HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

<u>WRIT PETITION No.18334 of 2018</u>

<u>ORDER</u>: *(per V. Ramasubramanian, J)*

Aggrieved by the dismissal of an appeal filed by the petitioner before the appellate Deputy Commissioner (Commercial Taxes), the dealer under the Telangana Value Added Tax Act, 2005, has come up with the above Writ Petition.

2. Heard Mr.G.Narendra Chetty, learned Counsel for the petitioner and Mr.J.Anil Kumar, learned Special Standing Counsel for the respondents.

3. The petitioner is aggrieved by the impugned Order on two grounds viz., a) that his objection relating to limitation was not considered, and b) that the clauses in the agreement between the petitioner and the Indian Oil Corporation were not taken into account to see whether there was a transfer of the right to use.

4. The contention of Mr.J.Anil Kumar, learned Special Standing Counsel, is that the case would fall under the category of evasion of tax and hence extended period of limitation would apply. Insofar as the other aspect is concerned, the contention of the learned Special Standing Counsel is that there was a failure on the part of the petitioner to establish his case on the basis of the clauses contained in the agreement.

5. But unfortunately, the submissions made by the learned Special Standing Counsel are not borne out by the Order impugned in the Writ Petition. Therefore, we are of the considered view that the appellate Deputy Commissioner has not taken note of crucial issues before coming to the conclusion that the appeal deserved to be dismissed. Therefore, the matter requires re-consideration by the appellate Deputy Commissioner.

6. Hence, the Writ Petition is allowed and the Order of the appellate Deputy Commissioner impugned in the Writ Petition is set aside. The matter is remanded back to the appellate Deputy Commissioner to consider all issues including the issue of limitation and the issues revolving around the clauses contained in the agreement.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 11, 2019
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