THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Petition No.21365 of 2017

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

The proceedings, under challenge in this writ petition, is the order passed by the revisional authority dated 02.05.2017 revising the assessment order passed by the Commercial Tax Officer, Proddatur dated 15.11.2012.

The petitioner had earlier invoked the jurisdiction of this Court, by way of W.P.No.44058 of 2016, questioning the earlier revisional order passed by the Deputy Commissioner dated 14.11.2016. The petitioner had asserted before this Court that the credit notes issued by ITC were only towards reimbursement of the expenses incurred by them, which did not alter either the purchase or sale; and they were, therefore, not liable to tax as per Rule 16(f) of the A.P. Value Added Tax Rules, 2005.

While observing that the said submission cannot be said to be without merit, this Court, taking into consideration the submission of Sri Shaik Jeelani Basha, learned Special Standing Counsel for commercial Taxes, that, instead of keeping the writ petition pending on the file of the Court, it would suffice if the petitioner was permitted to produce necessary evidence to show that no tax had been collected for the amounts mentioned in credit notes, which they had not explained earlier, set aside the revisional order and directed the revisional authority to give the petitioner an opportunity of a personal hearing; and, after permitting them to produce all such information which he may require, to pass a fresh order of revision in accordance with law. Thereafter the impugned order dated 02.05.2017 came to be passed.

While taking note of the submission of the petitioner that the credit notes were towards reimbursement of salary and vehicle maintenance, the revisional authority examined the credit notes, issued by ITC, and observed that in the credit notes it was clearly mentioned as "onward freight", and they did not relate to reimbursement of salary or vehicle maintenance.

While Sri G.Narendra Chetty, learned counsel for the petitioner, would contend that, even if it is onward freight, the same is not liable to tax as it has not been charged in the invoices and was not collected from the customer, these are all matters which the petitioner can always agitate before the Sales Tax Appellate Tribunal in an appeal preferred against the revisional order. While an appellate Tribunal would be entitled to examine all questions of fact and law, the question whether the credit notes, which reflect onward freight, also form part of sales invoices or not are all matters which this Court would, ordinarily, not examine in proceedings under Article 226 of the Constitution of India.

Leaving it open to the petitioner to avail the remedy of an appeal to the Sales Tax Appellate Tribunal, the Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

03rd July, 2017
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AND

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Writ Petition No.21365 of 2017

Date: 03.07.2017

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