THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Petition No.20811 of 2017

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

Heard Sri S.Krishna Murthy, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission. The proceedings under challenge in this writ petition is the assessment order passed by the Commercial Tax Officer dated 30.03.2017 levying tax of Rs.33,70,487/- on the petitioner under Section 4(7)(a) of the A.P.Value Added Tax Act, 2005 (for short "the Act").

Sri S.Krishna Murthy, learned counsel for the petitioner, would submit that the petitioner had opted for composition under Section 4(7)(d) of the Act and, consequently, could not have been assessed under Section 4(7)(a) of the Act; and the assessment order dated 30.03.2017, for the period April 2012 to February 2013, is barred by limitation.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that, despite several opportunities being afforded to them, the petitioner failed to submit their objections; and, as a result, the assessing authority was constrained to pass the impugned assessment order.

It does appear, from the impugned order of assessment, that the petitioner was afforded several opportunities which they failed to avail. While it does also appear that the impugned assessment order is partly barred by limitation, it is unnecessary for us to dwell on this aspect any further, as Sri Shaik Jeelani Basha, learned Special Standing counsel for Commercial Taxes, would fairly state that the assessing authority was ready and willing to give the petitioner one more opportunity of being heard, subject to a time frame being fixed by this Court for the petitioner to avail such an opportunity.

In view of the submission of the learned Standing Counsel, the impugned assessment order is set aside. The petitioner shall file their written objections, to the earlier show cause notice, within two weeks from today wherein they may raise all such grounds as are available to them in law, including of limitation and of composition under Section 4(7)(d) of the Act. The assessing authority shall at the earliest, and in any event not later then two months from the date of receipt of the petitioner's reply to the show cause notice, pass an assessment order afresh and in accordance with law. It is made clear that, in case the petitioner does not avail the opportunity of filing their objections within two weeks from today, it is open to the assessing authority to proceed and pass a fresh assessment order without giving the petitioner any further opportunity in this regard.

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)

(T.RAJANI, J)

03rd July, 2017
Note: Issue C.C by 06.07.2017.
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Date: 03.07.2017

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