* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+W.P.NO.17823 of 20167

% Date: 09-10-2017

#Between:

M/s. Ruchis A Multi Cuisine A/C Family Restaurant,
D.No.9/162, Peravalli Compiound, Behind Bombay Dyeing,
Near Tower clock, Anantapuramu – 515001, rep. by its
Proprietor B. Venkata Ramana.

…. Petitioner

And

1. The Deputy Commercial Tax Officer – II, Anantapuramu-II Circle, PAR Heights, Gooty Road, Anantapuramu, Anantapuramu District, A.P.
2. The commercial Tax Officer-II, Anantapuramu Circle, Anantapuramu Division, PAR Heights, Gooty Road, Anantapuramu, Anantapuramu District, A.P.
3. The State of Andhra Pradesh, rep. by the Principal Secretary to the Government, Revenue (CT) Department, A.P. Secretariat Buildings, Velagapudi, Amaravathi, Guntur District, A.P.

… Respondents

! Counsel for the Petitioner : Mr. G. Narendra Chetty

^ Counsel for Respondents : Mr. S. Suri Babu Sr. S.C

<GIST:
> HEAD NOTE:
? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17823 of 2017

ORDER: (Per VRS,J)

The petitioner, who is a registered dealer under the A.P Value Added Tax Act, 2005 on the rolls of the second respondent, has come up with the above writ petition challenging an order of assessment.

2. Heard Mr. Narendra Chetty, learned counsel for the petitioner and Mr. S. Suri Babu, learned Senior Standing Counsel for the respondents.

3. The main grounds on which the impugned order is assailed are (1) that the impugned order is based solely upon electricity consumption charges; and (2) that when two restaurants run by the assessee are located at Anantapuramu and Raidurg, separated by a great distance, the assessing officer could not have invoked the Explanation to Section 4(9) (d) of the A.P. VAT Act, 2005.

4. A careful perusal of the impugned order would show that the assessing officer prepared two assessments, one based upon the slips and another based upon the electricity consumption charges. The fact that the electricity consumption charges cannot form the sole basis for arriving at the best of judgment turnover, cannot be disputed.

5. Additionally, the case of the petitioner is that under Section 4(9) (d) of the Act, every dealer other than those covered by clauses (a) and (b) whose actual turnover is more than a particular limit and less than a particular limit is entitled to pay tax at the rate of 5% of the taxable turnover of the sale and supply of goods, being food or any other article for human consumption or drink served in restaurants. But the

Explanation to clause (d) of sub-section (9) of Section 4 makes it clear that for the purpose of computing the total turnover, the sales turnover of all business units located in common premises sharing the common kitchen or common employees, shall be added to the sales turnover.

6. The case of the petitioner is that they have two units, one located at Anantapuramu and another located at Raidurg and that therefore they would not come within the Explanation to Section 4(9)(d). This aspect, according to the petitioner, has not been examined by the assessing officer.

7. We do not know where both units are located, but the fact remains that this question has not been addressed to by the assessing officer at all. This is an important question of fact, which the assessing officer should have applied his mind and recorded a finding. Since he has failed to do so, the impugned order deserves to be set aside.

8. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the assessing officer for fresh consideration. It is open to the petitioner to establish where his restaurants are located and to establish that his case will not come within the purview of Section 4(9)(d). The assessing officer may pass fresh orders after giving reasonable opportunity to the petitioner. The amount of Rs.10 lakhs paid by the petitioner, by virtue of the conditional order of stay granted by this Court, shall remain with the Government until a fresh assessment order is passed. If a fresh assessment order is passed, the amount paid pursuant to the conditional order shall be adjusted as against any liability, if it arises. If no liability arises, the petitioner may be entitled to refund of the amount.

9. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

9th October, 2017
Js.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17823 of 2017

9th October, 2017

Js.