HON'BLE SRI JUSTICE G.CHANDRAIAH

&

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.16905 OF 2015

ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

The order dated 23.04.2015 of the Additional Commissioner (CT) Legal, refusing to grant stay pending appeal is challenged before this Court.

Heard learned counsel for the petitioner and learned Government Pleader for the Commercial Taxes (A.P).

By assessment order dated 21.06.2011, the tax liability of Rs.14,81,594/- came to be fastened on the petitioner assessee, as against the same, the petitioner filed an appeal before the Appellate Deputy Commissioner and the Appellate Deputy Commissioner disposed of the same on 14.06.2012. The Appellate Deputy Commissioner, as a matter of fact, allowed the appeal with respect to certain items of the turnover and with respect to certain items of turnover, remanded the matter for verification and passing of appropriate orders.

Aggrieved by the orders of the Appellate Deputy Commissioner, the petitioner filed an appeal with the Sales Tax Appellate Tribunal and the same is pending. In the meanwhile, by orders dated 11.11.2014 the consequential order on remand came to be passed by the Commercial Tax Officer by giving effect to the order dated 14.06.2012 of the Appellate Deputy Commissioner. In the consequential order passed on 11.11.2014 finally a tax amount of Rs.14,22,286/- was determined as payable. As the department sought to enforce the consequential order dated 11.11.2014, the petitioner approached the Additional Commissioner (CT) Legal by filing stay petition contending that the total disputed tax is Rs.14,81,594/- and he had already paid 50% of the same and thereby sought for stay of collection of the balance amount of Rs.7,09,730/- pending disposal of the appeal by the Tribunal. The same was dismissed by the Additional Commissioner (CT) Legal by observing with a cryptic order 'I find no reasonable grounds to grant stay'.

Having considered the rival submissions and considering the fact that when the appeal is pending before the Tribunal and 50% of the demanded amount has already been paid, which is not in dispute, the Additional Commissioner (CT) Legal ought to have considered the prayer of the petitioner especially considering that the petitioner claims to be only an agent procuring the furnace oil which ultimately came to be supplied to the outgoing ship. If the contention of the petitioner is accepted that he is only an agent, who purchased the same on behalf of the ultimate purchasers i.e. the owners of the ship, there would not be any liability of the petitioner. As these aspects are required to be considered and considering the fact that 50% of the tax has already been paid, which is not in dispute, the prayer of the petitioner seeking stay is justified and rejection of the stay application by the authority without assigning any reasons cannot be sustained. In the consequential order dated 11.11.2014 though a final payment of Rs.14,22,286/- has been mentioned, subsequently by order dated 28.11.2014 the final payment which is payable has been mentioned as Rs.7.09.730/- thereby giving credit to the amount of Rs.7,12,556/- which has already been paid. In other words, the remaining amount in pending appeal is only Rs.7,09,730/-.

Accordingly, the writ petition is disposed of setting aside the order dated 23.04.2015 passed by the Additional Commissioner (CT) Legal and it may directed that there shall be stay of collection of the balance amount of the disputed tax pending disposal of the appeal. It is also made clear that in the event of the appeal being dismissed, the petitioner shall be liable to pay tax amount with proper interest in accordance with rules.

As a sequel, Miscellaneous Petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KONDA RAM, J

17.06.2014
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HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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W.P.NO.16905 OF 2015

DATE: 17.06.2015

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