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

WRIT PETITION No.6817 of 2015

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

The petitioner has filed the writ petition seeking the following relief:

> "….. Writ of Mandamus setting aside the impugned JC order No.43/2015, dated 20.2.2015 passed by the 2nd respondent denying the stay of recovery of disputed tax and the consequential recovery notice dated 2.3.2015 issued by the 1st respondent directing the petitioner to pay the disputed tax of Rs.39,35,242/- for the period from November, 2012 to March, 2013 as illegal, arbitrary, violative of principles of natural justice and consequently restrain the respondents from recovering from the petitioner a sum of Rs.39,35,242/- ….."

2. The petitioner is engaged in the business of manufacture of Drugs and Medicines and is making intra-State sales of the said goods. It is a registered dealer on the rolls of the 1st respondent-Commercial Tax Officer, Hyderabad, with TIN No.28130194772. The 3rd respondent-Assistant Commissioner, Saroornagar Division, Hyderabad, has passed assessment order vide A.O.No.33218, dated 11.4.2014, determining the tax payable by the petitioner at Rs.39,53,242/- under the VAT Act, 2005 for the period from November, 2012 to March, 2013. The dispute is with regard to the goods viz., dental creams and dental rinses/mouth washes cannot be treated as drugs and medicines covered by Entry 88 of

Schedule IV of A.P. VAT Act, 2005 and thereby proposed to levy tax at 14.5% as per Schedule-V of the Act. Aggrieved by the said assessment order, after pre-deposit of 12.5% of the disputed tax, the petitioner has preferred an appeal before the 5th respondent-Appellate Deputy Commissioner, Hyderabad Rural Division, Hyderabad. Pending the appeal, as the application filed by the petitioner for interim stay of collection of disputed tax was rejected by the 5th respondent vide order dated 15.10.2014, the petitioner has preferred a revision before the 2nd respondent-Joint Commissioner (CT) II, Hyderabad, who, inturn, has confirmed the same vide impugned JC order No.43/2015, dated 20.2.2015. Hence, the present writ petition.

3. Heard learned counsel for the petitioner as well as the learned Special Standing Counsel for Commercial Tax and perused the impugned order dated 20.2.2015 and the consequential recovery notice dated 2.3.2015.

4. As the appeal filed by the petitioner against the assessment order dated 11.4.2014 is pending before the 5th respondent-Appellate Deputy Commissioner, we are not inclined to go into the merits of the case and record a finding. In view of the pendency of appeal and having regard to the facts and circumstances of the case, we deem it appropriate to dispose of the writ petition directing the respondents not to take any coercive steps for recovery of disputed tax on condition of the petitioner

depositing 1/3rd of the disputed tax before the 5th respondent within a period of six weeks from today. It is made clear that 1/3rd of the disputed tax includes 12.5% tax, which has already been deposited before the 5th respondent-Appellate Deputy Commissioner, Hyderabad, as a condition precedent for filing an appeal. The 5th respondent is directed to dispose of the appeal by passing appropriate orders in accordance with law as expeditiously as possible, preferably within a period of four months from today.

5. Subject to the above directions, this writ petition is disposed of, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

17.03.2015.
Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND

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