THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition Nos.38403 and 38427 of 2017

Common Order : **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

In both these Writ Petitions, the *vires* of Entry No.2 (xii) of Schedule IV to the Telangana Value Added Tax Act, 2005 (hereinafter referred to as "the VAT Act) is subjected to challenge on the ground that it is unconstitutional, and is beyond the legislative competence of the State Legislature under Entry 54 of List II to the 7th Schedule to the Constitution of India. The orders of the Appellate Deputy Commissioner dated 20.4.2017, confirming the orders dated 4.2.2016 and 18.2.2016 passed by the assessing authority for the tax periods 2010-11 to 2013-14 and 2013-14 to 2014-15, are also questioned in these Writ Petitions, as illegal and arbitrary.

Entry No.2 of Schedule IV of the VAT Act detail goods of tangible or incorporeal nature as may be notified from time to time by the State Government, and includes a franchise, that is to say, an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified or associated with the franchisor, whether or not a trade mark, service mark, trade name or logo or any symbol, as the case may be, is involved. Section 65(47) of the Finance Act, 1994, defines a "franchise" to mean an agreement by which the franchisee is granted representational rights to sell or manufacture goods or to provide service or undertake any process identified or associated with the franchisor, whether or not a trade mark, service mark, trade name or logo or any symbol, as the case may be, is involved.

While Sri P. Balaji Varma, learned counsel for the petitioner, would contend, not without justification, that, since the definition of "franchise" both under the Finance Act, 1994 and under the VAT Act is more or less identical, the petitioner is being mulcted with liability of both service tax and sales tax on the very same transaction.

While this question would have necessitated detailed examination, it is unnecessary for us to examine the validity of Entry 2(xii) of the IV Schedule to the VAT Act, in the present Writ Petitions, in view of the submission of Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, that the power of the State Government to levy tax under the VAT Act is only on the sale or purchase of goods, or on transfer of the right to use goods, and not on purely service transactions.

As the service component, of any franchise, can only be subjected to service tax and not to sales tax, we consider it appropriate to set aside the assessment orders, and to remand the matter to the assessing authority who shall, after putting the petitioner on notice and after giving them an opportunity of being heard, pass a fresh assessment order in so far as the petitioner's liability to pay VAT on either sale or purchase of goods, or on transfer of the right to use goods, involved in the franchise is concerned.

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

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

27th November, 2017
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Date: 27.11.2017

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