THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.32987 OF 2015

O R D E R (Per GC,J)

Heard the learned counsel for the petitioner and the learned Government Pleader for Commercial Taxes.

2. The petitioner – firm, which is being represented by its proprietor, is engaged in the business of purchasing and selling various grocery items. The Regional Vigilance and Enforcement Officer, Anantapuram inspected the business premises of one M/s Gontla Brothers, Dharmavaram and found that they are dealers of ITC products viz., cigarettes, gulabjam, agarbathies, match boxes, bingo, confectionaries etc. On verification of books of accounts and VAT returns with reference to the sale bills issued for the said firm during the period from 2009-10, 2010 – 11 and 2011-12, it was found that, it effected sales to the present writ petitioner, which purchased cigarettes by paying huge cash. Therefore, the 2nd respondent – Commercial Tax Officer, issued notice and the petitioner filed reply and by assessment order dated 26.8.2014, the petitioner was found guilty of the offences under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 and was also imposed tax. Aggrieved by the same, petitioner filed appeal before the 3rd respondent - Appellate Deputy Commissioner (CT)

Legal, and by order dated 12.3.2015 in Appeal No.34/2014-15(ATP), the appeal was dismissed. The petitioner filed further appeal before the APVAT Appellate Tribunal. Pending the appeal, the petitioner filed stay petition before the 4th respondent – Additional Commissioner. By order dated 23.9.2015 the Additional Commissioner rejected the stay petition mainly on the ground that the petitioner has not produced any evidence to show that appeal is pending before the appellate Tribunal under Section 33 of the Act. Aggrieved by the rejection of stay petition, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner had already deposited fifty percent of the disputed tax for maintaining the appeal and though the petitioner has brought to the notice of the 4th respondent the number of the appeal as T.A.No.60/2015 and furnished copies of Form 'C', without considering them, the stay petition has been rejected. Before this court, the petitioner also filed a better affidavit in WPMP.No.43513/2015 in W.P.No.32987/2015 bringing to the notice of this court, the number of the appeal filed before the Tribunal and the payment of fifty percent of the disputed tax. The learned Government Pleader has also not disputed these facts.

4. In view of the above facts and circumstances, the WPMP.No.43513/2015 in WP.No.32987/2015 is ordered. As the appeal filed by the petitioner in T.A.No.60/2015 is

pending on the file of the Tribunal and as the petitioner has already paid fifty percent of the disputed tax pending the appeal, without going into other merits of the case and as the stay petition was rejected mainly on the ground that no evidence was produced with regard to pendency of appeal, we are inclined to grant stay of collection of balance of the disputed tax.

5. For the foregoing reasons, the impugned order dated 23.9.2015 passed by the Additional Commissioner is set aside and pending the appeal in T.A.No.60/2015 on the file of APVAT Appellate Tribunal, there shall be stay of collection of balance of the disputed tax and the Tribunal shall dispose of the appeal in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ petition is accordingly disposed of. No costs.

9. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA

RAM,J

DATE:26.10.2015

AVS