

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 17797 of 2015

ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

Though in the writ petition, constitutional validity of Section 51(1) of the A.P. Value Added Tax Act, 2005, is questioned, learned counsel for the petitioner submits that, at present, he would not desire to press the same as the petitioner/dealer has already filed an appeal before the appellate Deputy Commissioner, and desires to pursue that appeal.

2. In that view of the matter, the only issue which requires consideration is the refusal to grant stay, pending appeal before the 2nd respondent. The 2nd respondent rejected the stay application filed by the petitioner by order dated 25.05.2015. Considering the fact that the petitioner had already paid the tax amount and penalty with interest and also the delay is only sixteen days, there is some element of merit in the argument of the learned counsel for the petitioner which is required to be considered by the appellate Deputy Commissioner. Inasmuch as the demand itself is not tax but penalty, and as pre-condition for the appeal, the petitioner has already paid 12.5% of the disputed amount, the 2nd respondent ought to have exercised discretion in granting stay. Further, we find that no reasons were mentioned in the order dated 25.05.2015 for refusal, or even otherwise the petitioner's case is entitled to be considered on merits. Hence, in the facts and circumstances of the present case, we deem it appropriate to stay the collection of balance amount, pending disposal of the appeal by the appellate Deputy Commissioner.

3. Accordingly, the writ petition is disposed of by giving liberty to the petitioner to raise all the contentions before the appellate Deputy Commissioner. It is made clear that we are not making any opinion with respect to Section 51(1) of the A.P. Value Added Tax Act, 2005, and are leaving the issue open for consideration in appropriate proceedings. No costs. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

03rd July, 2015

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