THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.7222 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed against the order, dated 07.02.2015, passed in CCT's Ref. No.LII(2)/5/2015 by the Additional Commissioner (Commercial Taxes) (Legal), refusing to grant interim order pending disposal of the appeal filed by the petitioner before the Sales Tax Appellate Tribunal.

Petitioner is running a Hotel and is registered under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act') on the rolls of Assistant Commissioner (Commercial Taxes) (FAC) LTU, Chittoor. For the tax period 2012 – 13, records of the petitioner were audited and the assessment order, dated 13.06.2013, was passed raising demand of Rs.4,85,761/-. Aggrieved by the same, petitioner carried the matter by way of an appeal before respondent No.2 – appellate Tribunal. Pending disposal of the appeal, petitioner filed an application before the Additional Commissioner (Commercial Taxes) (Legal) for grant of stay of collection of disputed tax. By impugned order, dated 07.02.2015, the Additional Commissioner

(Commercial Taxes) (Legal) has refused to grant interim order.

The assessing authority, in his order, disallowed the input tax credit of Rs.4,85,761/- on the purchase of LPG on the ground that LPG is covered by the negative list under Rule 20 (2) (q) of Andhra Pradesh Value Added Tax Rules, 2005 (for short, 'APVAT Rules'), and as such, no input tax credit can be claimed on the purchase of LPG, but it is the case of the petitioner that such denial of input tax credit is incorrect, as it is not included in Rule 20 (2) (q) of APVAT Rules.

With reference to the merits of the matter, in view of the pendency of appeal before the appellate Tribunal, it is for the appellate Tribunal to consider the same. Petitioner has stated that in view of the third proviso to Section 33(2) of APVAT Act, he has paid an amount of Rs.2,42,881/- by way of Demand Draft towards 50% of the disputed tax.

In view of the pendency of appeal before respondent No.2 and further, as the petitioner has already paid 50% of the disputed tax, we deem it appropriate to dispose of the Writ Petition with a direction to the respondents not to take any coercive steps to realise the balance 50% of tax as per the assessment order, dated 13.06.2013, till disposal of the appeal pending before respondent No.2. Respondent No.2 shall dispose of the appeal as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 20, 2015

MD