HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 33441 of 2015

DATE: 09.10.2015

Between:

Pearl Beverages Ltd. .. Petitioner

And

1. Asst. Commissioner (CT)
2. Appellate Deputy Commissioner (CT)
3. Addl. Commissioner (CT)(Legal)
4. State of A.P. .. Respondents

O R D E R:- (per Hon'ble Sri Justice Challa Kodanda Ram)

Though in the writ petition, constitutional validity of Section 51(1) of the A.P. Value Added Tax Act, 2005, is questioned, the learned counsel for the petitioner submits that at present, he would not desire to press the same as the petitioner/dealer has already filed an appeal before the Appellate Deputy Commissioner and desires to pursue that appeal.

In that view of the matter, the only issue which requires consideration is the refusal to grant stay, pending appeal before the 2nd respondent – Appellate Deputy Commissioner. The 2nd respondent rejected the stay application filed by the petitioner by order dated 15.07.2015. Considering the fact that the petitioner had already paid the tax amount and penalty with interest and also the delay is only 15 to 29 days, there is some element of merit in the argument of the learned counsel for the petitioner which is required to be considered by the Appellate Deputy Commissioner. Inasmuch as the demand itself is not tax but penalty, and as pre-condition for the appeal, the petitioner has already paid 12.5% of the disputed penalty, the 2nd respondent ought to have exercised discretion in granting stay. Further, we find that no reasons were mentioned in the order dated 15.07.2015 for refusal, or even otherwise the petitioner's case is entitled to be considered on merits. Hence, in the facts and circumstances of the present case, we deem it appropriate to stay the collection of balance amount of penalty, pending disposal of the appeal by the Appellate Deputy Commissioner.

Accordingly, the writ petition is disposed of by giving liberty to the petitioner to raise all the contentions before the Appellate Deputy Commissioner. It is made clear that we are not making any opinion with respect to Section 51(1) of the A.P. Value Added Tax Act, 2005, and are leaving the issue open for consideration in appropriate proceedings. No costs.

As a sequel to disposal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

09.10.2015

CHALLA KODANDA RAM,J

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