THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Petition No.18145 of 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The order impugned in this writ petition is the assessment order passed by the assessing authority on 31.03.2017, a copy of which was served on the petitioner on 12.04.2017. Several contentions, including that a part of the assessment is barred by limitation, Form 501 TCS certificates filed during the course of assessment and after the assessment were not taken into consideration, denial of ITC etc, are urged in the writ petition.

As the plea of limitation was not taken before the assessing authority, there is no reference to this aspect in the elaborate assessment order passed by the assessing authority. While that may not preclude the petitioner from questioning it even thereafter, as the assessing authority may lack jurisdiction to pass an assessment order beyond the time limit prescribed under the Telangana Value Added Tax Act, 2005, these are all questions which can also be urged before the Appellate Authority. It does, however, appear that the petitioner had produced Form 501 TCS certificates for Rs.92,28,836/- during the course of assessment, but they were not given credit for the said amount.

While we are not inclined to entertain the writ petition, and are of the view that the petitioner should avail the appellate remedy prescribed under the Act, Dr.S.R.R.Viswanath, learned counsel for the petitioner, would point out that the petitioner would be required to deposit 12.5% of even this sum of Rs.92,28,836/- as a pre-condition for an appeal to be entertained. We, therefore, asked Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, to ascertain whether these TCS certificates were, in fact, produced before the assessing authority either before or during the course of assessment. Sri M.Govind Reddy, learned Special Standing Counsel, submits that the assessing authority is not in station and, to the best of his information, it is only around Rs.67.00 lakhs for which Form 501 TCS certificates were produced during the course of assessment. Even if that be so, the petitioner has not been given credit, for even this sum, in the assessment order.

As Sri M.Govind Reddy, learned Special Standing Counsel, is not in a position to state with certainty whether the TCS certificates produced by the petitioner, before the assessment order was passed, was for Rs.92,28,836/- or Rs.67.00 lakhs, and as the extended period of limitation to prefer an appeal would expire by 11.06.2017 (Sunday), the petitioner can only file an appeal latest by tomorrow.

We consider it appropriate, therefore, to permit the petitioner to deposit 12.5% of the disputed tax (excluding 12.5% of Rs.92,28,836/- for which they claimed to have submitted Form 501 TCS certificates even before completion of the assessment). All the questions raised in this writ petition are left open to be urged by the petitioner before the appellate authority who shall consider their appeal and the stay petition, on its merits, uninfluenced by any observations made in this order. Registry shall return the order in original today under due acknowledgment.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

08th June, 2017
Note: Issue C.C. today.
JSU

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