THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN
&
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.22805 of 2017

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

Heard Sri P. Girish Kumar, learned counsel for the petitioner, and Sri S. Suri Babu, learned Special Standing Counsel for Commercial Tax (AP) and, with their consent, the writ petition is disposed of at the stage of admission. The order impugned in the writ petition is the assessment order in Form VAT 305 dated 08.03.2017 for the tax period 2010-11 till 2013-14.

Sri P. Girish Kumar, learned counsel for the petitioner, would contend that for the tax period 2011-12 to 2013-14 the petitioner has already been assessed to tax under the VAT Act; the impugned assessment order levying tax all over again, for the very same tax period, is without jurisdiction; and for the tax period April 2010 to March, 2011, as the assessment order was passed only on 08.03.2017, the assessment for this period is also barred by limitation.

While fairly conceding that, for the tax period April 2011 to March 2014, the petitioner was assessed to tax earlier, Sri S. Suri Babu, learned Special Standing Counsel for Commercial Tax, would point out that, since the petitioner has not taken the plea of limitation, the assessing authority had not examined this question as to whether or not the assessment, for the tax period April 2010 to March 2011, is barred by limitation.

While it does appear that the petitioner did not raise the plea of limitation in his reply to the show cause notice, this question can also be raised in writ proceedings under Article 226 of the Constitution of India. As it is conceded by the Learned Special Standing Counsel that the impugned assessment order is liable to be set aside for the tax period April 2011 to March 2014, the only dispute which would survive is whether assessment, for the tax period April 2010 to March 2011, is barred by limitation.

We consider it appropriate, therefore, to set aside the impugned assessment order, and permit the assessing authority to pass an assessment order afresh, for the tax period April 2010 to March 2011, after giving the petitioner an opportunity of filing their additional objections to the show cause notice and also of an oral hearing. It is open to the petitioner to raise all such pleas as are available to them in law before the assessing authority, including their contention that the assessment order dated 08.03.2017, in so far as it relates to the assessment for the tax period April 2010 to March 2011, is barred by limitation. The assessing authority shall pass an assessment order afresh, as directed hereinabove, at the earliest and, in any event, not later than three (3) months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

July 18, 2017
DSK

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते