HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.29569 of 2018

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

Heard Sri T.Srinivas Murthy, learned counsel for the petitioner, and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is being disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the revisional order passed by the Deputy Commissioner (CT), Secunderabad dated 25.05.2018 levying tax at the rate of 5% on the subject turnover, treating them as sale of medical devices falling under Entry 111 of the IV Schedule to the Telangana Value Added Tax Act, 2005 (for short "the Act").

The petitioner claims that the subject goods are exempt from tax, as they fall within the ambit of Entry 2 of the I Schedule to the Act. On the ground that several such writ petitions, on the very same issue, are pending consideration before the High Court, the petitioner invoked the jurisdiction of the Commissioner (CT) under Section 32(5) of the Act, and in his letter dated 17.01.2018 requested the Commissioner (CT) to defer the proposed revision till the question of law was decided by the High Court. Despite receipt of the said request, no orders were passed by the Commissioner (CT) and, in the meanwhile, the Deputy Commissioner (CT) passed the impugned order of revision on 25.05.2018.

It is not in dispute that the question whether the subject goods fall within the ambit of Entry 2 of the I Schedule to the Act as claimed by the assessee, or whether they fall within Entry 111 of the IV Schedule to the Act as claimed by the revenue, is under consideration in a batch of writ petitions pending on the file of this Court. One such case, relating to the very same assessee, is W.P.No.14830 of 2017 which was admitted, and interim stay was granted in WPMP.No.18346 of 2017 in W.P.No.14830 of 2017 dated 25.04.2017.

Section 32(5) of the Act confers discretion on the Commissioner (CT) to defer any proceedings under Section 32 of the Act by reason of the fact that proceedings are pending, among others, before the High Court involving a question of law having a direct bearing on the order or proceeding in question. As noted hereinabove, the writ petitions, pending on the file of this Court, do appear to involve a question of law which has a direct bearing on the revisional order passed by the Deputy Commissioner (CT). While it is no doubt true that a discretion is conferred under Section 32(5) of the Act on the Commissioner (CT), and he is not obligated to defer revisional proceedings for the mere asking, he must nonetheless exercise the discretion conferred on him for just and valid reasons, and in accordance with law.

The submission of Sri M.Govind Reddy, learned Special Standing counsel for Commercial Taxes, that the revision proceedings was likely to be barred by limitation as the assessment order was passed on 29.05.2014, is misconceived. Section 32(7) of the Act stipulates that, where any proceedings under Section 32 have been deferred on account of pendency of proceedings before the High Court involving a question of law having a direct bearing on the order or proceedings in revision, the period during which the said proceedings are pending before the High Court shall be excluded in computing the period of four years specified in sub-section (3) for the purpose of exercise of the power under Section 32 of the Act. As the period, during which the Writ Petitions are pending on the file of this Court, is required to be excluded, in computing the period of limitation for passing a revisional order, the interest of the Revenue would be adequately safeguarded even if the revisional proceedings, pending before the Deputy Commissioner (CT), had been deferred by the Commissioner (CT). Even otherwise, the request for deferring the revision proceedings was made by the petitioner; and, consequently, they cannot take advantage of their own request for deferment, and, on such request being acceded to, to then turn around and claim that the revision is barred by limitation.

As the application for deferment of revision proceedings is pending before the Commissioner (CT) ever since 17.01.2018, we consider it appropriate to set aside the revisional order, direct the Commissioner (CT) to take a decision on the petitioner's application, for deferment of revisional proceedings, within two (2) months from today, and communicate his decision both to the revisional authority and to the petitioner herein. In case the Commissioner (CT) exercises his discretion under Section 32(5) of the Act, to defer revisional proceedings, the Deputy Commissioner (CT) shall await the decision, in the batch of writ petitions pending on the file of this Court, and only thereafter take up revisional proceedings for hearing and disposal in accordance with law. In case the Commissioner (CT), for just and valid reasons, rejects the request for the revisional proceedings to be deferred, it is open to the Deputy Commissioner (CT), thereafter, to pass a revisional order in accordance with law. Needless to state that, in case the petitioner's request for deferment is rejected by the Commissioner (CT), it is always open to the petitioner to avail their judicial remedies against any such order passed by the Commissioner (CT).

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

21st August, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.29569 of 2018

Date: 21.08.2018

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