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.2663 OF 2015

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

This Writ Petition is filed seeking to direct respondent No.2 not to take any coercive steps in pursuance of the assessment order, dated 22.02.2014, passed in AO 9731, by the Commercial Tax Officer, Jubilee Hills Circle, Hyderabad – respondent No.4, pending disposal of appeal before the Telangana VAT Appellate Tribunal, Hyderabad.

Petitioner, a port trust, is a registered dealer under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'A.P.V.A.T. Act') on the rolls of respondent No.4. It has filed Form VAT 200 returns for the tax period from April, 2008 to March, 2013. After conducting audit, on the ground that taxable turnover was not properly shown for the purpose of assessment of tax, proceedings were initiated and the assessing authority, by order, dated 22.02.2014, passed in AO 9731, has assessed the under-declared VAT at Rs.12,07,97,534/-. Aggrieved by the same, petitioner carried the matter by way of an appeal before the Appellate Deputy Commissioner (Commercial Taxes), who, by order, dated 30.01.2015, has dismissed such appeal. Aggrieved by the same, petitioner preferred another appeal before the Telangana VAT Appellate Tribunal, Hyderabad, and the same is pending consideration. While so, as the Deputy Commercial Tax Officer is taking steps to realise the balance tax payable by the petitioner, the present Writ Petition is filed.

In this Writ Petition, it is submitted by Sri S. Ravi, learned Senior Counsel appearing for the petitioner, that out of the total under-declared tax of Rs.12,07,97,534/-, substantial portion of the tax was already paid and the balance tax payable by the petitioner is only Rs.4,32,97,534/-. It is further submitted that though several objections were raised in the assessment proceedings, they were not considered by the assessing authority as well as the first appellate authority, and the matter is pending consideration before the appellate Tribunal. It is further submitted that the activities of the petitioner cannot be termed as business as defined under Section 2 (6) of A.P.V.A.T. Act and further, the respondents have no jurisdiction to assess the tax payable by the petitioner.

On the other hand, it is submitted by the learned Advocate General appearing for the respondents that all the objections raised by the petitioner were considered by the assessing authority as well as the first appellate authority and hence, there are no grounds to issue any directions, pending disposal of the appeal before the appellate Tribunal. At the same time, it is fairly submitted by the learned Advocate General that out of the total under-declared tax of Rs.12,07,97,534/-, an amount of Rs.7,75,00,000/- was already paid by the petitioner and the balance tax payable is only Rs.4,32,97,534/-.

In view of the pendency of the appeal before the Telangana VAT Appellate Tribunal, Hyderabad, it is not desirable to go into the merits of the matter, but taking into account that out of the total under-declared tax, substantial portion of the tax was already paid by the petitioner and in view of the findings recorded by the first appellate authority, we deem it appropriate to dispose of the Writ Petition with a direction to the respondents not to take any coercive steps for realising the balance under-declared tax payable by the petitioner, on condition of petitioner depositing Rs.1,00,00,000/- (Rupees one crore) within a period of eight (8) weeks from today. Further, the appellate Tribunal is directed to dispose of the appeal as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order by giving an opportunity of hearing to the petitioner.

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 10, 2015

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