HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P. No. 20005 of 2015

DATE: 10.07.2015

Between:

M/s. GSL Coal Sales Pvt. Ltd. .. Petitioner

and

The Commercial Tax Officer
and five others .. Respondents

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O R D E R:- (per Hon'ble Sri Justice Challa Kodanda Ram)

The issue involved in this writ petition is whether the petitioner is liable to pay penalty with respect to transportation of Ready Mix Concrete.

The brief facts of the case are that the 1st respondent-Commercial Tax Officer, consequent upon passing of the Assessment Order confirming the proposals made in the Notice of assessment to levy VAT, issued Notice of Penalty in Form VAT 203A proposing to impose penalty on the petitioner for the period from 2009-10 to 2010-2011 (up to 30.09.2010). Being aggrieved by the Notice of Penalty, the petitioner filed objections, however, the 1st respondent without considering the objections confirmed the penalty as proposed in the Notice of Penalty and issued Order dated 28.01.2013 imposing penalty on the petitioner. When the petitioner filed an appeal against the order of penalty along with an application seeking stay of recovery of penalty, the 3rd respondent- Appellate Deputy Commissioner dismissed the stay application, against which, the petitioner preferred a Revision Application along with a petition seeking stay of recovery of the penalty. Now, the main grievance of the writ petitioner is that the 2nd respondent-Joint

Commissioner (CT), without considering the submissions made by the petitioner, rejected the application for stay by order dated 02.04.2015, and consequently, the 1st respondent-Commercial Tax Officer issued Arrear Notice dated 18.05.2015 demanding the petitioner to pay the penalty. Challenging the order of rejection of stay and consequential demand of penalty, the present writ petition is filed seeking appropriate directions.

The learned counsel for the petitioner has submitted that pending consideration of the appeal before the 3rd respondent, the petitioner paid 1/3rd of the demanded penalty. It is further submitted that the 2nd respondent, without assigning any reasons, rejected the application for stay by merely extracting the arguments of the petitioner and there is total non-consideration of the contentions raised by the petitioner as to why the stay of collection of balance disputed penalty could not be granted. It is also submitted that this Court, on earlier occasions, considered grant of absolute stay in other writ petitions wherein similar issue is involved, and prays that the case of the petitioner may be considered for grant of stay of recovery of balance disputed penalty.

Having considered the submissions of the learned counsel for both the parties and considering the fact that this Court has already entertained writ petitions by granting absolute stay in respect of cases where assessment orders relating to similar issue have been challenged and in view of the fact that the petitioner has already deposited 1/3rd of the disputed penalty, and also the very liability of the penalty is in issue, we deem it appropriate to dispose of the writ petition with the following direction:

> "There shall be stay of collection of balance amount of the disputed penalty pending disposal of the appeal preferred by the petitioner before the 2nd respondent-Joint Commissioner (CT). However, it is made clear that in the event the revision application is decided against the petitioner, the petitioner is liable to pay interest thereon as per the Andhra Pradesh Value Added Tax Act, 2005".

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel to the disposal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

10.07.2015

CHALLA KODANDA RAM,J

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