THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.13503 of 2016

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

Heard Sri A.K.Jaiswal, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P), and, with their consent, the writ petition is disposed of at the stage of admission.

The order under challenge in this writ petition is the order dated 17.11.2015 passed by the Additional Commissioner (CT) Legal, Hyderabad, rejecting the petitioner's application for grant of stay pending disposal of the appeal before the AP VAT Appellate Tribunal. The Deputy Commissioner (CT), Chittoor revised the assessment order passed by the Assistant Commissioner (CT), Chittoor for the period 2007-08, and levied tax under Section 4 (8) of the AP VAT Act on a turnover of Rs.4,85,56,000/- at 12.5% on the ground that the petitioner had transferred the right to use certain machinery like earth moving equipment, excavators, drilling equipment to its sister concern. By an elaborate order, the revisional authority, relying on several judgments of the Supreme Court and this Court, held that the very fact that the petitioner was paid fixed charges each month showed that there was transfer of the right to use the goods. The petitioner preferred T.A.No.265 of 2012 before the AP VAT Appellate Tribunal (for short 'the Tribunal'), against the order passed by the revisional authority. Sri A.K.Jaiswal, learned counsel for the petitioner, would submit that the substantive appeal, in T.A.No.265 of 2012, is still pending adjudication before the Tribunal.

The petitioner filed an application before the Additional Commissioner (CT), Legal, seeking stay of recovery of the disputed tax pending disposal of the appeal before the Tribunal. On the stay application being rejected, they have now invoked the jurisdiction of this

Court.

While the Additional Commissioner has passed an elaborate order on merits, and has come to the conclusion that there was a transfer of the right to use the machinery within the meaning of Section 4 (8) of the AP VAT Act, it would be wholly inappropriate for us to examine the contentions urged before us on merits, as the substantive appeal in T.A.No.265 of 2012 is still pending adjudication before the Tribunal. Ends of justice would be met if the respondents are directed not to take coercive steps for recovery of the disputed tax, pending disposal of the appeal before the Tribunal, on condition that the petitioner deposits 2/3rd of the disputed tax with the 1st respondent within six weeks from today. The petitioner shall be given credit for any amount already paid in this regard. It is made clear that failure on the part of the petitioner to deposit the aforesaid amounts, within the time stipulated hereinabove, shall result in automatic vacation of the order of stay; and it would then be open to the respondents to proceed and take action in accordance with law.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date: 26.04.2016

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