HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

<u>WRIT PETITION No.1458 of 2015</u>

<u>ORDER</u> : (Per Justice R. Subhash Reddy)

This writ petition is filed with the prayer which reads as under:

> "to issue a Writ, Order or direction particularly one in the nature of a Writ of Mandamus setting aside the impugned Order JC Order No.2/2015 dated 02.01.2015 passed by the 2nd Respondent denying the stay of recovery of disputed penalty and the consequential Recovery Notice dated 03.01.2015 issued by the 1st Respondent directing the Petitioner to pay the disputed penalty of Rs.21,03,564/- imposed on the Petitioner @ 25% on the alleged under declared VAT tax of Rs.84,14,257/- for the Assessment Year 2008-09 under Section 53(1)(ii) of the A.P.VAT Act, 2005 as without jurisdiction, bared by limitation, illegal, arbitrary, violative of principles of natural justice and consequently restrain the Respondents from recovering from the Petitioner a sum of Rs.21,03,564/- and pass such other order or orders".

2. Petitioner is a registered dealer under the provisions of the A.P.VAT Act, 2005 and is on the rolls of the Commercial Tax Officer, Somajiguda Circle, Abids Division, Hyderabad. Alleging that the petitioner/dealer has under-declared the turnover, the assessing authority has passed orders of assessment fixing the liability of tax on the petitioner at Rs.84,14,257/-. In view of the provision under Section 53(1)(ii) of A.P.VAT Act, 2005, separate orders are passed imposing penalty of Rs.21,03,564/- (25% of assessed amount) vide orders of Assistant Commissioner (CT)-III, dated 23.10.2010. Against the aforesaid orders, petitioner carried the matter by way of appeal before the appellate Deputy

Commissioner and sought interim orders to stay the collection of disputed tax. When the same was rejected, it was carried in revision before the Joint Commissioner of Commercial Taxes, which also ended in dismissal vide order dated 02.01.2015, passed in Order No.2 of 2015.

3. Heard learned counsel for the parties.

4. Though the learned counsel for petitioner has raised several contentions during the course of arguments, pointing out the infirmities in the order passed by the assessing authority, as much as the appeal filed by the petitioner is pending before the appellate Tribunal, we deem it appropriate to dispose of this writ petition directing the respondents not to take any coercive steps to realize the penalty on condition of petitioner depositing 50% of amount as per the penalty order dated 23.10.2010, within a period of four weeks from today. The appellate authority shall dispose of the matter after deposit of such 50% amount as referred above, as expeditiously as possible.

5. Subject to above directions, the writ petition is disposed of at the stage of admission. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

DR.B.SIVA SANKARA RAO, J

29th January 2015

ksh/ajr