THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.3484 of 2018

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

The proceedings, under challenge in this Writ Petition, is the order passed by the Additional Commissioner on 30.10.2017 for the tax period 1.10.2013 to 27.10.2013.

The petitioner is a registered dealer on the rolls of the 4th respondent, and is carrying on business in the sale of crackers. An assessment order was passed by the 4th respondent, for the tax period 1.10.2013 to 27.10.2013, on 22.11.2014. The petitioner preferred an appeal there-against on 16.10.2015, contending that the order of the assessing authority dated 22.11.2014 was received by them only on 20.9.2015. The 3rd respondent passed an order on 17.1.2017 rejecting the appeal filed by the petitioner on the ground that it was barred by limitation as it had been filed beyond the period prescribed under the VAT Act. Aggrieved thereby, the petitioner preferred an appeal to the Telangana VAT Tribunal on 10.4.2017 which was registered as T.A. No. 63 of 2017. They filed a petition before the 2nd respondent on 18.5.2017 seeking stay of collection of the disputed tax, pending disposal of the appeal by the Tribunal. As the 2nd respondent rejected the stay application by order dated 30.10.2017, the petitioner has invoked the jurisdiction of this Court.

Sri B. Srinivas, learned counsel for the petitioner, would submit that the impugned order passed by the 2nd respondent is bereft of reasons; the 30 days limitation period, prescribed for preferring an appeal to the Appellate Deputy Commissioner, must be reckoned from the date of receipt of a copy of the assessment order; and, since the assessment order dated 22.11.2014 was received by them only on 20.9.2015, the appeal preferred by them on 16.10.2015 is well within the prescribed period of limitation.

On the other hand, Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that the records available with the 3rd respondent clearly show that a copy of the assessment order dated 22.11.2014 was, in fact, served on the petitioner on 25.11.2014 itself; and since the appeal was preferred nine months after receipt of the assessment order, the appellate authority was justified in rejecting the appeal on the ground that it was filed beyond the period of limitation.

It would be wholly inappropriate for us to examine these rival contentions in as much as the order under challenge before us is the order passed by the revisional authority refusing to grant stay of collection of the balance disputed tax pending disposal of the appeal by the Tribunal.

All that the 2nd respondent has done is to extract all the contentions urged on behalf of the petitioner, and thereafter record that he did not find any valid reasons in the argument of the learned counsel for the appellant-petitioner for stay of collection of the disputed tax, and to dismiss the stay petition without going into the merits of the case, as the main appeal was pending disposal before the Telangana VAT Tribunal.

While it is no doubt true that the revisional authority cannot conclusively decide the issue on merits, since a substantive appeal is pending before the Tribunal, he is required, at least, to record reasons indicating his, *prima facie,* view as to whether the contentions urged before him by the petitioner, for grant of stay of collection of the balance disputed tax pending disposal of the appeal before the Tribunal, was justified or not.

As the appellate authority had rejected the appeal on the ground that the appeal was preferred beyond the period of limitation, this question necessitated examination by the revisional authority and he was required to determine, *prima facie*, whether the petitioner's contention that the assessment order was received by them only on 20.9.2015 was valid or whether the 4th respondent was justified in contending that the assessment order was served on the petitioner on 25.11.2014 itself justifying rejection of the appeal on the ground that it was preferred beyond the period of limitation.

As the order passed by the 2nd respondent is bereft of reasons, it is liable to be, and is accordingly, set aside. The revision is restored to file. The 2nd respondent shall pass orders afresh and in accordance with law, after giving the petitioner an opportunity of oral hearing, within two weeks from the date of receipt of a copy of this order.

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)

(KONGARA VIJAYA LAKSHMI, J)

28th February, 2018

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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Writ Petition No.3484 of 2018

Date: 28.2.2018

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