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

WRIT PETITION No.10268 of 2016

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

Heard Sri V. Bhaskar Reddy, learned counsel for the petitioner, and Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The order under challenge in this Writ Petition is the assessment order passed in Form VAT 305 dated 09.02.2016, levying tax of Rs.2,45,79,062/- on a turnover of Rs.17,02,10,128/-. The petitioner did not submit a reply to the show cause notice issued in Form VAT 305-A dated 04.01.2016, resulting in the assessment order being passed, more than a month thereafter, on 09.02.2016. While the petitioner-assessee had declared a turnover of Rs.1,01,40,580/-, the assessing authority, based on the information obtained from the postal department and Regional Vigilance and Enforcement Officer, held that the total turnover, liable to tax under the Act, was Rs.17,02,10,128/-.

Sri V. Bhaskar Reddy, learned counsel for the petitioner, would submit, firstly, that any material, which the assessing authority chooses to rely upon, ought to have been made available to the dealer before subjecting him to tax under the Act; secondly, that the goods, on which tax is levied at 14½ %, are articles of jewellery falling under Schedule-III of the A.P. VAT Act (for short 'the Act') and are liable to tax only at 1%.

In so far as the assessing authority had increased the undisclosed turnover from Rs.1,01,40,580/- to Rs.17,02,10,128/-, it does appear, from the show cause notice and the assessment order, that the assessing authority had relied upon information received from the Superintendent of Post Offices, Guntur and the Regional Vigilance & Enforcement Officer, for the period from 2011-2012 to 2015-2016, in determining the suppressed turnover. As the assessing authority has relied upon material obtained behind the petitioner's back, and had passed the assessment order without furnishing the petitioner a copy thereof, the assessment order, to the extent tax was levied on the increased turnover, must be set aside.

In so far as the turnover of Rs.1,01,40,580/- declared by the assessee is concerned, while the petitioner claims that the subject goods are liable to tax at 1% under Schedule-III of the Act, the case of the Revenue is that they are liable to tax at 14 ½ % under Schedule-V of the Act. The question, whether the subject goods fall within the ambit of Schedule-III or Schedule-V of the Act, are matters which can be properly examined by the Appellate Deputy Commissioner, on the statutory appellate remedy under the A.P.VAT Act being invoked by the petitioner.

The impugned assessment order, to the extent the assessing authority increased the turnover from Rs.1,01,40,580/- to Rs.17,02,10,128/-, is set aside. The assessing authority shall, after furnishing the information secured by him from the Superintendent of Post Offices, Guntur, and the report dated 17.12.2015 of the Regional Vigilance and Enforcement Officer, to the petitioner herein, pass an order afresh in accordance with law, after putting the petitioner on notice, and after giving them an opportunity of being heard. The entire exercise, culminating in a fresh assessment order being passed, shall be completed within a period of six weeks from today. In so far as the assessing authority levied tax at 14½%, on the declared turnover of Rs.1,01,40,580/-, the writ petition is dismissed, leaving it open to the petitioner to avail the statutory remedy of appeal under the A.P. VAT Act.

The Writ Petition is 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

M. SATYANARAYANA MURTHY, J

Date: 30.03.2016

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