HONOURABLE SRI JUSTICE G. CHANDRAIAH

AND

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 35121 AND 35140 OF 2015

Dated 28th October, 2015.

BETWEEN

m/S. Fortune Kences Hotel,

Tirupathi, rep. by its Managing Director

Sri K.Prabhakar Reddy

….Petitioner in WP.No. 35121 of 2015

M/s. Bhimas Residency Hotels Limited,

Tirupathi, rep. by its Director

Sri K.V.Ranganathan

….Petitioner in W.P.No. 35140 of 2015

And

State of Andhra Pradesh, rep. by its Principal Secretary,

Rev (CT) Department, AP Secretariat, Hyderabad and ors.

…Respondents in both WPs

HONOURABLE SRI JUSTICE G. CHANDRAIAH

AND

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 35121 AND 35140 OF 2015

COMMON ORDER :(per Hon'ble Sri Justice CHALLA KODANDA RAM)

The orders dated 17.07.2015 passed by the Additional Commissioner of Commercial Taxes (Legal), Andhra Pradesh in refusing to grant stay pending disposal of appeals is challenged before us.

Heard learned Counsel for the petitioners and learned Special Government Pleader for taxes appearing for the respondents.

It is not in dispute that against the orders passed by the second respondent, the petitioners preferred respective appeals before the third respondent, who dismissed the same. Against the same, the petitioners preferred further appeals in T.A.No.132 of 2014 and 131 of 2014 respectively before the Sales Tax Appellate Tribunal and the same are pending adjudication. The common issue involved in these cases is that the Liquid Petroleum Gas (LPG) used by the dealer is being denied for in put tax credit on the ground that the same is hit by Rule 20 (2)(q) of the APVAT Rules, 2005.

Prima facie Rule 20 (2)(q) of the APVAT Rules has no application as the petitioners being hotels are not using LPG in the furnaces or boilers but the same is being used for cooking and for other purposes. This aspect of the matter is required to be considered and similar matters are pending consideration before the Sales Tax Appellate Tribunal. Considering the fact that in the similar cases stay on condition of the dealers paying 50% of the disputed tax has been granted, the Additional Commissioner ought to have extended the same benefit to the petitioners instead of driving the petitioners to this Court. It is stated by the petitioners that they have already paid 50% of the disputed tax.

Considering this fact, we are inclined to grant interim stay of collection of balance disputed tax pending disposal of the appeals by the Sales Tax Appellate Tribunal.

Subject to the above the Writ Petitions are disposed of Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed in consequence. No order as to costs.

JUSTICE G. CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

DATED 28TH OCTOBER, 2015.

Note: CC 3 three days

(BO) Msnrx