THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NOs.8027 AND 8083 OF 2017

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Dr. S.R.R.Viswanath, learned counsel for the petitioner and both Sri S.Suri Babu and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, both the Writ Petitions are disposed of at the stage of admission.

In both these Writ Petitions, the orders impugned are the orders of penalty passed by the assessing authority consequent to the earlier assessment order being revised by the third respondent. Dr. S.R.R.Viswanath, learned counsel for the petitioner, would submit that an appeal was preferred, against the order of the revisional authority, to the A.P. VAT Tribunal in T.A.No.226 of 2016; the said appeal was allowed by the Andhra Pradesh Value Added Tax Appellate Tribunal by its order dated 26.09.2018; and, consequently, the impugned orders of penalty, passed under Sections 53 (3) and 55 (4) (b) of the Andhra Pradesh Value Added Tax Act, necessitates being set aside.

While fairly stating that the Andhra Pradesh Value Added Tax Appellate Tribunal had allowed the appeal in T.A.No.216 of 2016 by its order dated 26.09.2018, both Sri S.Suri Babu and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the revenue would prefer revision against the said order to this Court; and setting aside the order of penalty may deprive the revenue of its rights to collect the penalty in terms of the provisions of the VAT Act.

Once the assessment order has itself been set aside in appeal by the A.P. VAT Tribunal, the consequential order of penalty would not survive and must, therefore, be set aside. Needless to state that, in case the order of the VAT Tribunal were to be set aside later, it is always open to the revenue to initiate penalty proceedings thereafter in accordance with law. Both the impugned orders of penalty are set aside, and the Writ Petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

8th October 2018
RRB