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

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WRIT PETITION No.3147 OF 2015

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

This Writ Petition is filed seeking a direction by way of Mandamus to declare the order, dated 04.11.2014, passed by respondent No.1 rejecting the request for granting stay of collection of disputed tax, pending disposal of appeal before the Appellate Deputy Commissioner (Commercial Taxes), as illegal and arbitrary.

Petitioner is a registered dealer under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act'), on the rolls of respondent No.4. On the strength of authorisation given by the Joint Commissioner (CT) Enforcement – I, respondent No.3 has issued show-cause notice to the petitioner proposing to raise additional demand of Rs.68,54,015/- for the tax period from July, 2010 to October, 2012, by disallowing certain claims of the petitioner. Pursuant to the same, petitioner has filed its objections. Thereafter, the assessing authority has passed order, dated 28.05.2014, demanding balance tax of Rs.57,62,905/-. Aggrieved by the same, petitioner carried the matter by way of an appeal before the Appellate Deputy Commissioner (Commercial Taxes) by depositing 12.5% of the balance tax, which is a condition precedent for filing the appeal, along with a petition to stay collection of disputed tax, but the Appellate Deputy Commissioner (Commercial Taxes) rejected the stay petition. Aggrieved by the same, the petitioner has approached the Joint Commissioner (Commercial Taxes) – II for grant of stay of collection of disputed tax. By impugned order, dated 04.11.2014, the Joint Commissioner (Commercial Taxes) – II has dismissed the stay petition by relying on the Advance Ruling, dated 16.03.2011, given by the Authority for Clarification and Advance Rulings.

In this Writ Petition, it is submitted by the learned counsel for petitioner that certain objections raised by the petitioner were not considered in proper perspective and this Court, by order, dated 07.07.2011, passed in W.P.MP.No.19994 of 2011 in W.P.No.16649 of 2011, has suspended the order of the appellate Tribunal confirming the order of the Advance Ruling Authority, dated 16.03.2011. It is further submitted that in view of the provision under Section 7-A of the APVAT Act, sales made to the dealers in Special Economic Zone Units are exempted from tax and in spite of the same, the assessment order was passed raising huge demand. It is further submitted that similar matters are pending before this Court and interim orders are passed therein.

In view of the objections raised by the petitioner and further, in view of the pendency of the appeal before the Appellate Deputy Commissioner (Commercial Taxes), it is not necessary to keep this matter pending before this Court. As it is stated that the impugned order was passed by relying on Advance Ruling given by the Authority for Clarification and Advance Rulings in the case of M/s. Sarojini Engineering Works, Visakhapatnam, and as various issues are required to be considered by the Appellate Deputy Commissioner (Commercial Taxes), before whom the appeal is pending, we deem it appropriate to dispose of the Writ Petition with a direction to the respondents not to take any coercive steps to realise the balance tax payable by the petitioner, pending disposal of the appeal before the Appellate Deputy Commissioner (Commercial Taxes). Further, the Appellate Deputy Commissioner (Commercial Taxes) is directed to dispose of the appeal as expeditiously as possible, preferably within a period of four (4) months from today.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA

RAO, J

February 20, 2015

MD