THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.5021 of 2016

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

The impugned order of assessment in Form-VAT-305 dated 29.12.2015 is questioned on grounds that 1) a common assessment order was passed levying tax both under the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'VAT Act') and under the Central Sales Tax Act, 1956 (for brevity, 'CST Act'); 2) the assessing authority had adjusted the input tax credit, available to the petitioner under the VAT Act, towards their CST dues; and 3) the assessing authority has failed to adjust the excess tax paid by their sister concern i.e. M/s Parameshwara Cotton Traders with the tax dues of the petitioner herein.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would fairly state that the assessment order necessitates being set aside on the short ground that a common order of assessment, both under the VAT Act and the CST Act, could not have been passed. Learned Standing Counsel would, however, justify the action of the assessing authority in adjusting the input-tax credit, available to the petitioner under the VAT Act, with their tax dues under the CST Act placing reliance on Section 40 of the VAT Act, Rules 35 (7) and 38 of the Andhra Pradesh Value Added Tax Rules, 2005 and Form-VAT-200. While it does appear, on a reading of the aforesaid provisions, that adjustment, of input tax credit under the VAT Act, towards the tax due under the CST Act, can be made only at the request of the VAT dealer, it is wholly unnecessary for us to dwell on this aspect any further as the impugned assessment order must be set aside on the short ground that a common assessment order ought not to have been passed by the assessing authority levying tax on the petitioner both under the VAT Act and under the CST Act.

Suffice it to make it clear that the question whether the assessing authority, in the absence of any request by the dealer, can adjust the input tax credit available to the dealer under the VAT Act towards their taxes due under the CST Act, is left open, if need be, to be examined in appropriate legal proceedings. In so far as the petitioner's claim for adjustment of excess tax paid by M/s Parameshwara Cotton Traders Limited with their tax dues is concerned, no specific provision, which enables excess amounts paid by a sister concern to be adjusted against the tax dues of another, has been brought to our notice. Suffice it to make it clear that it is open to the petitioner's sister concern to seek refund of the excess tax, if any, paid by them in accordance with law.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, states that the question of bias, on the part of the fourth respondent, need not be examined as a fresh order of assessment would be passed by an officer other than the fourth respondent, if need be, after giving a fresh notice for audit.

The Writ Petition stands disposed of accordingly. 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

02nd March, 2016.
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