THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION Nos.24948 & 24925 of 2016

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

The proceedings under challenge in these two Writ Petitions are the order of assessment and the consequential order of penalty, whereby the petitioner herein was levied tax of Rs.7,79,909/-, and thereafter an order of penalty was passed calling upon the petitioner to pay penalty of Rs.1,94,977/-.

Sri B.Srinivas, learned counsel for the petitioner, would submit that, while the petitioner had disclosed that input tax credit available to them, i.e. for Rs.7,79,909/- was shown in their returns, they had not utilized the input tax credit as sale of electrical energy is exempt from tax under the Andhra Pradesh Value Added Tax Act, 2005. The assessment order and the consequential penalty order were passed based on the premise that the petitioner had utilized the input tax credit available to them, to be adjusted with the output tax payable on some other goods.

As Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, fairly stated that, in case the petitioner has not utilized the input tax credit available to them, to be adjusted against the output tax, then the assessing authority would lack jurisdiction to levy tax and penalty and, instead of keeping the Writ Petition pending on the file of this Court, it would suffice if the assessing authority were permitted to re-do the assessment. In view of the submission now made across the Bar by the learned Special Standing Counsel, the impugned orders of assessment and penalty are set aside. The assessing authority shall, after affording the petitioner an opportunity of a personal hearing and after considering whether the petitioner had, in fact, utilized the input tax credit available to them, pass a fresh assessment order in accordance with law. Needless to state that, after an assessment order is passed, it is open to the assessing authority, if need be, to initiate penalty proceedings afresh in accordance with law.

Both the Writ Petitions are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

U.DURGA PRASAD RAO, J

01st August, 2016.
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