THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.8395 of 2012

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

The petitioner's claim in this writ petition is that the vehicles purchased by them in the State of Uttar Pradesh and other States, which were exempted from levy of tax by the concerned States and were brought into the State of Andhra Pradesh several years after these vehicles were purchased, cannot be treated as new vehicles 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 these vehicles are, no doubt, motor vehicles, 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 vehicles. The question whether they are liable to pay 2.5% more, on the vehicles being treated as new vehicles 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 claim 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 amounts, 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.

As the assessment order is being set aside, the consequential order of penalty must be and is, accordingly, set aside. It is made clear that this order shall not preclude the respondent-authorities, if they so choose, from initiating penalty proceedings afresh, after a fresh assessment order is passed.

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)

04th January, 2017
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Date: 04.01.2017

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