HON'BLE SRI JUSTICE G.CHANDRAIAH

&

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 32000 of 2015

DATE: 01.10.2015

Between:

M/s. B.N.R. Constructions .. Petitioner

And

State of A.P.
and three others .. Respondents

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

The petitioner has filed an appeal before the Sales-Tax Appellate Tribunal, Hyderabad in T.A.No. 145 of 2010 against the Order dated 04.02.2009 passed by the 3rd respondent-Deputy Commissioner of Commercial Tax (Legal) revising the assessment order dated 04.04.2005 passed by the 2nd respondent-Commercial Tax Officer. Subsequently, on 15.08.2014, the petitioner has filed an application in Form XXII before the 4th respondent-Additional Commissioner of Commercial Taxes (Legal) seeking stay of collection of unpaid tax Rs.15,20,598/- consequent to the revisional order passed by the 3rd respondent. Now, the main grievance of the writ petitioner is that in spite of the fact that the petitioner paid 55% of the disputed tax and the appeal is pending adjudication, the 4th respondent, without considering this aspect, has rejected the application for stay on 17.07.2015. Hence, the present writ petition is filed seeking to set aside the order dated 17.07.2015 and grant stay of all further proceedings in pursuance of the revisional order dated 04.02.2009.

The learned counsel for the petitioner has contended that the impugned order is a non-speaking order and the same has been passed only on the ground that the revisional order passed by the 3rd respondent was received by the petitioner on 28.02.2009 and the application seeking stay has been made on 15.08.2014.

Heard the learned counsel for both the parties and perused the material placed on record.

It is not in dispute that the original assessment came to be made on 04.04.2005 for a taxable turnover of Rs.97,01,313/- on which a tax of Rs.7,76,105/- was levied, and on giving credit, balance tax payable is Rs.85,760/-. However, on account of the revision, the taxable turnover came to be determined as Rs.1,90,07,470/- on which tax due is levied at Rs.15,20,598/-. In normal circumstances, this Court, pending adjudication of the appeal, grants stay of collection of the tax on condition that the petitioner pays 50% of the disputed tax. In the instant case, as pointed out by the learned Government Pleader for Commercial Tax (A.P.), the disputed tax would come to Rs.7,44,493/- and the petitioner did not have any grievance with regard to the original assessment made on 04.04.2005, and in fact, he had paid the tax demand. Further, it may be noted that the petitioner had not preferred any appeal against the order dated 04.04.2005 as obviously he was not aggrieved by the assessment order. In that view of the mater, we are inclined to dispose of the writ petition with the following observation:

> "There shall be stay of collection of the balance disputed tax on condition that the petitioner deposits a sum of Rs.3,75,000/-, within a period of eight weeks from today."

With the above observation, this 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

01.10.2015

CHALLA KODANDA RAM, J

bcj