THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

<u>Writ Petition No.30417 of 2018</u>

<u>ORDER</u>: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, and Sri S.Suri Babu, Learned Special Standing Counsel for Commercial Taxes, and, with their consent, this Writ Petition is disposed of at the stage of admission.

The proceedings, under challenge in this Writ Petition, is the assessment order passed in Form VAT 305 dated 27.02.2018 assessing the petitioner to tax for the four year tax period 2012-13 to 2015-16. It is not in dispute that the petitioner is a dealer registered on the rolls of the Commercial Tax Officer, Peddapally, Karimnagar District; and prior to bifurcation of the erstwhile State of Andhra Pradesh on 02.06.2014, it is only the Commercial Tax Officer, Peddapally who had jurisdiction to assess the petitioner to tax. After bifurcation of the State, the petitioner obtained registration from the Commercial Tax Officer, Steel Plant Circle, Visakhapatnam, and, in so far as their sales turnover in the State of Andhra Pradesh is concerned, the 2nd respondent could have assessed them to tax for a part of the tax period of 2014-15, and for the entire tax period 2015-16. To the extent the 2nd respondent assessed the petitioner to tax, for the tax period 2012-13 and 2013-14, the impugned assessment order is without jurisdiction, and is liable to be set aside. In so far as the impugned assessment order dated 27.02.2018, relates to the tax period 2014-15 and 2015-16, since the erstwhile State of Andhra Pradesh was bifurcated only on 02.06.2014, the petitioner could not have been assessed to tax for the period prior thereto i.e. from 01.04.2014 to 02.06.2014 as the 2nd respondent lacked jurisdiction to pass an assessment order, and it is only the 4th respondent who could have assessed the petitioner to tax under the VAT Act, even for this tax period of around two months.

While the 2nd respondent claims to have issued a show-cause notice on 27.11.2017 and 14.12.2017, the petitioner claims not to have received a copy thereof. The fact, however, remains that the proceedings of the 2nd respondent, calling upon the petitioner to avail the opportunity of a personal hearing, vide letter dated 02.02.2018, was received by the petitioner who, by their e-mail dated 06.02.2018, sought 30 days time to file their reply.

It is wholly unnecessary for us to examine whether the 2nd respondent-assessing authority could have passed the assessment order even without intimating the petitioner that he was not inclined to grant the 30 days time sought for by them, since it does appear that the assessment order, for the tax period 2012-13 to 2015-16, was passed because the assessment for the tax period 2012-13 and 2013-14 would be barred by limitation by the end of March, 2018.

As noted hereinabove, the 2nd respondent lacked jurisdiction to assess the petitioner to tax for the period 01.04.2012 to 02.06.2014, and it is only on the turnover, in so far as it relates to the sale of goods within the State of Andhra Pradesh, that they can be assessed to tax under the AP VAT Act. As the 2nd respondent has subjected the petitioner's turnover, in both the States of Telangana and Andhra Pradesh, to tax under the AP VAT Act, we consider it appropriate to set aside the assessment order, and give the petitioner an opportunity to submit their objections to the show-cause notice.

The impugned assessment order is set aside, and shall be treated as a show-cause notice to which the petitioner shall submit their reply within two weeks from today. In case the petitioner submits their reply within the aforesaid stipulated period, the 2nd respondent shall, after affording them an opportunity of an oral hearing, pass an assessment order afresh, for the tax period 02.06.2014 to 31.03.2016, in accordance with law. Suffice it to make it clear that, in case the petitioner fails to submit their reply to the show-cause notice within the aforesaid stipulated period of two weeks, it is open to the 2nd respondent to proceed and pass an assessment order afresh and in accordance with law.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

Date:27th August, 2018.

Note:
Issue C.C. by 31.08.2018.
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