THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

<u>WRIT PETITION NO.40152 OF 2015</u>

<u>ORDER:</u> {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The petitioner has invoked the jurisdiction of this Court against the order passed by the Additional Commissioner, CT (Legal), Hyderabad dated 19.10.2015 rejecting the petitioner's application for grant of stay pending appeal before the Appellate Deputy Commissioner.

Facts, to the limited extent necessary, are that the petitioner executes works contracts. They were assessed to tax for the period from 01.04.2012 to 31.03.2013. An assessment order was passed on 17.06.2015 assessing the petitioner to tax for Rs.5,24,07,212/- and, after adjusting the tax paid by way of DDs, challans and tax deducted at source totalling to Rs.4,99,21,539/-, the petitioner was called upon to pay tax of Rs.24,85,673/-. The case of the petitioner is that they had sub-contracted the entire work, in respect of the subject commercial complex, to a VAT dealer at Hyderabad by name M/s. Glass Wall Systems India Pvt. Ltd.

Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would submit that, while the liability to pay tax on the executed works contracts is on the petitioner as the main contractor, they had, by oversight, paid the entire tax to the sub-contractor who, in turn, had paid tax to the Government.

Attention of this Court is drawn to the assessment order dated 15.07.2015, passed with respect to the sub-contractor for the tax period 2012-13, which records that tax of Rs.45,31,858/- was paid by the
sub-contractor.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would, however, point out certain variations in the turnover disclosed by the petitioner in its returns, and the turnover disclosed by the sub-contractor. He would further contend that since the liability is that of the petitioner, they cannot claim the benefit of the amount, if any, paid by the sub-contractor, as VAT.

The fact remains that the sub-contractor appears to have paid a sum of Rs.45,31,858/- which, according to Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, is the tax paid towards the sub-contract entrusted by the petitioner in their favour. As the order of the Additional Commissioner, which is subject to challenge in these proceedings is only an order refusing to grant stay pending disposal of the appeal by the Appellate Deputy Commissioner, we consider it appropriate to direct that, pending disposal of the appeal before the Appellate Deputy Commissioner, the petitioner shall pay 50% of the tax demanded within four (4) weeks from today. They shall, however, be give credit for the 12.5% tax paid by them for the appeal to be entertained by the Appellate Deputy Commissioner.

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

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

10th December 2015

RRB