THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.9131 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

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

While several issues are raised in the Writ Petition, we are concerned only with that part of the order of the assessing authority whereby freight charges incurred by the assessee, in transporting the subject goods to their retailers was included as part of the sale price, despite the petitioner's specific assertion that they did not charge freight separately from their customers. While the assessing authority has examined the records produced by the petitioners, and has found that they had incurred expenditure towards freight, there is no material on record to show that the expenditure incurred by the petitioners, towards freight charges, was collected by them, from their customers, later.

Sri K.Vivek Reddy, learned Special Standing Counsel for Commercial Taxes, would fairly state that the impugned order does not reflect the assessing authority's consideration as to whether the freight charges incurred by the petitioners was subsequently collected from the retailers to whom the goods were supplied by them. He would, however, submit that, while the assessing authority had failed to consider this aspect, the impugned assessment order does not necessitate interference on any of the other grounds urged in the Writ Petition.

If the Writ Petition is kept pending on the file of this Court it may necessitate examination of not only the issue regarding freight but all other contentions as well, for this Court would not, ordinarily, entertain a challenge to an assessment order in part and relegate the assessee to the remedy of an appeal for the other part of a common assessment order as no person can be permitted to avail parallel remedies at the same time.

We are, however, saved the trouble of considering this issue as both Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri K.Vivek Reddy, learned Special Standing Counsel for Commercial Taxes appearing on behalf of the respondents, would agree that, in the facts and circumstances of the present case, it would suffice if the assessment order were to be set aside on the question of freight, and the petitioner is relegated to the appellate remedy, under the Telangana Value Added Tax Act, 2005 ("the Act" for brevity), on all the other grounds urged in the Writ Petition. Both counsel also agree that, in view of Section 37 of the Act, the assessing authority would be entitled to pass an order afresh on the question of freight within three (3) years from the date of receipt of a copy of this order.

In view of the concession of learned counsel on either side, the assessment order is set aside to the limited extent, the assessing authority had included the expenses incurred by the petitioner towards freight as part of the sale price without examining whether the petitioner had collected the freight charges, incurred by them, from their customers. The matter is remanded to enable the assessing authority to consider this aspect. On all other issues, the petitioner is granted liberty to invoke the appellate remedy under the Act, as they still have time to do so. A copy of the original assessment order shall be returned forthwith to the petitioner on their making available a photostat copy thereof to the Registry.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

11th April 2016

Note: Issue CC in two days

B/O

RRB