THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.1683 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This Writ Petition is filed questioning the order passed by the second respondent on 07.12.2015 rejecting the petitioner's stay application, for the assessment year 2008-09 under the CST Act, pending disposal of the appeal by the Telangana VAT Appellate Tribunal.

An assessment order was passed on 01.08.2011 granting the petitioner exemption under Section 5(3) of the CST Act on the basis of certain photostat copies of the counterfoils of the 'H' Forms produced by the petitioner. The assessing authority, thereafter, issued a show cause notice dated 30.05.2014 informing the petitioner that, a scrutiny of the assessment records, revealed that a turnover of Rs.4.61 crores was allowed basing on the declarations in Form 'H' which were filed without support of documentary evidence such as bill of lading, purchase order etc. The assessing authority however, by proceedings dated 12.09.2014, withdrew the earlier show cause notice observing that appropriate action has been initiated by the Deputy Commissioner (CT) under Section 32(2) of the A.P. VAT Act read with Section 9 of the CST Act.

The third respondent issued revision show cause notice dated 08.10.2014 calling upon the petitioner to show cause why the notarised copies of the 'H' forms should not be disallowed as being irregular; and why such 'H' Forms should not be rejected as the dealer had failed to file supporting documentary evidence like purchase orders, copies of invoice, transport documentation i.e., the bill of lading, air way bills etc. The petitioner filed their objections thereto by letter dated 22.09.2014. In his order dated 31.07.2015, the revisional authority observed that the petitioner had filed a letter before the CTO stating that three 'H' Forms were misplaced by him; he had sought exemption based on notarised photostat copies of the counterfoils of the 'H' Forms; during the course of personal hearing held on 29.11.2014, the petitioner was informed that the photostat copies of the counterfoils could not be accepted in the absence of the originals; the petitioner had, thereafter, filed a complaint before the Station House Officer, Mailardevpally Police Station on 01.12.2014 stating that these three 'H' Forms were lost on 29.12.2014 when their representative had collected the same from M/s. Kamala International, and was returning from Abids; in the complaint, it was stated that the forms were lost at Mailardevpally; it was a false complaint as, even according to the petitioner, the 'H' Forms were lost/misplaced even prior to 01.08.2011; the petitioner was aware that the complaint, lodged with the Police Station, was false, and was made only with the intention of obtaining fresh 'H' forms'; the Station House Officer had issued a certificate on 03.02.2015 stating that such forms were not traceable; in the meanwhile, M/s. Kamala International made a representation before the CTO on 04.12.2015 to issue fresh 'H' Forms in the place of the forms lost/misplaced; the application for duplicate 'H' forms to be furnished, should have filed before the CTO, Rajendranagar circle; and, instead, they filed the application before the Commercial Tax Officer, Nampally Circle only with the intention of obtaining 'H' Forms to claim exemption. The revisional authority rejected the 'H' forms, and subjected the turnover, of Rs.3.24 crores, to tax at 12.5%.

Aggrieved thereby, the petitioner carried the matter in appeal to the Tribunal in T.A.No.313 of 2015 which is said to be pending as on date. They filed an application, seeking stay, before the Joint Commissioner who, by his order dated 07.12.2015, rejected the petitioner's application. On perusal of the said order, it is evident that the said order is bereft of reasons. We were initially inclined to set aside the order, and to direct the second respondent to pass a reasoned order afresh. Sri V.Bhaskar Reddy, learned counsel for the petitioner, would, however, submit that no useful purpose would be served in remanding the matter to the second respondent as, invariably, applications for stay are being rejected by the respondent-authorities; instead, this Court should consider grant of stay pending disposal of the appeal; and, ordinarily, this Court would grant stay of recovery of the disputed tax, pending disposal of the appeal, on condition that the dealer pays 50% of the tax due after giving credit to the amount already paid.

While it may not be appropriate for us to make any observations on merits, as these are matters for examination by the Appellate Tribunal in T.A.No.313 of 2015 filed by the petitioner, we cannot also ignore the fact that the petitioner had lodged a complaint only after a personal hearing was given to them by the revisional authority; and they had falsely stated therein that the 'H' forms were lost only on 29.11.2014 when, even according to them, the documents were lost as early as in the year 2011.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would, however, contend that the complaint was lodged on wrong advise as police complaints are not, ordinarily, entertained for loss of certificates three years earlier. Be that as it may, these are all matters which the appellate Tribunal is required to consider. In the aforesaid circumstances, we consider it appropriate to direct the respondents not to take coercive steps for recovery of the disputed tax, pending disposal of the appeal before the appellate Tribunal, on condition that the petitioner pays 60% (sixty percent) of the disputed tax within six (6) weeks from today, after giving credit to any amount already paid in this regard.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

25^{th} January 2016

RRB