HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.32825 of 2018

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

This writ petition is filed seeking a writ of certiorari to call for the records relating to the endorsement dated 20.08.2018, passed by the 1st respondent, declining to exercise jurisdiction under Rule 60 of the A.P.Value Added Tax Rules, 2005 (for short "the Rules"); to declare the assessment order dated 18.01.2017, passed by the 1st respondent, as without jurisdiction; and to quash the penalty order in Form VAT 203 dated 12.04.2017 passed by the 1st respondent.

Dr. S.R.R.Viswanath, learned counsel for the petitioner, would fairly state that a separate writ petition would be filed questioning the order of penalty dated 12.04.2017; and it would suffice if this Court, while adjudicating the other reliefs, grants the petitioner liberty to file a separate writ petition questioning the validity of the order imposing penalty.

Liberty as sought for is granted and the Writ Petition, to the extent the relief of quashing the order of penalty is sought, is dismissed.

The assessment order is questioned in this writ petition as an order passed in violation of principles of natural justice. It is the petitioner's case that the 2nd respondent had earlier issued a notice calling upon the petitioner to show cause why he should not be subjected to enhanced tax for the tax period 2009-10 to 2013-14; pursuant thereto, the petitioner submitted their books of accounts; the 2nd respondent (arrayed *eo nominee* as the 3rd respondent in the writ petition) was placed under suspension; in the meanwhile, the Commercial Tax Officer issued a notice for the very same tax period calling upon the petitioner to show cause why enhanced tax should not be levied on them; and, thereafter, an assessment order was passed.

The petitioner filed an application, under Rule 60 of the Rules, seeking rectification of the said order on the ground that the assessment order was passed, even without verification of the books of accounts, which were available with the 2nd respondent. By his endorsement dated 20.08.2018, the 1st respondent acknowledged the fact that the dealer had submitted documents like TDS and TCS certificates, work orders and the endorsement, for the tax period, before the 2nd respondent. On the technicality, that all such contentions cannot be examined in proceedings under Rule 60 of the Rules, the 1st respondent dismissed the petitioner's application for rectification.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that, while the books of accounts were with the 2nd respondent, the 1st respondent was unaware that the books of accounts had been made available by the petitioner to the Department; and, instead of keeping the writ petition pending on the file of this Court and granting stay, it would suffice if the assessment order dated 18.01.2017 is set aside; and the matter is remanded to the Commercial Tax Officer to pass an assessment order afresh.

Dr. S.R.R. Viswanath, learned counsel for the petitioner, would submit that, except for one file containing TDS and TCS certificates for the year 2011-12, all the other records have been returned to the petitioner; and the available record would be placed before the 1st respondent on any day which he fixes for hearing. Learned counsel would seek a direction to the 2nd respondent to return the file retained by him.

As it is not known whether the file, for the tax period 2011-12, is still available with the 2nd respondent, suffice it if, on the day fixed for hearing, the petitioner produces the records available with him; and satisfies the 1st respondent that the tax proposed, in the show cause notice, should not be levied on him. The 1st respondent shall ascertain, from the office of the 2nd respondent, whether the file for the tax period

2011-12 is available with them and, in case it is so available, to summon them for verification and examination on the day fixed for hearing. If, on the other hand, this file is not available in the office of the 2nd respondent, the petitioner shall be intimated, of the file not being available, before the date fixed for hearing.

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)

14th September, 2018
JSU

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.32825 of 2018

Date: 14.09.2018

JSU