THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.16025 OF 2017

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

Heard Sri B.Srinivas, learned counsel for the petitioner and Sri T.Vinod 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 assessment order passed by the assessing authority (fourth respondent) on 04.03.2017 in Form VAT 305 for the tax period 2010-11 to 2013-14. The assessee is a trader in mobile phones, and is running retail chain stores within the State of Telangana (part of the erstwhile Andhra Pradesh). It is their case that mobile phones are "transmission apparatus" falling within the ambit of Entry 39(15) of Schedule IV of the Andhra Pradesh Value Added Tax Act ("the Act" for brevity). While subjecting the petitioner to tax on mobile phones under Schedule V, treating these goods as unclassified goods liable to tax at 14.5%, the assessing authority has failed to examine the specific contention, urged by the petitioner in their reply to the show cause notice, that the subject goods are "transmission apparatus" falling under Entry 39(15) of Schedule IV of the A.P. VAT Act, liable to tax at 5%.

Since this contention of the assessee has not even been examined by the assessing authority, the impugned order of assessment must be and is, accordingly, set aside. Since the petitioner has already filed his reply to the show cause notice, suffice it to direct the assessing authority to afford the petitioner an opportunity of an oral hearing, and thereafter pass a fresh assessment order in accordance with law dealing with the petitioner's contention that the subject goods fall within the ambit of Entry 39(15) of Schedule IV of the Telangana Value Added Tax Act. It is made clear that the impugned order is being set aside on this ground alone, and none of the other contentions urged both by Sri B.Srinivas, learned counsel for the petitioner and Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, have been examined. The assessing authority shall pass orders with utmost expedition and, in any event, not later than two (2) months from the date of receipt of a copy of this order.

The Writ Petition stands 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