THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No. 6580 of 2018

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

Heard Sri Sivaraju Srinivas, 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.

Aggrieved by the assessment order passed for the tax period 2012-13 to 2014-15, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner along with an application for grant of stay of recovery of the disputed tax pending disposal of the appeal. The Appellate Deputy Commissioner rejected the stay petition by order dated 12.1.2018. Aggrieved thereby, the petitioner carried the matter in revision to the Additional Commissioner on 18.1.2018. A notice of hearing was given on 23.1.2018 and, thereafter, the impugned order dated 14.2.2018 came to be passed. While the impugned order runs into six pages, except for the last two paragraphs, the remaining part of the order is limited merely to a narration of the facts preceding the order passed by the Additional Commissioner, and the various contentions urged on behalf of the petitioner. All that the Additional Commissioner has recorded, in the impugned order, is that the assessing authority took support not only from certain case law, but also the orders issued by the Government, in order to levy tax on handling charges/warranty claims and in restriction of input tax credit; and he did not find any valid reasons, in the argument of the appellant-petitioner, for stay of collection of the disputed tax.

The *ipse dixit* of the Additional Commissioner, as noted hereinabove, would not constitute an order assigning reasons. The Additional Commissioner was obligated to assign reasons as to why he found no justification in the argument of the counsel for the petitioner for grant of stay of the disputed tax. While it is no doubt true that, pendency of the substantive appeal before the Appellate Deputy Commissioner, would require the Additional Commissioner not to record any conclusive finding on merits, he was obligated to record his *prima facie* conclusion as to why the contentions put forth by the petitioner did not merit acceptance, as the remedy available to the petitioner, of a revision under Section 31(3)(b) of the Telangana Value Added Tax Act, 2005 (hereinafter referred to as "the VAT Act"), is statutory in character.

While we were initially inclined to admit the Writ Petition and grant stay, Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, instead of keeping the Writ petition pending on the file of this Court, it would suffice if the Additional Commissioner is directed to pass a reasoned order afresh, and in accordance with law.

The impugned order of the Additional Commissioner is, accordingly, set aside. The Additional Commissioner shall, within one week from the date of receipt of a copy of this order, pass a reasoned order afresh, and in accordance with law. Till the Additional Commissioner passes an order afresh, no further coercive steps shall be taken for recovery of the disputed tax.

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)

(KONGARA VIJAYA LAKSHMI, J)

14th March, 2018

Note:
Furnish c.c. by tomorrow.
b/o
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Date:14.3.2018

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