THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

T.R.E.V.C.NO.42 OF 2018

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

Heard Sri S.Dwarakanath, learned counsel for the petitioner and Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial taxes and, with their consent, the revision is disposed of at the stage of admission.

This Revision, under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 ("the APGST Act" for brevity), is preferred against the order passed by the Telangana Value Added Tax Appellate Tribunal, Hyderabad in T.A.No.15 of 2017 dated 03.07.2018 dismissing the appeal preferred by the petitioner herein against the order passed by the Appellate Deputy Commissioner in her order dated 09.11.2016.

The dispute, in the present case, arises under the A.P. Tax on Entry of Goods into Local Areas Act, 2001 ("the Entry Tax Act" for brevity). The assessing authority passed an assessment order, for the assessment year 2003-04, on 30.03.2007. The said order is said to have been served on the petitioner on 26.11.2007. Among the several contentions, which the petitioner urged before the Appellate Deputy Commissioner, was that the assessment was barred by limitation as it was passed more than three years from the end of the assessment year; and the assessment order was ante-dated only to overcome limitation. However, a month after the assessment order is said to have been served on the petitioner, the Act itself was struck down, as ultra vires the Constitution, by a Division Bench of this Court by its order dated 31.12.2007. Aggrieved thereby, the State carried the matter in appeal to the Supreme Court. While the petitioner herein had preferred an appeal to the Appellate Deputy Commissioner in 2007 itself, the said appeal was disposed of by order dated 09.11.2016 just two days prior to the judgment of the Supreme Court dated 11.11.2016 in **Jindal Stinless Ltd., Anr. v. State of Haryana & Ors.,**[1]. The Appellate Deputy Commissioner had set aside the assessment order on the ground that the Act itself had been struck down by the Division Bench of this Court in **Sree Rayalaseema Alkalies & Allied Chemicals Ltd. & Others v. State of Andhra Pradesh & Others**[2]**.** While setting aside the assessment order, the Appellate Deputy Commissioner observed that, in view of the pendency of the S.L.P. before the Supreme Court, the assessing authority should take appropriate action as per the outcome of the S.L.P. including interim direction, if any, in the matter.

The grievance of Sri S.Dwarakanath, learned counsel for the petitioner, is that, since the assessment order was set aside on the ground that the Act itself had been struck down by the Division Bench of this Court in **Sree Rayalaseema Alkalies & Allied Chemicals Ltd.**[2], and since the order of the Division Bench has now been reversed by the Supreme Court in **Jindal Stinless Ltd.**[1], the assessing authority may take up assessment afresh, in which event the petitioner's contention that the earlier

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[1] **(2017)12 SCC 1**
[2] **46 APSTJ 1**

assessment is barred by limitation would no longer be available to be raised.

While contending that it is not the limitation period of three years which is applicable, but the extended period of limitation of six years which is attracted, Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, would fairly state that this question has not been examined by the Appellate Deputy Commissioner; and it would suffice if both the orders of the Tribunal and the Appellate Deputy Commissioner are set aside; and the matter is remanded to the Appellate Deputy Commissioner for his consideration afresh in accordance with law.

Both the order under revision passed by the Tribunal in T.A.No.15 of 2017 dated 03.07.2018, and the order of the Appellate Deputy Commissioner dated 09.11.2016, are set aside and the appeal before the Appellate Deputy Commissioner stands restored. Since setting aside the order of the Appellate Deputy Commissioner would result in revival of the earlier assessment order, suffice it to protect the interests of the petitioner if the Appellate Deputy Commissioner is directed to dispose of the petitioner’s appeal, preferred against the assessment order, within two months from the date of receipt of a copy of this order, after giving the petitioner an opportunity of oral hearing. Till orders are finally passed by the Appellate Deputy Commissioner, the respondents shall not take any coercive steps for recovery of the entry tax in terms of the assessment order.

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

(RAMESH RANGANATHAN, J)

(D.V.S.S.SOMAYAJULU, J)

24th October 2018
RRB