HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.8722 of 2018

Order: (per V.Ramasubramanian, J.)

Aggrieved by an order of the Appellate Deputy Commissioner (Commercial Taxes) dismissing an appeal filed under the Andhra Pradesh Value Added Tax Act, 2005, the dealer has come up with the above writ petition.

2. Heard Mr. G.Narendra Chetty, learned counsel for the petitioner and Mr. S.Suri Babu, learned Special Standing Counsel for the respondents.

3. What happened in this case was that an order of assessment was originally passed on 13-9-2015. The said order was partly set aside by the Appellate Deputy Commissioner and the matter remanded back to the Assessing Officer for passing a consequential order.

4. The Assessing Officer passed a consequential order dated 15-3-2017. This order became the subject matter of an appeal before the Appellate Deputy Commissioner.

5. The Appellate Deputy Commissioner, who heard and dismissed the appeal, happened to be the same person who passed the original order of assessment on 13-9-2015. In other words, he sat on appeal over proceedings the original author of which was none other than himself.

6. It is well settled that no one can be a judge in his own cause. In this case, the dictum has to be applied with a little difference. The Appellate Deputy Commissioner did not sit on appeal

over his own order. But he sat on appeal against an order passed by another officer as a consequence of his own order passed in the first round of litigation being set aside by the Appellate Deputy Commissioner. Therefore, the fundamental basis on which the aforesaid rule of law is enunciated, applies to cases of this nature also. Hence, the impugned order of the Appellate Deputy Commissioner is liable to be set aside and the matter has to be directed to be assigned to a different person for a fresh disposal.

7. Mr. G.Narendra Chetty, learned counsel for the petitioner, submitted that even the order of the Assessing Officer, dated 15-3-2017, is liable to be set aside, since in paragraph-8 he has confirmed the order of the first Assessing Officer that was already set aside by the Appellate Authority. But this contention loses sight of one important fact viz., that the order of the Commercial Tax Officer, dated 15-3-2017, is no longer in existence and the same has merged with the order impugned in this writ petition. Therefore, the writ petition is allowed and the order of the Appellate Deputy Commissioner is set aside. The Commissioner of Commercial Taxes may allot the appeal to any other Appellate Deputy Commissioner and such Appellate Deputy Commissioner may give an opportunity of personal hearing and then pass orders in accordance with law. The applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

11th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

<u>Writ Petition No.8722 of 2018</u>
(per VRS, J.)

11th April, 2018.
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