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

Writ Petition No.41311 of 2014

ORDER: ***(per Hon'ble Sri Justice Ramesh Ranganathan)***

Heard Sri M.V.J. Kumar, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned Standing counsel for Commercial Tax (AP) and, with their consent, the Writ Petition is disposed of. The proceedings under challenge in the Writ Petition is the assessment order passed in Form VAT 305 dated 12.11.2014, for the tax period August, 2010 to March 2011, levying tax of Rs.3,25,79,535/- on the petitioner.

While the challenge in the Writ Petition is mainly to the validity of the deductions made in terms of Rule 17(1)(e) of the A.P. VAT Rules, Sri M.V.J. Kumar, learned counsel for the petitioner, would fairly state that, in the light of the law declared by a Division Bench of this Court in **GVPR Engineers Limited, Hyderabad v. The State of Telangana**[1] wherein the scope and ambit of Rule 17(1)(e) of the A.P. VAT Rules was examined, this contention must fail. Learned counsel would, however, submit that the assessment order is vitiated on several other grounds, one of which is that, while in terms of the earlier show-cause notice VAT of Rs.1,04,80,604/- was directed to be paid, the VAT payable under the assessment order is more than thrice the said amount, i.e for Rs.3,25,799,535/-. On instructions from the petitioner, Sri M.V.J.K. Kumar, learned counsel, undertakes that the petitioner would deposit the VAT due, as reflected in the show-cause notice, i.e for Rs.1,04,80,604/- with the Assessing Authority, within four

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weeks from today; and, instead of examining the petitioner's contention on merits, it would be more appropriate if, on such deposit being made by the petitioner, the assessment order is set aside, and the Assessing Authority is directed to pass an assessment order afresh and in accordance with law.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Tax, on instructions, would submit that, in case the petitioner deposits Rs.1,04,80,604/-, in terms of the undertaking furnished on their behalf by Sri M.V.J.K. Kumar, learned counsel, the Assessing Authority would examine the matter afresh and in accordance with law, except the contentions relating to Rule 17(1)(e) of the A.P. VAT Rules as this issue has been already decided in the Division Bench judgment of this Court referred to hereinabove.

We consider it appropriate, in such circumstances, to set aside the impugned assessment order and direct the petitioner to deposit Rs.1,04,80,604/- with the Assessing Authority within four weeks from today. On such deposit being made, the impugned assessment order shall be treated as a show-cause notice, to which the petitioner is entitled to submit their reply within three weeks of deposit of Rs.1,04,80,604/-. The Assessing Authority shall, after affording the petitioner an opportunity of a personal hearing, pass an assessment order afresh at the earliest, and in any event not later than three months from the date of receipt of a copy of this order. Needless to state that, in case the petitioner does not comply with the undertaking given to this Court and does not deposit Rs.1,04,80,604/- within four weeks from today, the impugned assessment order would automatically revive and it would be open to the respondents to proceed and take action against the petitioner, for recovery of the tax due in terms of the said assessment order, in accordance with law.

The Writ Petition is, accordingly, disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 17.09.2018
Furnish CC by tomorrow.
(BO)
BSS

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

URGENT
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W.P. No.41311 of 2014
(per Hon'ble Sri Justice Ramesh Ranganathan)

Date: 17.09.2018

BSS