THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 20903 of 2015

ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This writ petition is filed seeking to quash the order of the 4th respondent, dated 19.03.2015, for the tax period from June 2010 to June 2012, and also to restrain the respondents from taking coercive steps for recovery of the disputed balance tax of Rs.2,88,380/-, which is Value Added Tax (VAT) liability on service tax, pending disposal of the appeal in T.A.No.81 of 2014 before the A.P. VAT Appellate Tribunal, Visakhapatnam.

2. The gist of the averments in the writ affidavit is that the petitioner is a firm engaged in Hotels and Hospitality business and is a registered dealer on the rolls of the 1st respondent, under the A.P.VAT Act, 2005. The 2nd respondent made assessment order dated 05.03.2013 raising a demand of Rs.11,74,469/-. In the said assessment, the petitioner's claim of input tax credit of Rs.5,70,528 on LPG was disallowed, and a VAT of Rs.5,76,761 was levied on the Service Tax. Aggrieved by the assessment order, the petitioner preferred an appeal before the 3rd respondent-Appellate Deputy Commissioner. The appellate authority remanded the matter to the 2nd respondent with regard to the aspect of

disallowance of input tax credit on LPG, but however, upheld the VAT liability on Service Tax. Questioning the VAT liability on Service Tax, the petitioner approached the A.P. VAT Appellate Tribunal, Visakhapatnam, by way of an appeal wherein a pre-deposit of 50% of the disputed Tax was also made. During the pendency of appeal before the Tribunal, the 1st respondent issued proceedings dated 14.11.2014, demanding the petitioner to pay Rs.2,88,380/- being the balance of VAT liability on service tax. Consequent to the proceedings dated 14.11.2014, the petitioner sought stay of collection of disputed tax. The 4th respondent dismissed the stay petition vide proceedings dated 19.03.2015. Alleging that the dismissal of stay petition is without application of mind by the 4th respondent and contending that the order of the Sales Tax Appellate Tribunal in the case of M/s Cyberabad Conventions Centre (T.A.No.139 of 2013) wherein the Sales Tax Appellate Tribunal had held that service tax collected from the customers would not form part of taxable turnover, is binding on the 4th respondent, the petitioner is before this Court seeking the reliefs stated supra.

3. Admittedly, an appeal questioning the VAT liability on service tax is pending before the A.P. VAT Appellate Tribunal. The subject matter is whether VAT can be levied on service tax component or not. *Prima facie,* considering the fact that the Hyderbad Bench of the Sales Tax Appellate Tribunal had taken a view that VAT cannot be levied on the service tax component, we are inclined to stay the collection of disputed

balance tax of Rs.2,88,380/-, till disposal of the appeal by the A.P VAT Appellate Tribunal.

4. Accordingly, the writ petition is disposed of. No costs. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

14th July, 2015

ksm

HON'BLE SRI JUSTICE G. CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 20903 of 2015

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