THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.27067 OF 2016

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The order of this Court, in W.P.No.7425 of 2016 dated 10.03.2016, required the assessing authority to issue a notice to the petitioner fixing a date for personal hearing on which date the petitioner was required to appear and if they so choose, to file additional objections to the show cause notice; and, after considering the oral and written submissions, if any filed by the petitioner, the assessing authority was directed to pass an assessment order afresh and in accordance with law. The entire exercise, culminating in an order of assessment being passed, was directed to be completed within two (2) months from the date of the order. This Court made it clear that, in case the petitioner failed to avail the opportunity of a personal hearing on the date fixed by the assessing authority, it was open to the assessing authority to pass a fresh assessment order in accordance with law without giving any further opportunity to the petitioner.

The petitioner, thereafter, filed elaborate objections by their letter dated 17.06.2016 contending that the "mobile phones" sold by them falls within the ambit of Entry 39(15) of the IV Schedule to the A.P. Value Added Tax Act, 2005, and should be subjected to tax only at 5%. They also requested the assessing authority to defer assessment proceedings on the ground that a similar issue was pending consideration before this Court.

The assessing authority passed the impugned order holding that, while a similar issue may be pending consideration before the High Court, the direction given in W.P.No.7425 of 2016 dated 10.03.2016 required him to complete the assessment within two months; an opportunity of a personal hearing was afforded to the authorised representative of the petitioner on 24.06.2016 who had also submitted their written submissions on 17.06.2016; and the turnover proposed in the show cause notice dated 16.12.2015 was being confirmed.

While the order of this Court in W.P.No.7425 of 2016 dated 10.03.2016 required the assessing authority to pass an assessment order afresh, and he was justified in not acceding to the petitioner's request for the assessment proceedings to be deferred, the aforesaid order of this Court obligated him to consider the petitioner's objections and pass a reasoned order which the assessing authority has failed to do. None of the contentions urged by the assessee, in their written submissions, have been dealt with in the impugned assessment order.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, submits that, instead of keeping the writ petition pending on the file of this Court, it would suffice if this Court were to set aside the impugned order and permit the assessing authority to pass a reasoned order afresh.

We consider it appropriate, in such circumstances, to set aside the impugned order, direct the assessing authority to afford the petitioner an opportunity of a personal hearing and, thereafter, pass a reasoned order, dealing with the objections filed by the petitioner, in accordance with law. The entire exercise, culminating in an order of assessment being passed, shall be completed within a period of two months from the date of receipt of a copy of this order.

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, ACJ)

(U.DURGA PRASAD RAO, J)

23rd August 2016
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

WRIT PETITION No.27067 OF 2016

-

-

Date: 23.08.2016

JSU