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.41014 OF 2014

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

This Writ Petition is filed by a registered dealer under Andhra Pradesh Value Added Tax Act, 2005 (for short, 'AP VAT Act') seeking to declare the action of respondent No.2 in rejecting the stay petition vide CCT's Ref.No.LII(2)/10/2014, dated 28.11.2014, as illegal and arbitrary and consequently, to set aside the same, and grant stay of collection of disputed tax of Rs.30,86,903/- pursuant to the order, dated 28.01.2013, passed by the Deputy Commissioner (Commercial Taxes), Nellore Division, Nellore – respondent No.3.

2. The petitioner is a Private Limited Company and is a registered dealer under AP VAT Act, 2005 on the rolls of Commercial Tax Officer – II Circle, Ongole, doing business in machinery and spare parts. For the tax period from February, 2010 to March, 2011, the assessing authority, by order, dated 21.07.2011, has determined the tax payable at Rs.72,264/- by giving exemption on the turnover of Rs.2,12,88,988/-. The said order of the assessing authority was revised by respondent No.3 by order, dated 28.01.2013, in exercise of powers conferred under Section 32 (2) of the AP VAT Act, withdrawing the

exemption granted by the assessing authority. The tax effect of the order, dated 28.01.2013, payable by the petitioner was Rs.30,86,903/-. As against the same, the petitioner has preferred a statutory appeal before respondent No.2 and sought interim stay of collection of the balance disputed tax of Rs.23,15,171/-. The appellate authority, by the impugned order, dated 28.11.2014, has rejected the stay petition.

3. Heard the learned counsel for petitioner and the learned Government Pleader for Commercial Taxes.

4. It is submitted by the learned counsel for petitioner that though the assessing authority has rightly given exemption on the turnover of Rs.2,12,88,988/-, respondent No.3 has withdrawn the same, without assigning any reason. It is further submitted that the petitioner is having sufficient material in support of the C - Forms to claim such exemption and the same would be produced at the stage of final hearing.

5. Inasmuch as the appeal preferred by the petitioner before the appellate authority is pending consideration, it is not desirable to go into the merits of the case. From a perusal of the order, dated 28.01.2013, it is clear that the tax effect on the petitioner is Rs.30,86,903/-. It is stated by the learned counsel for petitioner that as required under law, 25% of the disputed tax was already

paid before the appellate authority and the balance is Rs.23,15,171/-. As it is a case of withdrawal of exemption and further, in view of the claim of the petitioner, we are of the view that the matter requires examination by the appellate authority at the stage of final hearing. As the remedy availed by the petitioner is a statutory remedy of appeal, which is pending consideration before the appellate authority, we deem it appropriate to dispose of the Writ Petition with a direction to the appellate authority to dispose of the appeal as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. Further, the respondents shall not take any steps for recovery of balance amount, subject to condition of the petitioner depositing Rs.7,71,726/- within a period of four weeks from today. It is made clear that once such deposit is made, it is open to the respondents to take steps accordingly.

6. 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

19th January, 2015
MD