HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WP No.38327 of 2017

Date:17.11.2017

Between:

M/s Bharat Airtel Limited,

Hyderabad, reptd by its Head

Legal and Regulatory-Bipin Thomas

..... Petitioner

And:

Commercial Tax Officer,

Hyderabad and three others.

....Respondents

Counsel for the petitioner: Mr. S.Dwarakanath

Counsel for respondent Nos.1 & 2: Mr. J.Anil Kumar

Special Standing Counsel for CT (TS)

Counsel for respondent Nos.3 & 4: Mr. K.Lakshman

Assistant Solicitor General

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed for the following substantive relief:

> "to issue a Writ of *Certiorari* or any other appropriate writ or order or direction to
> (a) declare that Section 4(8) of the Telangana VAT Act, 2005 to the extent it seeks to levy tax on the monthly charges received by the Petitioner from its subscribers which are relatable to pure services for telecommunication provided through landline and internet as ultra *vires* to Articles-246(1) & 265 of the Constitution of India read with Entry 54 of List-II of Seventh Schedule;
> (b) to quash the impugned assessment order, dated 27.9.2017 passed by the 1st respondent in A.O.No.35217 for the tax period April, 2013 to March, 2015; or
> (c) in the alternative, declare Section 66B of the Chapter-V of the Finance Act, 1994 to the extent it seeks to levy Service tax on the monthly charges received by the Petitioner for provision of landline telephones and internet services as ultra-*vires* to Articles-246(3) & 265 of the Constitution of India read with Entry 97 of List-I of Seventh Schedule to the Constitution of India if the same amounts to a sale within the meaning of Section 4(8) of the Telangana VAT Act; and
> (d) to direct respondent Nos.3 and 4 to refund the Service tax collected and paid by the petitioner on the monthly charges as per the bills under Section 66-B of Chapter-V of the Finance Act, 1994 after transferring the VAT component of Rs.2,60,71,149/- to Respondent Nos.1 and 2 for satisfaction of the

demand as per the impugned order and refund the balance amount."

A perusal of the proceeding sheet shows that this case was earlier dealt with by Division Bench-I on 15.11.2017. During the course of hearing, Mr. S.Dwarakanath, learned counsel for the petitioner, has given up the challenge to the *vires* of the statutory provisions of Telangana Value Added Tax Act, 2005 and the Finance Act, 1994. Therefore, the case has been posted before this Court.

After hearing Mr. S.Dwarakanath, learned counsel for the petitioner, and Mr. J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes (Telangana), we are of the opinion that once the petitioner has given up the challenge to the *vires* of the provisions of the afore-mentioned Acts, it is entitled to avail the remedies available under the A.P.Value Added Tax Act, 2005. Therefore, we are not inclined to entertain this Writ Petition for adjudication on merits.

Learned counsel for the petitioner submitted that as his client was pursuing the Writ Petition, it could not file appeal within the period of limitation.

In these facts and circumstances of the case, the petitioner is permitted to file appeal within two weeks from today. If the appeal is filed within the said period, the same shall be entertained and adjudicated by the appellate authority on merits.

Subject to the above, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WPMP.No.47587 of 2017 is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

17th November 2017

Note:

1. Issue CC within three days.

2. Registry is directed to return the original papers to the learned counsel for the petitioner to enable the petitioner to file appeal.

B/o

DR