THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Petition No.1261 of 2018

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

Heard Sri I. Ramana Reddy, learned counsel for the petitioner, and Sri J. Anil Kumar, 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 demand notice in Form VAT 202 dated 8.1.2018 calling upon the petitioner to pay the outstanding amount of Rs.22,24,746/-, for the assessment year 2017-18, within 24 hours.

Sri I. Ramana Reddy, learned counsel for the petitioner, would draw our attention to GO Ms. No.108 dated 20.5.1996 whereby the incentive of deferment of sales tax, limited to 135% of the fixed capital investment, was extended to the petitioner repayable in a period of fourteen (14) years. Learned counsel would submit that, in terms of the said GO, the petitioner was informed, by letter dated 16.5.2001, that a Revised Final Eligibility Certificate was being issued to him; the Revised Final Eligibility Certificate, issued in terms of GO Ms. No. 108 dated 20.5.1996 and GO Ms. No. 134 dated 1.7.1996, prescribed, in Clause 10(b) thereof, the period of repayment as 14 years from 18.6.1998 to 17.6.2012; Clause 11 of the said Final Eligibility Certificate stipulates the conditions for availing incentives and under sub-clause (i) thereof, in case of deferment of Sales Tax, the total sales tax deferred in a year should be repaid at the end of the 14th year without interest; consequently, the amount due for the year 2003-04 is liable to be repaid, in terms of Clause 11(i), only at the end of the financial year 2017-18, ie, on or before 31.3.2018; and the Commercial Tax Officer, Nampally was not justified in issuing the demand notice, in Form VAT

202 dated 8.1.2018, calling upon the petitioner to pay the said amount within 24 hours.

On the other hand Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would seek to justify the impugned order on two grounds, firstly, that the petitioner had, itself, paid a part of the amount during the course of the financial year 2017-18, and did not wait till the end of the said year to make payment; and such payment shows that the petitioner also understood their obligations as not to await the end of the financial year 2017-18 to make payment; even otherwise, the tax period, under the A.P. VAT Act, 2005 and under the Central Sales Tax Act, 1956, is only one month and not one year; and, in such circumstances, the Commercial Tax Officer was justified in demanding payment of the balance amount due, for the financial year 2017-18, in January, 2018 itself which is just a little more than two months prior the end of the financial year ie, 31.3.2018.

We must express our inability to agree with the submission urged, on behalf of the respondent, by the learned Special Standing Counsel for Commercial Taxes. The terms and conditions of the Final Eligibility Certificate, which are binding both on the Commercial Tax department and the petitioner, expressly require repayment of the sales tax deferment amount, for a particular year, to be made at the end of the 14th year without interest. The word used therein is "end of the year" and not "end of the month"; and, consequently, sales tax deferment of the year 2003-04 is liable to be repaid only at the end of the financial year 2017-18 ie by 31.3.2013, and not in the middle of the year. The mere fact that the petitioner had, on their own accord, paid a part of the amount during the course of the year, and did not wait till the end of the year to do so, would not justify the Commercial Tax Officer insisting on payment of the entire amount before 31.3.2018.

While the petitioner is still entitled, if they so choose, to repay the entire amount even before the end of the financial year 2017-18, ie before 31.3.2018, the authorities can take coercive steps, for recovery of the said amount, only thereafter and not before.

The impugned demand notice, is therefore, set aside. The petitioner shall pay the sales tax deferment amount due, for the assessment year 2003-04, on or before 31.3.2018, failing which it is open to the respondents to take steps for recovery of the said amount on or after 1.4.2018.

As the petitioner can file a reply to the show cause notice, informing the Commercial Tax Officer of the order now passed by us, we see no reason to entertain a challenge to the penalty notice at this stage. Needless to state that the order now passed by us shall not disable the petitioner from filing a reply to the show cause notice, issued to them by the Commercial Tax Officer, raising all such contentions as are available to them in law.

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

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

22nd January, 2018

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Petition No.1261 of 2018

Date: 22.1.2018

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