THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.2498 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The proceedings under challenge in this writ petition is the order passed by the Additional Commissioner (Commercial Taxes) dated 17.10.2015 rejecting the petitioner's application for grant of stay pending disposal of their appeal before the A.P. Value Added Tax Appellate Tribunal, Visakhapatnam.

The petitioner was assessed to tax for the assessment year 2001-02 by proceedings of the Assessing Authority dated 29.01.2004. The Deputy Commissioner, by his proceedings dated 08.11.2007, revised the assessment under Section 20(2) of the A.P. General Sales Tax Act, 1957 (for short "the Act") and confirmed levy of tax @ 8% on the additional turnover of Rs.27,70,713/-. Aggrieved thereby, the petitioner carried the matter in appeal to the Tribunal, and the appeal is said to be pending as A.R.No.26 of 2015. The petitioner sought stay pending appeal, and the impugned order dated 17.10.2015 was passed by the 3rd respondent.

In the impugned order, the Additional Commissioner observed that the petitioner had contended that deduction towards income tax and sales tax were not given by the Revisional Authority; these deductions did not figure under Rule 6(2) of the APGST Rules, 1957 (for short "the Rules"); these deductions were not even analogous to the deductions mentioned in Clauses (a) to (l) of the Rules; they could not vary the incorporation value of the goods used in the works; they were mere statutory deductions imposing certain legal liabilities on the sellers/deemed sellers; they had the effect of only reducing the net consideration payable to the contractor; the dealer failed to file any objections before the Revisional Authority; they also did not furnish any details relating to the contentions raised for the first time before him; and the amount received by the contractor alone was taken as the measure of the turnover. The petitioner's application, for grant of stay, was rejected.

Sri S.Krishna Murthy, learned counsel for the petitioner, would submit that, as the petitioner has already made a pre-deposit of 25% of the disputed tax, pending disposal of the appeal before the Tribunal, this Court should grant stay. The scope of judicial review of such an order, in proceedings under Article 226 of the Constitution of India, is extremely limited. It is only when a clear case of an error apparent on the face of record is made out would this Court be justified in interfering with the matter. The order of the Additional Commissioner is a reasoned order. It cannot be said that it suffers from any perversity necessitating interference. Needless to state that the Tribunal shall decide the appeal on its own merits uninfluenced either by any observations made in the impugned order or in the order now passed by us. We see no reason, however, to interfere with the order passed by the Additional Commissioner refusing to grant stay pending disposal of the appeal by the Tribunal

Sri S.Krishna Murthy, learned counsel for the petitioner, requests six weeks time to pay the balance tax. We consider it appropriate, however, to permit the petitioner to pay the balance tax within four weeks from today failing which it is open to the respondents to initiate proceedings for recovery of the said amount in accordance with law.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:22.02.2016

JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

<u>W.P.No.2498 of 2016</u>

<u>Date:22.02.2016</u>

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