THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.8295 of 2009

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

Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner, and Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is disposed of.

The relief sought for in this writ petition is to direct the 2nd respondent to consider the representations submitted by the petitioner on 18.11.2008 and 23.12.2008 for the assessment year 2002-03, as also the T.D.S. Certificates issued by the A.P. Health and Medical Housing and Infrastructure Development Corporation dated 7.11.2008 for Rs.6.89,992/-.

While Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that the rectification sought by the petitioner, by the aforesaid representations, related to the assessment order passed on 7.2.2006 for the assessment year 2002-03, more than two years after the order was passed, the fact remains, that the T.D.S. Certificates were issued by a State Government Corporation; and, since the petitioner claims that tax has been paid, by way of deduction from their bills, failure of the respondent-authorities to rectify the demand, to the extent the petitioner claims to have already paid tax, violates their constitutional right under Article 265 of the Constitution of India whereby the respondents are entitled to collect tax only in accordance with law.

As the petitioner claims that the tax was deducted from their bills, they are entitled for the tax, so deducted from their bills, to be adjusted against the tax they are liable to pay in terms of the assessment order. While there has, undoubtedly, been a delay of more than two years in making the representations, the applications appear to have been filed within the time stipulated under Rule 50(1) of the Andhra Pradesh

General Sales Tax Rules, 1957 (for short 'the Rules') which enables an assessee to seek rectification of a mistake, either clerical or arithmetical, in the order within four years from the date of the order.

We see no reason, therefore, to deny the petitioner their right to have their claim, of tax having been deducted at source from their bills, examined by the assessing authority. Since the relief sought for in this writ petition relates only to 2002-03, the respondents shall consider the petitioner's representations for the said year, give them the benefit of T.D.S. deducted from their bills for the said period, and issue a demand notice afresh 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)

(A. SHANKAR NARAYANA, J)

2nd January, 2017

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Date: 2.1.2017

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