of the Act in terms of the law declared by this Court in ***K.G.F.Cottons (P) Limited***[1]. In so far as denial of input tax credit is concerned, it is open to the petitioners to put forth all such contentions as are available to them in law before the Assessing Authority, who shall consider their claim for being extended input tax credit, and pass assessment orders afresh in accordance with law.

Sri M.V.J.K.Kumar, learned counsel for the petitioners, would express apprehension that fresh orders of assessment may well be passed by the very same Officer and it is, therefore, necessary for this Court to examine the petitioners' plea of bias on the part of the officer concerned.

Both Sri M.Govind Reddy and Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that fresh assessment orders would be passed by an officer other than the 4th respondent who has been arrayed as a respondent eo nominee.

As the assessment orders, impugned in these writ petitions, are set aside, and as both the learned Special Standing Counsel, on instructions, state that fresh assessment orders would be passed, by an officer other than the 4th respondent, the question whether the action of the 4th respondent in passing the assessment orders, in the circumstances above mentioned, constitutes bias or not becomes academic. Ordinarily, this Court would not examine academic questions in proceedings under Article 226 of the Constitution of India. Suffice it to leave this question open for adjudication in appropriate legal proceedings.

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

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 02.03.2016
JSU

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

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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[1] (2015) 60 APSTJ 135 (HC-Telangana &AP)