

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT PETITION No.5786 of 2012

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

The petitioner's claim in this Writ Petition is that the vehicle purchased by them in the State of Karnataka, which was exempted from registration and levy of tax by the said State and was brought into the State of Andhra Pradesh several years after the vehicle was purchased, cannot be treated as a new vehicle and be subjected to tax at the rate of 7.5%.

Sri B.Siva Rama Krishnaiah, learned counsel for the petitioner, would submit that while the vehicle is, no doubt, a motor vehicle, liable to tax under the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short "the Act"), the rate of tax applicable to such vehicles is only 5% and not 7.5 which rate is applicable only to new vehicles at the time of registration. Learned counsel would also point out that, though the petitioner had raised such a contention in their reply to the show cause notice, the assessing authority had failed to consider the said contention.

As it is not in dispute that, even vehicles purchased outside the State and brought within the State of Andhra Pradesh several years thereafter are liable to tax under the Act provided they are motor vehicles, the question which remains to be considered is only regarding the rate of tax, and the consequential levy of penalty. Even if the petitioner's contention were to merit acceptance, it is not in dispute that they are liable to pay tax at 5% towards the life tax of the vehicle. The question whether they are liable to pay 2.5% more, on the vehicle being treated as a new

vehicle within the State of Andhra Pradesh, must be examined, in the first instance, by the assessing authority who is obligated under the Act to adjudicate the petitioner's claims in this regard. We see no reason, therefore, to examine this contention, for the first time, in proceedings under Article 226 of the Constitution of India.

As the petitioner has raised this contention, which has not been examined by the assessing authority, we consider it appropriate to set aside the impugned order, and remand the matter to the assessing authority for his consideration afresh and in accordance with law. The petitioner shall pay tax at 5% within four weeks from today and shall be given credit for any amount already paid by them in this regard including the amount, if any, paid pursuant to the interim order of this Court. Their liability to pay, in addition, tax at 2.5% shall be determined by the assessing authority after giving them an opportunity of a personal hearing.

The impugned order of assessment and penalty is set aside. The assessing authority shall, after affording the petitioner an opportunity of a personal hearing and to produce the documents in support of their claim, pass a fresh order levying tax and penalty in accordance with law.

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, ACJ)

(DR. SHAMEEM AKTHER, J)

20th January, 2017
JSU

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Date: 20.01.2017

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